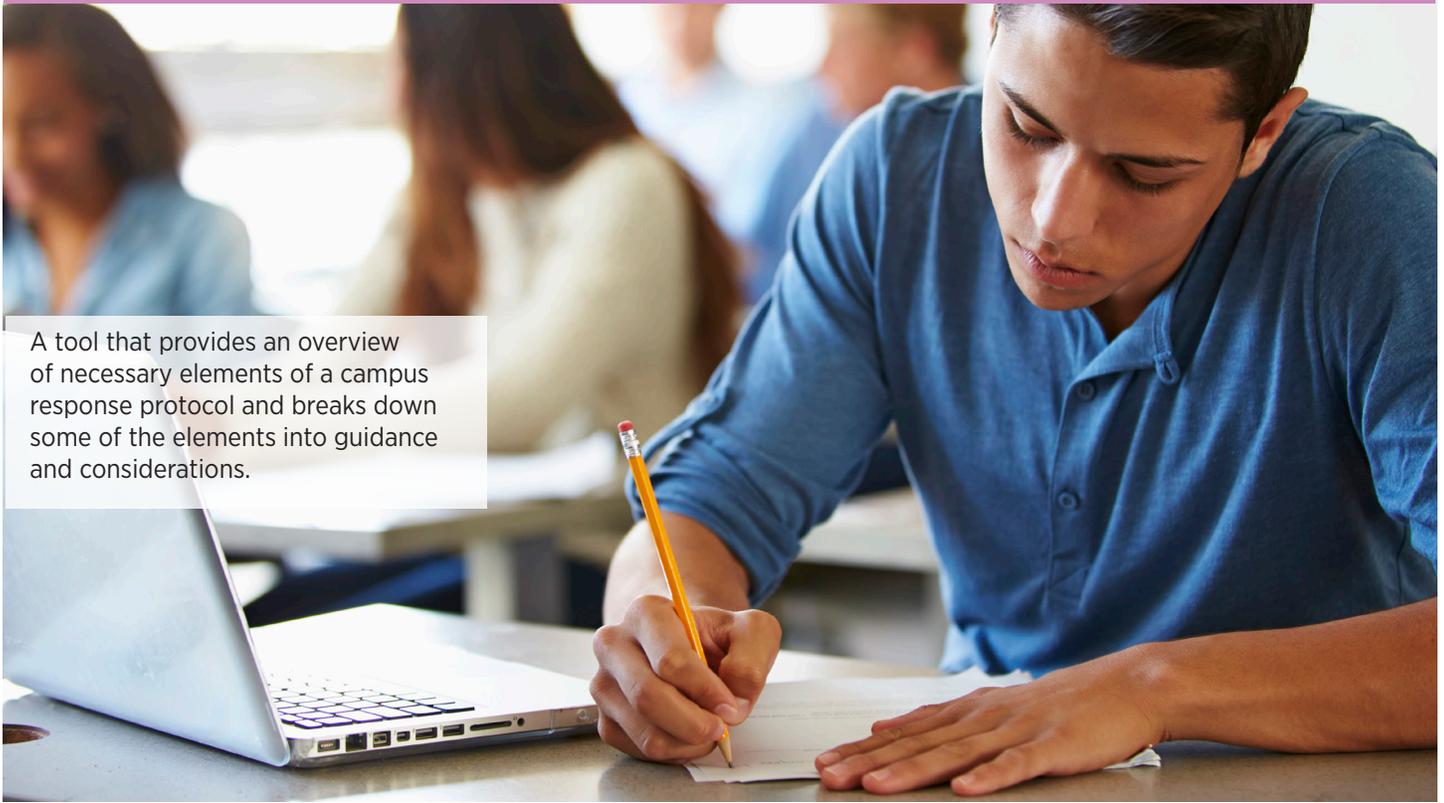


# GUIDE TO CAMPUS PROTOCOL DEVELOPMENT: Components, Considerations and Checklists



A tool that provides an overview of necessary elements of a campus response protocol and breaks down some of the elements into guidance and considerations.

## 1 INTRODUCTION

This section of the Toolkit provides guidance to Ohio campuses in building and strengthening their response protocols to gender-based violence impacting students.<sup>1</sup> There are various systems, structures, and strategies by which a campus can effectively respond to gender-based violence, all of which can be compliant and integrate best practices. One protocol does not fit all - in fact, great protocol development and implementation must be tailored for a campus community by the campus community in communication with and feedback from key campus and community constituents.

There are several existing protocols, checklists, and templates from national and state sources that have been identified by the U.S. Department of Education Office of Civil Rights (OCR) and the Ohio Department of Higher Education (ODHE) as reflecting best practices in campus gender-based violence response. We have included those resources in Section 4.

### *The purpose of this Guide is to:*

- Identify resources that Ohio campuses should use to build their protocols and engender an approach to the work that creates a “Changing Campus Culture” mentality among campus and community responders;
- Provide Ohio-specific guidance on best practices from campus and community practitioners;
- Recommend adaptations for various institutional sizes and types; and
- Address how state law impacts response.

1 This Guide addresses gender-based violence in which a student is the recipient of the unwanted conduct regardless of who the accused individual may be. It does not address when an employee is the recipient.

This resource is grounded in ODHE’s Changing Campus Culture recommendations and is intended to serve as a comprehensive source of national and localized guidance for a range of professionals, from those new to the field and to those with extensive experience. We encourage you to use this guide as you build and strengthen your own protocol, and assess where you are, where you want to go, and how you will get there as a campus and in collaboration with campus and community partners.

This guide incorporates all the Essential C’s<sup>2</sup> but especially focuses on s Commitment, Collaboration, Competence and Compliance in congruence with the Where Are We Now? A Self-Assessment Tool. In the sections of the Guide discussing the components of a protocol, there are “Key Points” which are main considerations or facts for that relevant topic. There are also checklists campuses can use as they examine their current protocol.

<b>TABLE OF CONTENTS</b>	
<b>1</b>	<b>INTRODUCTION</b>
<b>2</b>	<b>GUIDING PRINCIPLES</b>
<b>3</b>	<b>NATIONAL MODEL PROTOCOLS &amp; PROCESS FOR PROTOCOL DEVELOPMENT</b>
<b>4</b>	<b>COMMITMENT</b>
a.	Protocol-Building Resources: Title IX Team Best Practices & Recommendations
b.	Creating a Changing Campus Culture Mentality
<b>5</b>	<b>COLLABORATION</b>
a.	Campus & Community Partnerships
b.	Strategies to engage law enforcement and prosecutor partners
<b>6</b>	<b>COMPETENCY</b>
a.	Training
<b>7</b>	<b>COMPLIANCE</b>
a.	Confidential Resources
b.	Annual Security Report
c.	Investigation & Adjudication Process
d.	Interim Measures & Survivor Safety
e.	Sanctions
f.	Monitoring/Tracking
g.	Balancing Compliance and Humanity: Creating a fair, equitable campus adjudication process
<b>8</b>	<b>EMERGING ISSUES</b>
a.	Transcript Notation
b.	Ohio Public Records Law and Private Institution

2 The Essential C’s are Commitment, Collaboration, Compassion, Communication, Competency, Compliance, Consistency and Considerations (Culture, Confidentiality, Capital, and Crimes).

## 2 GUIDING PRINCIPLES

Developing and implementing a best practice gender-based violence response system requires the highest levels of expertise, collaboration, and care. Campuses face unprecedented scrutiny from all directions on how to address these issues. This can be a good thing. A stressful and complex thing, to be sure, but a good thing in that it offers Ohio campuses the opportunity to deliver on our respective missions and our commitment to students and the educational process.

This is not easy or comfortable work. It requires balancing factors and concepts challenging to weigh, such as safety and fairness, and making difficult, nuanced decisions every day that have significant and oftentimes long term impacts on students' lives. It requires campuses to work effectively with individuals who may have seemingly competing or contradictory perspectives and responsibilities regarding some of the most misunderstood, fraught, controversial, politicized issues in our culture, let alone on our campuses. Responding to gender-based violence utilizing the best practices described in this Guide is complex, effortful work. We strongly believe that while the work is challenging and requires a high level of expertise and commitment, we are capable of doing it, together in partnership with our campus and external communities.

This Guide was designed to move beyond compliance to change campus culture; to move the needle on the actual issue of campus gender-based violence- that is, decrease perpetration and increase students accessing whatever type of support, advocacy, and/or reporting resource they identify is right for them. While we are confident that utilizing the Guide will certainly do so, the aim of this resource is not for campuses to be able to “check the boxes” of Title IX or Clery Act requirements; rather, this Guide is built on the premise that our response to gender-based violence must be grounded in our knowledge and understanding of its unique cultural position. This Guide is directly informed by our understanding of the prevalence and dynamics of gender-based violence, and in particular, the pervasive victim blaming and social stigma that crosses all “systems” a student may engage with, including the criminal justice, Title IX, medical, mental health, family, and social systems. “Doing” best practice gender-based violence response is not a checklist- it’s a mentality.

This Guide strives to be both survivor-centered and respect the rights of the respondent. It is rooted in understanding that developing and implementing gender-based violence protocol in response to one source of perceived liability (e.g., an OCR complaint, a civil lawsuit by one party) raises the likelihood that a campus is in fact not complying with Title IX’s requirement that we provide an equitable (for both the complainant and respondent) complaint resolution process for sex discrimination and that our response may be biased. This Guide demonstrates our commitment to the premise that what campuses have to stand on is the integrity of their process. We know that in most cases one party will be unhappy with the outcome of whatever process is in play- the question is, was that party treated with dignity and respect, and were their rights protected and enforced? Our hope is that this Guide will provide a roadmap to get a yes to that question.

## 3 NATIONAL MODEL PROTOCOLS

***We have identified the following model protocols (and relevant supplemental materials) as reflecting best practices:***

- The Association of Title IX Administrators (ATIXA):<sup>3</sup>
  - Sex/Gender Based Harassment, Discrimination and Sexual Misconduct Model Policy
  - Sex/Gender Based Harassment, Discrimination and Sexual Misconduct Model Procedures
  - Guidelines for Implementation of Essential Elements for a Comprehensive Sexual Misconduct Policy & Protocol
  - Policy Guidance and Model Language
  - Tips, Guidance, & General Reference Information
  - Sexual Misconduct Guiding Principles
  - Best Practice Recommendations
  - Title IX Audit

3 The majority of these materials were provided by ATIXA for attendees to the ODHE February 2016 Sexual Violence Prevention & Response Summit Title IX Track.

- [A Safer Campus: a Guidebook on Prevention and Response to Sexual & Intimate Partner & Stalking for Ohio Campus 2nd Edition](#)
- Ohio Attorney General's Office 2015 [Recommendations for Crafting a Memorandum of Understanding Between Critical Partners Responding to Reports of Campus Sexual Assault](#).
- University of Virginia's [Policy on Sexual and Gender-Based Harassment and Other Forms of Interpersonal Violence](#)
- University of Oregon [Protocol for Responding to Incidents of Sexual Harassment and Sexual Assault Involving Students](#)
- Association of Student Conduct Administration (ASCA) 2014 [Student Conduct Administration & Title IX: Gold Standard Practices for Resolution of Allegations of Sexual Misconduct on College Campuses](#)
- White House [Guide to Drafting a Sexual Assault Policy](#)
  - Checklist for Campus Sexual Misconduct Policies
  - Definitions of Prohibited Conduct
  - Key Components of Sexual Assault Crisis Intervention/Victim Service Resources
  - Building Partnerships with Local Rape Crisis Centers: Developing a Memorandum of Understanding
  - Sample Reporting and Confidentiality Policy
  - Interim and Supportive Measures for Victims

## Protocols Overview



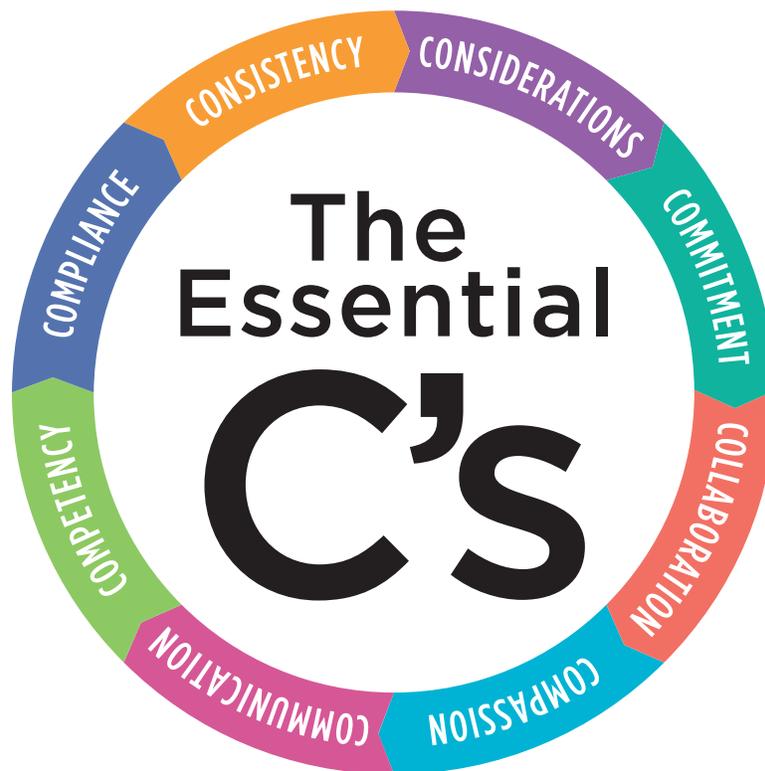
### RESPONSE PROTOCOLS

- Every campus must develop written protocols about how it will affirmatively respond to incidents of gender-based violence whether committed by a student, campus employee, faculty, or third parties.
- A campus must have a public affirmative statement explaining its responsibility to provide a safe and nondiscriminatory environment for all students and its intolerance of anything that would compromise that responsibility.
- A single comprehensive policy to address all forms of Sex Discrimination, including gender-based violence, is ideal to minimize confusion and perceived or actual different standards for different parties, which may create additional barriers to reporting. *Your policy should:*
  - Address jurisdiction, including when students and employees are considered students and employees respectively, and when they are not;
  - Cover incidents of gender-based violence that involve campus students and faculty whether or not the crime is committed on or off campus;
  - Explain how the policy intersects with others (i.e. if you have separate policies when a student is respondent and if an employee is respondent), including policies related to tenured faculty.
- Campuses must develop a prompt, fair, and equitable investigation and disciplinary adjudication process.
- The protocols should be specific and outline definitions of prescribed conduct, the process involved in both the investigation and disciplinary action phases after a complaint has been received, duties of the campus to protect complainants, potential sanctions for respondents, and other relevant information to ensure a fair and equitable process.
- Protocols should include operational definitions of gender-based violence such as sexual assault, rape, sexual harassment, stalking, intimate partner violence, and other forms of sexual violence. Consent, coercion, and incapacitation should also be defined.
- Clear guidance to the entire campus community must be provided about how to identify gender-based violence and how to report it to the Title IX Coordinator.
- Protocols should convey a culture where reporting of gender-based violence is encouraged and there is transparency about what happens after a report is received.

- The campus must have an official statement prohibiting retaliation against individuals who report incidents under Title IX.
- The campus should inform survivors that they have the right and how to make complaints to the local law enforcement if a criminal justice action is desired.
- The protocols should include how the complainant and respondent will be treated with respect, dignity, and sensitivity throughout the process and how they will be provided information about the status and outcomes.
- The protocol must be quite detailed yet be understandable. For example, it must include the timeframes for major stages of the complaint process, information about confidentiality, how the campus will respond when either the complainant or respondent is a minor, and roles and responsibilities of all responders involved in gender-based violence. It also must be accessible and understandable by a diverse campus population.

### The Process of Development

Consistent terminology should be used throughout all protocols and accompanying materials. Protocols should be developed and reviewed by a team comprised of experts who respond to gender-based violence. It is also helpful to have protocols reviewed by individuals who were not directly involved in their development, but as interested outsiders to ensure that there is consistent understanding of the protocols across a diverse campus population. For example, this could include culturally-specific organizations, student groups, faculty, and staff.





### 3 COMMITMENT

  
KEY POINTS

- **COMMITMENT<sup>4</sup>**
- Fostering climate change takes a coordinated and supported effort.
- A unified and clear message of commitment to end and respond to gender-based violence should permeate the campus.
- There must be direct, open, and transparent communication at every level of the campus about the commitment and the processes in place to manifest that commitment.
- The campus should foster a climate that encourages reporting of gender-based violence.
- Leadership from the highest level of campus administration must be engaged and share responsibility along with the entire campus community to change campus culture.
- A campus should dedicate critical resources in order to have a safe, comprehensive, and compliant response to gender-based violence.
- Strategic leaders in faculty, staff, and administration should be identified to work on campus and with off-campus partners.

4 This toolkit includes a set of key points on many of components of a model response protocol. Some of these sections also have accompanying checklists. These segments take into account guidance provided to campuses from a variety of sources about compliance with the Clery Act and Title IX. These key points and checklists are not all-encompassing and campuses should not limit their responses to what is contained in this section. Additionally, following these checklists does not guarantee that a campus will be in compliance with federal and state regulation.

There have been tremendous previous efforts to help simplify the myriad of regulations and steer campuses across this country. There was significant reliance on those existing resources in the development of this section such as the guidance offered by the U.S. Department of Education Office for Civil Rights through its Dear Colleague Letters, the Title IX Coordinators Resource Guide, and its resolution agreements with campuses across the country. Additionally, materials from The White House Task Force to Protect Students from Sexual Assault and model protocols and checklists from membership organizations such as the Association of Title IX Administrators, the Association for Student Conduct Administration and the National Association of College and University Attorneys (NACUA). Finally, the presentation created by JuHwon Lee and several others, for the 2013 NACUA Annual Conference, entitled, *Sexual Misconduct and Compliance with Title IX: Managing Risk with Integrated and Coordinated Sexual Misconduct Policies and Procedures* helped inspire a roadmap and content.



**Our campus has:**

- A unified message about responding to gender-based violence.
- Engagement and leadership from key individuals in the administration.
- Sufficient resources dedicated to developing and implementing response protocols.
- Mechanisms to inform the larger campus about the commitment and how it will respond to gender-based violence.

## PROTOCOL: BUILDING RESOURCES

### Title IX Team Best Practices & Recommendations

#### 1 Adequately resource the work.

Work toward establishing a dedicated, full-time Title IX position to lead a team of individuals addressing gender-based violence at your campus regardless of campus size. This supports Title IX leadership having the opportunity to drive cultural change rather than merely meeting compliance requirements. It also acknowledges the reality that while gender-based violence is a critical component of Title IX work, the scope of the work includes much more.<sup>5</sup> Additionally, the campus should strive to establish, a Title IX position that oversees the full Title IX program, but does not conduct investigations themselves; rather, this person should oversee an investigator(s) depending on the size of your campus.<sup>6</sup>

For smaller institutions and/or those working to build capacity, consider creative ways to assign Title IX responsibilities to more than one already-established position so that two or more positions may collaborate to effectively meet the needs of the campus and support one another in the work. Doing so may help minimize overwhelmed, under-resourced staff, maximize campus collaboration and staff support, and increase Title IX visibility and leadership opportunities.

#### 2 Properly position the work.

Depending upon where this position is housed can create real and perceived issues surrounding authority, effectiveness, and bias. It can also affect the ability to coordinate efforts and conflict of interest. Campuses should give great care in deciding where this position will sit in its administration and who in the senior leadership it will report to. Specifically the coordinator:

- Should not have any other duties that would raise questions about a potential conflict of interest. Therefore, designating a board member, general counsel, dean of students, superintendent, principal, or athletics director as the Title IX coordinator may pose a conflict of interest.
- Must have access to senior campus leadership/administration to be able to fully inform them of any Title IX issues that arise. Additionally, the Title IX coordinator must have the appropriate authority, both formal and informal, to effectively coordinate the recipient’s compliance with Title IX.
- Must be provided with sufficient resources to carry out position responsibilities and ensure compliance with Title IX.
- Should be provided access to campus law enforcement unit investigation notes and findings as necessary.

The reporting structure for top Title IX leadership should communicate to the community the campus-wide scope and authority (over students and employees) of the position Placing Title IX personnel addressing student issues in Human Resources creates an additional barrier for students to access services as most students think of Human Resources as for employees only.

<sup>5</sup> Office for Civil Rights April 24, 2015 *Dear Colleague Letter* on Title IX Coordinators.

<sup>6</sup> *Id.*, at 3.

## COMMITMENT

---

### 3 Properly staff the work.

Consider critically the required and desired skillset staff must have to provide effective, trauma-informed investigation of gender-based violence. An individual with extensive human resources compliance skills and experience, but with little to no training or experience working with an individual who has experienced gender-based violence trauma would not be an appropriate fit for this position. The Coordinator must have adequate training on what constitutes gender-based violence, including sexual harassment, sexual violence, intimate partner violence, and stalking. This person must also understand the campus's grievance procedures and the intricacies involved in both fact finding and decision-making.

***In their role, the Coordinator should be:***

- Available to meet with students as needed;
- Involved in the drafting and revision of such campus response protocols to help ensure that they comply with the requirements of Title IX; and
- Available to provide assistance to campus law enforcement unit employees regarding how to respond appropriately to reports of gender-based violence.

***Critical skillsets for Title IX staff include at minimum:***

- Ability to establish rapport quickly and in difficult circumstances.
- Ability to translate complex concepts to individuals whose capacity to comprehend the information is significantly compromised.
- Demonstrated commitment to assessing and addressing personal bias.
- Demonstrated skills effectively weighing and balancing complex, nuanced factors.
- Strong knowledge of prevalence, effects, dynamics, and impact of gender-based violence.

### 4 Plan ahead.

The more effective we are in this work, the more barriers will come down and the more reports we will have. As we continue to witness the positive trend of increased reports on our campuses we should utilize this data to inform budget and personnel planning and decisions.



## TITLE IX COORDINATOR'S ROLE

Every campus must designate at least one employee responsible for coordinating and carrying out the campus's Title IX efforts. If a campus has more than one person in this role or as part of a team, one person should be selected to have overall oversight and responsibility with a corresponding title that clearly indicates this leadership and accountability.

This position should not be left vacant and campuses must have someone designated as the Title IX Coordinator at all times.

The coordinator must be granted the authority and independence to carry out position responsibilities to ensure compliance with Title IX.

Contact information for the coordinator, including name and title, should be readily available to the entire campus community.

The Coordinator should regularly review campus police records for violations of Title IX and respond accordingly.

Title IX Coordinator should document EVERY report or request for assistance in resolving an incident involving allegations of gender-based violence.

In addition to addressing individual incidents of gender-based violence, the Title IX Coordinator is in a key position to identify and address any patterns or systemic problems.

- Priority is student welfare.
- Develop a culture of accountability and respect for others.
- Students look to campus for guidance and direction to set clear expectations for behavior.
- Student behavior guided by swift, fair, and certain campus response.



### *Our Title IX Coordinator position:*

- Is filled at all times.
- Holds no other responsibilities than serving as the Title IX Coordinator (preferable).
- Is provided the authority and independence to carry out its responsibilities.
- Is provided sufficient resources to carry out its responsibilities.
- Does not have any conflicts of interest that would create real or perceived barriers to access and compliance.
- Has adequate training to properly undertake responsibilities to respond to gender-based violence.
- Reports directly to senior campus administration and leadership.
- Meets directly with students
- Assists in drafting and modifying campus protocols.
- Has access to campus law enforcement reports and information to complete Title IX investigations.
- Regularly reviews campus police records for violations of Title IX and responds accordingly.
- Documents all reports or requests for assistance in addressing gender-based violence.
- Contact information, including name and title, are widely disseminated across campus to students and campus employees and contractors.

## COMMITMENT

---

### CREATING A “CHANGING CAMPUS CULTURE” MENTALITY

*The following concepts and guidance support efforts to encourage responders to approach their respective work with the beyond compliance mentality:*

#### **Share Information Transparently**

As campuses work to increase campus constituents’ knowledge and understanding on gender-based violence, students’ rights under Title IX and campus policies, and campus and community resources available, reports will increase. This means that efforts to decrease barriers to accessing advocacy, support, and/or reporting resources are working and that we are beginning to move the needle in our communities. Campuses should establish regular spaces and places to share these successes and framing. Potential avenues may include: annual letter from Title IX team to the community; town hall meetings; proactive media pieces; and social media campaigns.

Title IX staff can leverage relationships and collaboration with student leaders to share and promote the information and establish avenues for Q&A with Title IX staff on the data and trends. Title IX teams should proactively utilize regular opportunities to share successes and continuing challenges on all strata of the campus, including admission tour guides, parents, alumni, and the Board of Trustees.

#### **Leverage Mission**

Your gender-based violence protocol should start with a statement of intent and purpose that is directly tied to the campus’ mission. Doing so encourages campuses to do the “pre-work” of developing a shared vision of the work, which should then directly inform the actual protocol development and implementation.

#### **Clearly Define Roles and Scope of Processes**

*Title IX staff should inform parties early and often about what the internal Title IX complaint resolution process is, and is not, addressing. A Title IX Coordinator may want to explain the following:*

- The Title IX process asks and answers this question: is there sufficient evidence to conclude that it is more likely than not (preponderance of the evidence) that the respondent violated a campus policy?
- Compare and contrast with the criminal justice response and option.
- Acknowledge that the Title IX process is difficult. Higher education has put so much emphasis on getting students to report that we can lose sight of the fact that the process itself can be grueling, challenging, and can result in a not responsible outcome.
- If there is a finding of not responsible, that does not mean something traumatic and/or difficult did not happen. Emphasize that campus resources are still there to address student needs around academics, housing, safety, and well-being regardless of the outcome.

These concepts should be revisited throughout the Title IX’s interaction with the complainant and respondent as they are difficult concepts to comprehend even in the best of circumstances.

#### **Prioritize clarifying the roles and confidentiality of all “entry points” a student might access.**

It is essential that complainants and respondents understand who they are interacting with, the roles of these individuals, and how the information they provided to these individuals may be used in the future. Some of these professionals are: Title IX staff, campus police, local police, prosecutors, student conduct staff, community advocates, campus advocates, campus mental health counselors, private counselors, clergy, and confidential advisors.

It is best practice for a campus to proactively share this information with the campus community as a whole to help inform the campus community in advance in case of an incident of gender-based violence. Strategies to do so include using student leaders as disseminators of the information, integrating the information into spaces where students already are (e.g., classrooms, orientations to student clubs) and integrating the topics into related issues about which students may already be engaged or concerned. This information must also be shared during an initial meeting between the Title IX Coordinator and a student, although at that time the student may be in crisis and not absorbing the information.

**Law enforcement or campus security personnel should not conduct Title IX investigations.**

This structure further exacerbates the problematic conflation of the criminal and Title IX processes and increases the likelihood of a chilling effect on reporting if students think reporting to the Title IX person is reporting to law enforcement and they do not want to take that step. In addition, because the two systems have entirely different foundations, standards, orientations, processes, and outcomes, utilizing an individual with a law enforcement background and skillset in the Title IX role may increase the likelihood that a campus is not effectively meeting a range of its obligations under Title IX.

**Be intentionally inclusive**

To move beyond compliance into cultural change, we must commit to identifying and implementing intentional ways in which our campus processes and response are accessible and inclusive for all students regardless of their sex, gender, gender identity, gender expression, race, ethnicity, ability, disability, pregnancy, social economic status, color, national origin, religion, citizenship, familial status, age, or veteran status.<sup>7</sup> Culturally competent services and responses integrate culturally-specific knowledge about marginalized or underserved communities into services and messaging. Understanding and identifying barriers for underserved communities, and taking active steps to minimize these barriers to increase the accessibility of programs and support for students must be part of our core vision and approach. Providing culturally competent responses is an ongoing process, and campuses are encouraged to continually evaluate and assess their responses. *Strategies to promote intentional inclusivity in campus protocol development and implementation should include:*

- Anti-discrimination protocols should include protections for sexual orientation, gender identity, and gender expression.
- Definitions for language in protocols defining consent, sexual violence, sexual harassment, sexual assault, intimate partner violence, stalking should use gender neutral language (i.e., they, them, theirs, student, partner) to reflect that anyone can experience these forms of violence.
- Resources should include culturally-specific options (i.e., counselors) that are both trauma-informed and have expertise in working with specific communities.
- Resources, protocols, and information should be accessible to students for whom English is not a first language and for those with varying levels of physical and/or cognitive abilities.
- Promotion and dissemination should use inclusive language, images, and modalities.
- Proactively build relationships with culturally-specific resources on campus and off campus.

**Build rapport and create choices**

Title IX staff and campus partners are likely familiar with the phrase “reluctant victim” referring to a student who wants to share information about their experience (or the information has come to us from a third party), but has requested that to remain confidential and/or that we do not proceed with further investigation. Most campuses are aware of their obligations to evaluate these types of requests and what factors they must consider during evaluation. If we are to be truly trauma-informed and utilize our knowledge about the realities of gender-based violence in our culture, we must be willing to take all reasonable steps to allow students the time and space to make the decisions that are best for them around sharing the respondent’s name and if/how that they will participate in our complaint resolution process. In our rush to be compliant and/or to get someone to report, we minimize our opportunity and ability to build the rapport and trust with the complainant. Providing a complainant time to take-in the information, speak to family and friends, consider options, and acquire necessary sleep and nourishment, may in fact result in a complainant deciding to participate in a grievance process.

**Equitable Advocacy**

- **Identify mechanisms and staff (not Title IX staff) to provide assistance to the respondent with academics, housing, and mental health issues while the complaint resolution is pending.** A campus could accomplish this (and promote equitable advocacy more broadly) by developing a Respondent Advisor program to support accused individuals. The responsibilities of a Respondent Advisor role could include: accompanying respondents in meetings/hearings, helping them understand their rights and options, assisting with meeting/

7 This list includes and is not limited to protected classes under Federal law.

## COMMITMENT

---

hearing preparation, addressing academic, housing, employment, and mental needs and providing emotional support while navigating concerns throughout the complaint process. Respondent Advisors should be trained on the campus' gender-based violence complaint resolution process and all resources available to the respondent. Campuses should establish a selection, vetting, and training program for these individuals, including education on the complaint resolution process and clear parameters on their role. To maximize participation in this type of program and minimize concern that a person participating may somehow be defending the respondent, Title IX and other leadership should proactively share information about its parameters, rationale, and value with the campus community.

- **Encourage identification of the advocate and/or advisor of choice for both parties as early as possible.** This will promote the most comprehensive, expert support for both parties and will support staying as close to the 60 day recommendation as possible. Many students engage legal counsel late in the process, which can cause delays via scheduling and potential delay tactics by either or both attorneys.
- **Request that complainant and respondent advocate/advisor resources be on “on stand-by”** (not physically present but available to come immediately) in case a party wants to have them in the initial meeting to increase utilization. Advocates for both parties can give information, support, and assistance in a way that the Title IX investigator cannot and this is a critical component of protecting parties' rights from the start.
- **Campuses should consider allowing both parties to have a lawyer AND an advocate** given the unique and critical roles of both through the process.

### **Create a culture that does not tolerate gender-based violence**

Change can feel insurmountable; however, it truly happens one person at a time. We also must regularly acknowledge, and draw energy and hope from, the extraordinary strides we have made in bringing light to and affecting change around the issue of gender-based violence on our campuses over just the last five years. By working to promote a culture where students, faculty, and staff intervene before, during, and after gender-based violence occurs, campuses are creating substantial cultural change. As we look ahead in this movement, our next step is to move beyond awareness-raising to building up skills- such as effectively engaging as a bystander, supporting a survivor in a trauma-informed manner, and successfully advocating for organizational policy changes- and opportunities to put those skills into action.

### **Reduce perpetration/end gender-based violence**

Individuals who perpetrate gender-based violence count on the community around them- their classmates, professors, co-workers, friends, and family members- to help them. They count on us to be silent- to look the other way; to not believe the survivor; to look to the survivor for the cause of the violence. In fact it may be that the greatest tool for individuals who engage in gender-based violence have is us. Conversely, the more we become a community that refuses to look the other way, the more individuals who perpetrate violence have something to fear. We want our campus communities to be places where those who commit gender-based violence are uncomfortable; do not fit in; where they know and learn that they social norm is for someone to speak up rather than stay silent. The more individuals on our campuses and in our communities that are educated on the realities of gender-based violence that intentionally reject victim blame and social stigma, and have the skills and courage to interrupt gender-based violence the more we are able to reduce perpetration of gender-based violence.

### **Promote healthy sexuality, stable relationships and productive workforces**

Much of society's reticence toward addressing gender-based violence comes from the historical, deeply entrenched, and damaging misinformation most of us learn about the prevalence, dynamics, and impact of gender-based violence as well as discomfort with the topic of sex and sexuality (despite the fact that gender-based violence is primarily about power and control, not sex). We now know that working to promote healthy relationships, including sexual consent, is a critical component to addressing gender-based violence on campus. Beyond that, when campus community members are educated through the lens of what we want them to do and be, rather than what we do not, they feel more connected to the overall efforts to create change. Moreover, if we create campus communities of healthy individuals and relationships, student and campus personnel productivity increases, leading to a generally stronger sense of community and purpose, and promoting our mission to educate students holistically.



**5 COLLABORATION**

**Campus & Community Partnerships**

One individual or entity cannot change culture. Developing, fostering, and sustaining campus and community partnerships are critical to move beyond check box compliance. Larger campuses should consider having both a campus response team and a multi-disciplinary campus-community team, with built in mechanisms for overlap and collaboration between the two. Smaller institutions can enhance their response team capacity by leveraging campus and community resources into one team. Team-building recommendations include:

<p><b>Be Student &amp; Survivor-Centric</b></p>	<ul style="list-style-type: none"> <li>• Prioritize student and survivor membership in these teams to maximize relevance and accountability and to optimize effectiveness and impact.</li> <li>• Put what we know- that students with access to confidential advocacy and support are more likely to seek additional sources of support (e.g., counseling, medical) and to report to law enforcement and Title IX- into action. Prioritize more choices around and sources of confidential support and advocacy- community-based, on-campus staff, and on-campus peer) for students.</li> </ul>
<p><b>Build Relationships</b></p>	<ul style="list-style-type: none"> <li>• Proactively build a relationship with your community gender-based advocacy organization if one exists in your community. This may be particularly critical to small campuses who may not have the on-campus resources. Establish a MOU that articulates ongoing partnership and collaboration opportunities. If your community does not have a rape crisis center or IPV advocacy organization, commit to developing on-campus expertise around advocacy and support, ideally via staff and peer advocates, and utilize the state and national resources available to them in those efforts.</li> </ul>
<p><b>Establish Common Ground</b></p>	<ul style="list-style-type: none"> <li>• Develop a common gender-based violence knowledge base through reciprocal trainings.</li> <li>• Utilize shared knowledge and understanding to develop a shared vision and approach to the work.</li> <li>• Continually ground the work of the team to that shared vision and approach. For example, your team may determine that, in response to a common understanding that the severe underreporting of campus gender-based violence is due to lack of understanding of survivor choices and various systems, you may work as a group to prioritize confidential advocacy and support resources as the initial entry point for student survivors in your community. From there, you can determine strategies to meet that goal leveraging the tools available to each member to support the shared goal.</li> </ul>
<p><b>Increase Access</b></p>	<ul style="list-style-type: none"> <li>• Create a campus and community centralized web portal with videos of members describing their role, addressing their confidentiality parameters, and proactively dispelling myths to encourage student survivors accessing resources.</li> </ul>

## COLLABORATION

### Partnering with Law Enforcement and Prosecutor

- When engaging with these partners, acknowledge and allow for education and dialogue around the differences between the criminal and Title IX systems, including, but not limited to:
  - Purpose
  - Legal foundation
  - Type of conduct addressed
  - Language
  - Standard of proof
  - Rules of evidence
  - Potential outcomes
  - Actual outcomes
  - Requirements while pending (e.g. Interim measures)
  - Parties rights

### Build Relationships

- Historically and for many still now (including those we may be striving to partner with), the criminal justice system is seen as the only and/or the only appropriate system under which we should address gender-based violence- in particular acquaintance sexual violence. Knowing this, we have to be realistic, intentional, and patient as we develop the trust, rapport, and partnership required to determine how the two systems, and the individuals within those systems, will (and as importantly will not) work together. We can do this relationship-building while still firmly committed to and strong on our mission to change campus culture around gender-based violence.

### Successful strategies to foster collaboration with law enforcement and prosecutor may include:

- **Draw parallels with other systems** required by law to address conduct that may be criminal in nature as well and result in some non-criminal sanction (e.g. termination, dismissal) under their internal systems, such as employers or the military. If the criminal justice response does not move forward for any reason (which frequently is the case for most acquaintance gender-based violence), these non-criminal entities must still have a response. It may be helpful to share and facilitate an open dialogue with law enforcement partners regarding the fact that campuses have been adjudicating student and employee conduct that may be criminal in nature (e.g. physical fights, drug possession) that may result in suspension or expulsion for years, and there has been no backlash or concerns from the public or law enforcement about campuses doing so- until the issue of campuses doing so in student on student sexual assault cases came up. A discussion about why this is, while challenging and likely developed over time, may lead to productive perspective development and ultimately stronger collaboration that will support cultural change.
- **Identify an ally within law enforcement** who shares your desire for collaboration, understands the interplay of the two systems, and may be able to co-facilitate conversations and trainings with you for their colleagues.
- **Articulate to law enforcement partners** that understanding, utilizing, and partnering with campus Title IX staff, advocates and community advocates can significantly increase the ability of a student victim in a criminal case to serve as a strong witness and to sustain their participation in the criminal process.

For example, if a prosecutor is able to refer a student they are working with to the Title IX Coordinator to assist the student to stabilize their academics, address their safety needs (via a No Contact Order), and remove them from the residence hall in which they were raped, that student will be in a much better space to participate successfully in the criminal process. In a similar vein, if and when police and/or the prosecutor's office determine they will not be taking the student's case to prosecution (which again, is the vast majority of the time), they can offer that student a multitude of resources outside of the criminal process that will potentially help address some of their needs.

- **Proactively address potential prosecutor concerns** that the campus Title IX process will negatively impact the success of the criminal case.
  - **Acknowledge Reality.** First, it is important to have an open, respectful conversation about the fact that most campus gender-based violence cases, particularly student on student sexual violence with alcohol involved, are not pursued by the prosecutor’s office and those that are rarely result in conviction. This reality has nothing to do with the existence of a concurrent Title IX investigation/process, but rather reveals the many challenges that exist related to the criminal justice system response to gender-based violence as a whole compared to other types of crime.
  - **Have difficult conversations.** Have a proactive conversation (not in the middle of a case) with the prosecutor’s office regarding what their specific concerns are around the Title IX process negatively impacting the criminal case so that Title IX officer can be sensitive and responsive to those concerns. Perhaps there is an investigation training that the prosecutor’s office might recommend for Title IX staff that would decrease their concerns.
- **Help Each Other.** Raise the idea that investigation and complaint resolution processes conducted by personnel with appropriate training and expertise could potentially benefit a criminal case and help the prosecutor office’s strengthen their response and outcomes to these cases.
- **Let data drive the objectives** and work of campus and community partnerships in whatever form they make take. For example, many prosecutor offices across Ohio do not track how many student victims they engage with nor what they do with those cases once received (i.e. whether prosecuted, outcomes of prosecution). If we can begin to understand what systems students access, what is happening when they do, and how those data points might relate, the more we can tailor our campus and community partnerships to directly address those issues. One strategy may be for a community group or Sexual Assault Response Team (SART) to develop a shared data set that they would like to collect. For example, all systems (i.e. law enforcement, SANE, advocacy organizations, prosecutors) integrating a question about student status into their intake processes would likely be a significant shift in most communities. If the reporting party does identify as a student, the responding entity then has the opportunity to identify and explain campus resources to that person and make a referral with a name to that referral resource. For example, if a student identifies to a prosecutor that they are a student on a local campus and are having trouble keeping up in classes because of the assault, that prosecutor can use their campus and community team contact to make a directed referral. Teams may consider developing flowcharts of campus and/or community resources with names attached to utilize in their respective intake and referral processes.
- **Complainant and Respondent Lawyers.** Legal representation for one or both parties is becoming the norm. Title IX personnel should ensure parameters of lawyer participation in the campus’s complaint resolution process are clearly described in protocol, but should also build in the opportunity to review these protocols with lawyers to encourage transparency, answer questions, and make clear the consequences for legal representation not abiding by the campus’s protocols. Consider ways to engage with lawyers serving in these roles and regularly interfacing with campus personnel in a proactive way outside of individual cases to promote common understanding of each other’s roles, the campus’s policies and protocols, and to address conflicting or tension points proactively rather than in the middle of a case. For example, the Title IX Coordinator and/or administrator facilitating the conduct process may consider inviting local lawyers to campus for an informal, non-adversarial Q&A on Title IX and the campus’ process so that discussion, including typical tension points during cases, may be discussed in a more proactive, less adversarial environment. Title IX Coordinators and local lawyers may consider attending or even potentially co-developing and implementing trainings on the intersection and interplay of Title IX processes and the criminal and civil legal systems to increase individual knowledge and foster a respectful, working relationship. A Title IX Coordinator may consider attending a forum at which Title IX issues are discussed in the civil attorney arena to gain better understanding of the perspectives and concerns that may be raised in those spaces. These strategies can help to minimize one or more conflict areas during the complaint resolution processes, which serves to support both students better in an already very difficult process.

## COLLABORATION



### COLLABORATION

- Collaboration is imperative to ensure the campus has compliant, comprehensive, and meaningful responses to gender-based violence.
- Every campus should have a group of key stakeholders that meet on a regular basis to discuss campus responses to gender-based violence.
- No one method of engaging stakeholders is effective for all stakeholders. Different approaches should be used based upon the individual, the history of prior relationships, and the desired outcome of engagement.<sup>8</sup>
- The campus should also be connected to any larger community collaborative or task force working on gender-based violence issues.
- In any collaborative, members should have delineated roles and responsibilities, preferably written.
- Working in collaboration helps identify gaps in services and breakdowns in protocol implementation. A collaborative can also leverage resources and power to create resources to fill the gaps and ameliorate the implementation challenges. Stakeholders are in a key position to develop information sharing and documentation protocols and create templates that should be used by campus responders.
- To be effective, collaboration requires trust building, open and honest communication, and the ability to work through conflict. Cross-training can facilitate a better understanding of various stakeholder's roles and responsibilities.
- Campuses can use collaboration to assemble a comprehensive list of services and supports vices (both on and off campus) who can meet the needs of the diverse student body.
- Memorandums of Understanding (MOUs) should be used to develop and cement formal relationships between campuses and off-campus entities that are critical to a holistic and comprehensive response. MOUs should outline the corresponding roles and responsibilities of partners and acknowledge respective duties of partners in responding to gender-based violence.
- Communication protocols should be developed that provide clear guidance on documentation, confidentiality, and information sharing among responders.

8 See the Toolkit section Unpacking Essential C's: Collaboration: A Guide to Stakeholder Engagement for more information.



## 6 COMPETENCY

**For investigators and decision-makers.** Campuses can meet their Title IX responsibilities to have a prompt and equitable complaint resolution process, including a fair, reliable, and impartial investigation, for sex discrimination complaints through a variety of systems and structures.

### What's Your Model?

Your campus may have determined that a civil rights model with a single investigator conducting the investigation, making a finding, and assigning the sanction is the right fit; or that utilizing a fully external investigator and complaint resolution process is the right fit. Whatever the system, your campus is responsible for ensuring the individuals managing these processes are trained in a way that meets OCR guidance.

*Consider the following recommendations as you determine the best approach for your campus:*

- ✓ **Establish an application and interview vetting process** for investigators and decision-makers that promotes a trauma-informed, equitable, impartial process.
- ✓ **Address how to balance personnel's responsibility to be trauma-informed and to be unbiased and equitable in training.** If a campus does not specifically address this issue, investigators and decision-makers may improperly draw a case conclusion and act impartially rather than equitably. For example, investigators and decision-makers should understand why there may be inconsistent statements and issues with memory as that can be consistent with experiencing trauma; therefore, an investigator/decision-maker must not automatically discredit a report if those factors are present and/or allow such factors to indicate whether or not an incident of gender-based violence has occurred.
- ✓ **Ensure that investigators are aware they may be or can become a trigger for a complainant** and are capable to show flexibility and responsiveness to the impact their interactions have. This includes demeanor, openness and communication gaps.
- ✓ **Give decision-makers access to initial training materials** if they are selected to serve as a decision-maker on a case so that they can review the information closer in time and be more informed during the hearing<sup>9</sup> as significant gaps of time may pass before a decision-maker is called to serve on a board and a review of materials would be prudent.

<sup>9</sup> There are a wide range of training modules for decision-makers available from various resources each with delivery method options (i.e. in person, webinar) and a range of cost. Examples include Paperclip Communications, Academic Impressions, ATIXA, and NACUA. Title IX leadership should vet the quality of the training content and faculty determine the highest quality training to meet the campus' particular needs and budget.

## COMPETENCY

---

✓ **Give decision-makers an adequate amount of time to consider case documentation** to support their ability to review the information and potential policy violation questions at issue. While campuses are certainly correct to have strong safeguards around sharing case documentation with decision-makers, campuses that provide case documents to decision-makers only 1 hour or even 24 hours before the hearing greatly reduce the decision-makers ability to review the materials.

✓ **Address the following competencies in decision-maker training:**

- Gender-based violence prevalence, dynamics, and impact.
- Potential experiences and reactions of an individual accused of gender-based violence (e.g., fear of telling family, memory impaired by alcohol, impact of concurrent criminal process).
- Questioning skills.
- Weighing different types of evidence (e.g. direct, circumstantial, inferential).
- Applying policy to fact.
- Elemental analysis.
- Applying preponderance of evidence standard.
- Assessing credibility, motive, inconsistencies, consent, intoxication, capacity
- Mock hearings.

✓ **Institute mock hearings and monthly in-services** on various relevant, complex topics to increase expertise and experience.

✓ **If you are using an external investigator, consider:**

- How is that person/firm vetted?
- What mechanisms are in place to assess an external investigator's expertise and ability to do the work in a trauma-informed way?
- How have you ensured that person/group has the campus connections to refer both parties to the campus resources they may need?

✓ **Co-training with collaborative partners**

- Utilize your partners. When considering who will train your investigators and decision-makers on the dynamics of gender-based violence, utilize campus (i.e. Diversity & Inclusion, LGBTQI+, Women's Center) and/or community (i.e. local rape crisis center, LGBTQI+ organization) partners to do so.
- Be prepared to respond to respondent and/or respondent attorney concerns that having individuals/entities whose role it is to advocate for individuals reporting gender-based violence do this training creates improper and prohibited bias in investigators and decision-makers. Specifically, a respondent may argue that if a group of conduct board members hear that 1 in 4 women are sexually assaulted, only 1 in 10 report, and campuses have gotten in trouble by the U.S. Department of Education for repeatedly not finding accused students responsible, they will naturally be biased to make a finding of responsible.

*To address this concern, campuses may consider:*

- **Having an on-campus person** who is not in a decision-making or advocacy role within the complaint resolution process to be trained by these campus/community advocacy organizations and then to deliver the training to investigators and decision-makers.
- Having training come from an expert with a more **neutral position** and/or professional background, such as Dr. Rebecca Campbell’s “Neurobiology of Trauma” presentation.
  - **Articulate** the reason for ensuring decision-makers understand the facts and realities around gender-based violence- that is, that such training is in response to myths, misunderstanding, and historical, entrenched systematic blaming of students reporting and discouraging them from doing so.
  - **Communicate** that your training content strives to create equitability and proactively address impartiality and bias, and how.
- **Ensure that investigators and decision-makers are trained on all forms of gender-based** violence not just student-on-student acquaintance sexual violence. There are important distinctions and unique components of intimate partner violence, stalking, and sexual assault that one should understand to inform their trauma-informed approach. For example, lethality assessment and safety planning look very different between intimate partner violence and acquaintance sexual assault.<sup>10</sup>
- **For Responsible Employees**
  - When engaging individuals designated as Responsible Employees on your campus, **lead with the “why” of their reporting responsibilities.**
    - Highlight the protocols grounded in student safety and well-being, success in the classroom, and how experiencing gender-based violence can negatively impact success in the classroom.
    - Focusing on the why of the protocol rather than the “what” (e.g. if a student discloses to you, you must report to Title IX immediately) allows us to tie the training to existing, familiar, and shared education and student development values. It also serves to cultivate rapport, trust, and collaboration with individuals who may come less organically to the work (e.g. faculty in Gender Studies) or even with reluctance and/or opposition to the idea of the Responsible Employee obligations.
  - **Utilize an engaging, accessible training module to reach all Responsible Employees.**<sup>11</sup>
    - From there, create in-person follow up sessions with small groups of Responsible Employees to share the reason for the policy, answer any questions, and create rapport between the Title IX staff and Responsible Employees.

10 See Toolkit Resource List [Safety Planning with Adult Sexual Assault Survivors: A Guide for Advocates and Attorneys](#), Victim Rights Law Center (2013).

11 For example, the Clery Center for Campus Security’s [Responsible Employee Training](#) video.

## COMPETENCY



### KEY POINTS

## TRAINING

Campuses must have education programs to increase the awareness of gender-based violence.

There should be both mandatory and ongoing training on issues related to protocols pertaining to gender-based violence to all members of the campus community – including students, faculty, administrators and other staff.

At a minimum campus police should be trained on complaint and disciplinary procedures; how to properly inform complainants of their rights under Title IX; and how to report incidents to the Title IX Coordinator.

Cross-training can be used to help stakeholders better understand the role and responsibilities of other responders.

Training for employees should include practical information about how to identify and report gender-based violence.

Title IX training (what to look for, informing complainants of their rights, and how to report) must be provided to all administrators, professors, instructors, resident assistants, coaches, and other staff who interact with students on a regular basis. In addition to above, responsible employees are required to additionally receive training on how to:

- Prevent and identify gender-based violence, including incidents involving same-sex violence and rape-tolerant attitudes.
- Recognize behavior or other warning signs of gender-based violence.
- Respond appropriately to reports of gender-based violence to avoid re-victimization.
- Report gender-based violence to the Title IX Coordinator.
- Respond to a complainant's request for confidentiality.
- Protect complainant's confidentiality to the extent permissible.
- Provide contact information to complainants for: (1) reporting options (Title IX Coordinator, campus police, and local law enforcement), and (2) on- and off-campus victim resources (victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance).
- Their requirement to provide complainants with information about: (1) available confidential resources for victim advocacy, counseling, and other support services; (2) their right to file a Title IX complaint; and (3) the option of reporting to campus or local police.

Increased competency and training is required for the Title IX Coordinators, Title IX investigators, law enforcement, victim advocates, campus-based advisors of choice, and responsible employees. Specifics, scope, and depth of the training topics will depend on the particular role of each group on campus, but will include some combination of the following:

- What conduct constitutes gender-based violence.
- The complaint and disciplinary process, including options, timeframes, and potential outcomes.
- Applicable confidentiality requirements and protecting complainant’s confidentiality and privacy whenever possible.
- How to conduct an investigation, including trauma-informed interviewing techniques.
- Holding those who have committed acts of gender-based violence accountable and possible sanctions.
- How to weigh witness credibility.
- Evaluating evidence in an impartial manner.
- The neurobiology of trauma especially from gender-based violence and how that trauma affects decision-making and actions.
- Cultural relevancy and diversity training in relation to responding to gender-based violence.
- Applicable legal standards for investigating and reviewing complaints.
- The obligation to take interim measures where appropriate.
- The need to take steps from preventing ongoing or a reoccurrence of gender-based violence.

Campuses should ensure there is training offered on any new protocols.

Campuses should verify that the training they offer is effective by utilizing a range of assessment and evaluation tools, such as pre- and post-tests, rubrics, and trainee surveys.

***Our campus:***

- Has education programs to increase awareness of gender-based violence, including how to identify it, the campus’s protocols, and how to report.
- Trains responsible employees on their role and responsibilities.
- Ensures that those entrusted with the implementation of the campus response protocols have expertise either through experience or training to perform their roles.
- Trains law enforcement on campus investigation and disciplinary protocols and the importance of informing students of their right to a Title IX investigation/complaint process.
- Informs the campus community about protocol changes.
- Confirms that trainings are effective.





## 7 COMPLIANCE

### Confidential Resources

- **More confidential spaces supports more cultural change**
  - **Why do so few students report?** Campuses committed to moving the needle on campus gender-based violence must approach the work always grounded in the *why* of underreporting (to anyone including officials like police or Title IX) and *how* we can tackle that fundamental cultural component. Campuses working through this lens know that if we want students to report to campus authorities (so that we can then respond with all of our policies and processes) we have to be willing to intentionally create more confidential spaces rather than less.
  - As we determine and disseminate the non-confidential and confidential resources for students, we must do so with our knowledge that **students who learn of their rights, options, and resources in safe spaces are more likely to seek accountability** through Title IX and/or law enforcement and will be so much better prepared, healthy, and supported as they go down those paths.
  - **Creating more confidential spaces means creating an actual “culture of reporting”** rather than to mean that every Responsible Employee knows they must report everything they know to the Title IX Coordinator. The former means creating a campus culture in which students know how to access information, services, and support; can consider their options in a safe, supportive environment; and are empowered to make informed decisions about their next steps. The former is changing culture, the latter compliance.
  - **It is possible to be both in compliance and to change campus culture**, but it does mean being willing to and intentional around not making every employee a Responsible Employee.
- **Value of on-campus confidential advocacy.** If you are in a position to support a confidential on-campus advocacy program and support staff, this position should be established. An on-campus confidential staff advocate is able to establish visibility, relationships with campus and community partnerships, and develop strong knowledge of campus systems, all of which serve the students with whom that person works.
- **Proactive education on confidential and non-confidential resources.** If we are to be truly trauma-informed and understand the “why” of underreporting, we know that we must answer the question “What happens if I tell this person about what happened?” for students in a clear and proactive manner. Students and survivors serving on campus and/or community partnership teams can be very helpful in this realm, assisting you to develop language and materials to share this information in as accessible and understandable ways as possible.

- **Ohio Revised Code §2921.22 Failure to report a crime or knowledge of a death or burn injury**
  - Campuses around Ohio are currently interpreting their reporting obligations under ORC §2921.11 along a spectrum and are then designing their response systems to align with that interpretation.
  - For example, although OCR has stated<sup>12</sup> that individuals providing assistance to students who experience sexual violence who are not professional or pastoral counselors (e.g. individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women’s centers, health centers) are not required to be Responsible Employees, some campuses have moved these individuals under a program or individual with licensure privilege (i.e. counseling services) so that the advocate will not have reporting responsibilities under ORC §2921.22.
  - The downside to this approach is that many students who have experienced gender-based violence may not seek out counseling services for a variety of reasons (e.g., not understanding the difference between advocacy and counseling, a particular student wanting the former rather than the latter, or stigma related to counseling).
  - Such an approach also does not acknowledge the potential interpretation of the ORC §2921.22(G)(6) to mean that individuals without privilege, but who are specifically designated and trained to provide advocacy and support services to students, may be exempt from this reporting obligation.<sup>13</sup>
  - Finally, such an approach also does not acknowledge that, given the strong language of ORC §2921.22(A)(1)- “Except as provided in division (A)(2) of this section, no person, **knowing that a felony** has been or is being committed, shall knowingly fail to report such information to law enforcement authorities”- there is a reasonable interpretation that no individual outside of those in the criminal justice system, specifically law enforcement, a Prosecutor, and/or a judge or jury, could know that a felony has been committed.
  - Non-privileged advocates are not in the business of (nor do they have the training to) make such a determination- rather their role is to provide information, support, and advocacy to the student.
  - In addition and directly related, some campuses have interpreted ORC §2921.22 in a way that has led them to create a response system in which the campus reports student information to campus law enforcement, local law enforcement, and/or the Prosecutor’s Office and those entities are contacting students *despite clear indication by the student that they do not want such contact*. Given what we know about the “why” of underreporting to law enforcement, campuses should consider the potential detrimental consequences of such a system, including how such a response may contradict Title IX’s strong expectations around confidentiality and trauma-informed approaches as well as the potential detrimental effect on reporting such a practice may have.
  - Both issues above highlight the critical role of community-based advocates for students.

12 Office for Civil Rights April 2014 *Questions and Answers on Title IX and Sexual Violence*.

13 States that an individual does not need to report if “Disclosure would amount to revealing information acquired by the actor in the course of the actor’s duties in connection with a bona fide program for providing counseling services to victims of crimes that are violations of section 2907.02 or 2907.05 of the Revised Code or to victims of felonious sexual penetration in violation of former section 2907.12 of the Revised Code. As used in this division, “counseling services” include services provided in an informal setting by a person who, by education or experience, is competent to provide those services.”



### ANNUAL SECURITY REPORTS

Under the Clery Act, campuses must issue an Annual Security Report (ASR) report every year that lists all domestic violence, dating violence, stalking, and sexual assault reports<sup>14</sup> that have occurred in the past three years in certain geographical locations under control or significantly used by the campus.

This report must be automatically disseminated to all current students and employees or any announcement should have a direct link to the report. This report should also be available upon request to any prospective students and employees.

Campuses should delineate Clery geography locations so that there is no confusion about what has to be reported in the ASR.

The ASR must also include a statement as to the campuses' position about gender-based violence and protocols.

The campus should be collecting statistics from both campus/local law enforcement and campus security authorities.

Campuses should be maintaining a daily crime log.

Only aggregate, non-identifying information should be included in the data collection and in the ASR. Campuses may want to develop training for campus security authorities on what information they need to share.

### CONSENT AND CONFIDENTIALITY

A campus should inform and obtain consent from the complainant before beginning an investigation.

If a complainant requests confidentiality or asks that the complaint not be pursued, the campus should assess the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The campus should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation.

If confidentiality is requested, the campus should inform the complainant:

- If it cannot guarantee confidentiality. For example, in some cases, such as those where the campus is required to report the incident to local law enforcement or other officials, the campus may not be able to maintain the complainant's confidentiality.
- It will investigate the allegations of gender-based violence and take appropriate action, even if the survivor does not wish to pursue any campus response, but that any campus response may be hindered by the complainant's wishes for anonymity.
- It will take steps to prevent retaliation and will respond accordingly if it occurs.

Even if a campus cannot take disciplinary action against the respondent, the campus should pursue other steps to limit the effects of the gender-based violence and prevent its recurrence.

To protect a complainant's confidentiality and encourage survivors to seek help, the following employees are not required to report incidents of gender-based violence: campus mental health counselors, pastoral counselors, social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality, and the people they supervise.<sup>15</sup>

A complainant and respondent should be told that the information collected during a campus investigation could be subpoenaed in criminal or civil proceedings.

14 Incidents of intimate partner violence, dating violence, sexual assault, or stalking that were reported to campus security authorities or local police and hate crimes offenses that were motivated by the actual or perceived gender identity or national origin of the survivor must be included in the ASR. See Clery Crimes in Glossary for more information.

15 See the Confidential Resources section of the Toolkit for more information.

**Our campus:**

- Informs and obtains consent from the complainant before beginning an investigation.
- Takes all reasonable steps to investigate and respond to a complaint consistent with a request for confidentiality or a request not to pursue an investigation.
- Considers the following when weighing a request for confidentiality:
  - Circumstances that suggest there is an increased risk of the alleged respondent committing additional acts of sexual violence or other violence.
  - Whether there have been other sexual violence complaints about the same alleged respondent.
  - Whether the respondent has a history of arrests or records from a prior school indicating a history of violence
  - Whether the alleged respondent threatened further harm against the student or others, and whether the gender-based violence was committed by multiple individuals.
  - Circumstances that suggest there is an increased risk of future acts of gender-based violence under similar circumstances.
  - Whether the student's report reveals a pattern of perpetration, via illicit use of drugs or alcohol, at a given location, or by a particular group.
  - Whether the gender-based violence was perpetrated with a weapon.
  - Age of the student subjected to the gender-based violence.
  - Whether the school possesses other means to obtain relevant evidence (i.e., security cameras or personnel, physical evidence).
- Informs the complainant that the campus's ability to respond may be limited if a complainant insists that his or her name or other identifiable information not be disclosed to the respondent.
- Tells the complainant that Title IX prohibits retaliation, and that the campus will not only take steps to prevent retaliation but also take strong responsive action if it occurs.
- Evaluates a request for anonymity in the context of its responsibility to provide a safe and nondiscriminatory environment for all students.
- Informs the complainant if the campus cannot ensure confidentiality.
- Pursues other steps to limit the effects of the alleged harassment/violence and prevent recurrence.
- Considers the respondent's rights to receive information about the complainant and to receive information about the allegations if the information is maintained by the campus as an "education record" under FERPA.
- Under FERPA, after a complaint is made, a student may request from the office responsible for FERPA requirements (in some cases this is the Registrar's office) that (1) their name and other identifiable information be redacted from the complaint and all pertinent documents; (2) such information not be provided to the respondent in any manner; and (3) all information regarding the complaint and its relation to accommodations be kept confidential to all persons except those responsible for investigating the claim and coordinating accommodations.<sup>16</sup> OCR recommends that the institution inform the survivor preemptively about what information will be disclosed, to whom, and why.<sup>17</sup> Especially where a responsible employee made the complaint without the survivor's agreement, survivors should feel comfortable asking to only be involved in the investigation and hearing to the extent necessary.<sup>18</sup>

<sup>16</sup> See 34 C.F.R. § 99.12(a)

<sup>17</sup> Catherine E. Lhamon, *Questions and Answers on Title IX and Sexual Violence*, U.S. DEPT. OF EDUC. OFF. FOR CIV. RIGHTS (April 29, 2014), available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>. pages 18-22.

<sup>18</sup> Id.



### KEY POINTS

## INVESTIGATION OVERVIEW

To comply with Title IX responses, campuses must promptly investigate a report of gender-based violence. However, there is no time frame in which a survivor must come forward in order for there to be Title IX investigation.

A campus's investigation must be adequate, reliable, and impartial. This includes the opportunity for both the complainant and respondent to: present witnesses and other evidence; have ongoing updates about the status of the investigation; and have an advocate or advisor of choice present.

Whenever a student comes forward with an allegation that they are a survivor of gender-based violence, the campus should provide them with written information about options, resources, and evidence collection and preservation. Best practice is to have this list accessible in both electronic and hard copy formats.

Campuses should designate individuals to investigate Title IX complaints that have specific training and experience investigating allegations of gender-based harassment, including sexual violence, stalking, and intimate partner violence. The investigator may be an employee of the campus or an external investigator engaged to assist the campus in its fact gathering.

The standard of preponderance of evidence should be used during the investigation and fact finding process.

In determining the appropriate course of action to eliminate the conduct at issue, prevent its recurrence and address its effects, upon receipt of a report, the Title IX Coordinator and/or other relevant team members may want to do a quick assessment to consider the nature of the report, the safety of the complainant and the larger campus community, and the complainant's expressed preference for resolution.

A law enforcement investigation does not relieve the campus of its obligation to conduct an independent Title IX investigation. Additionally, a campus should not wait for the conclusion of a criminal investigation or criminal proceeding before they begin or complete their own Title IX investigation. For example, if a campus places its fact-finding on hold in order for a police department to finish its own investigation, the fact-finding should immediately resume and once the police department completes its evidence collection.

It is important to note that not having a local law enforcement investigation or a finding of lack of evidence for criminal prosecution, does not release a campus of its duty to respond promptly and effectively, nor is it determinative of whether a violation of Title IX occurred.

Campus police and Title IX Coordinators must notify a complainant of the right to file a criminal complaint and not discourage a survivor from pursuing criminal action at any time during or following the campus's Title IX investigation. Campus police should inform complainants of their right to file Title IX complaints.

### Evidence collection and investigations should include but not be limited to:

- medical evidence/records
- security monitoring records
- visitor logs
- audio-video recordings
- texts and email
- voice mail and phone records
- social media
- photographs of the scene and injuries
- prior civil protection orders
- campus records
- clothing and other tangible objects
- 911 recordings
- physical and forensic evidence\*

\*Reviewed by a trained forensic examiner

If an investigation goes forward and the complainant continues to ask that his or her name not be revealed, the campus should take all reasonable steps to investigate and respond in a manner consistent with that request unless doing so would compromise the safety of others or prevent the campus from responding effectively to the complaint.

Protocols for campus police should be developed and officers trained on how to collect evidence and investigate in a trauma-informed manner to allegations of gender-based violence. For example, it is best practice to refer for forensic evidence-collection immediately by a specialized SANE.

In order to complete the Title IX investigation, the Title IX Coordinator should have access to campus law enforcement's investigation notes and findings, so long as this information sharing does not compromise a criminal investigation.

There should be sufficient documentation occurring throughout investigation to support the fact finding and any potential subsequent determinations.

The team should assess whether there is a need for a timely warning or emergency notification under federal law. If a timely warning is issued, there should be no identifying information about individuals involved in the incident.

Campuses should respond as seriously to incidents occurring off-campus as those that occur on campus. Protocols on how to respond to off-campus incidents of gender-based violence involving a member of their campus community must be developed.

Title IX staff leading the investigation and/or campus administrators facilitating the conduct process should discuss preferred communication methods with both the complainant and respondent and should provide regular updates on the process to both parties.

Title IX staff leading the investigation and/or campus administrators facilitating the conduct process should inform the complainant at the outset that they should report any new incidents of gender-based violence and/or retaliation immediately so that the campus can respond.

At the conclusion of the investigation, the Title IX staff leading the investigation should notify both parties in writing whether they have determined there is a reasonable cause that a policy violation may have occurred and what the next step in that particular campus' complaint resolution process will be (e.g. process moves to the student conduct office and a hearing will be scheduled to determine if there is sufficient evidence to conclude it is more likely than not that a policy violation has occurred).

## COMPLIANCE



### *Our campus:*

- Promptly initiates its own investigation whenever there is any allegation of gender-based violence.
- Takes immediate steps to resolve the situation and whenever possible protect the survivor and assure his/her well-being.
- Notifies the complainant of the right to file a Title IX complaint.
- Notifies the complainant of the right to file a criminal complaint.
- Provides a student with written information about options, resources, and evidence collection and preservation as soon as they disclose that they are a survivor of gender-based violence.
- Designates a specially trained individual(s) to investigate Title IX complaints.
- Considers whether to notify off-campus authorities based on balancing the law and survivor-centric practices.
- Investigates a complaint independently of local law enforcement.
- Uses the preponderance of evidence standard.
- Allows a complainant to come forward regardless of when the incident occurred.
- Conducts adequate, reliable, and impartial investigations of complaints, including the opportunity for both the complainant and respondent to present witnesses and other evidence.
- Conducts investigations by individuals with thorough training on gender-based violence, evidence collection, confidentiality, and culturally-relevant, trauma-informed responses.
- Has a formal relationship with local law enforcement that outlines information sharing.
- Promptly resumes and completes its fact-finding if placed on hold during the off-campus police department's investigation/evidence gathering.
- Trains campus police and security officers on the process of evidence collection and trauma-informed responses.
- Processes complaints of gender-based violence that occurred off-campus in accordance with its established protocols.
- Removes identifying information about students when issuing a timely warning.
- Has access to trained forensic examiners to review any forensic evidence.
- Follows-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.
- Notifies the complainant and respondent about the results of the investigation.



## KEY POINTS

## INTERIM MEASURES &amp; SURVIVOR SAFETY

Once the campus has notice of gender-based violence, the campus, in partnership with the survivor, should promptly take steps to help protect the survivor. Whenever possible, a campus should also take measures to protect a student who was assaulted off campus from further violence, harassment, or retaliation.

Complainants must be made aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement. It is mandatory to do this in writing. Best practices encourage that it be communicated in more than one method.

Interim or protective measures may be needed even if the complainant does not pursue any additional action, such as a disciplinary proceeding or criminal investigation. All that is required is that the campus is made aware of the incident, the complainant requests the accommodation, and the accommodation is reasonably available.

Interim measures can be anything that helps an individual complainant feel safe and still upholds the due process rights of the respondent. The campus should also consider the safety of the entire student population. Interim measures can be implemented any time before or during a campus response and can continue beyond the conclusion of an investigation and adjudication. They can be applied to either the complainant or the responding party and should be tailored to what the individual complainant wants and needs.

Some potential measures a campus can consider are to:

- Modify residence such as changing on-campus housing; helping to dissolve a housing contract; assisting with and facilitating the actual move.
- Limit and individual's or organization's access to certain campus facilities or activities.
- Provide academic support services, such as tutoring.

**When the campus becomes aware of a potential gender-based incident, it should take immediate steps to support the survivor and ensure he/she/they are safe. A few of these steps are listed below. It is important to note that this cannot and should not happen in one meeting. Trauma of an incident dictates patience and understanding and working with a survivor where they are in the process. It is also recommended that campuses review other components of the Toolkit that discuss trauma and creating a fair, equitable and survivor-centric campus adjudication process.**

- Provide a list of campus and off-campus resources that are relevant to gender-based violence.
- Offer assistance obtaining immediate medical care.
- Explain confidentiality and privacy and any limitations to the two.
- Provide information about preservation and collection of evidence.
- Explain the campus's obligation to conduct a Title IX investigation.
- Provide information on complaint and disciplinary protocols and options, including timeframes and commitment to protect from further harm and retaliation.
- Notify of the option to make a report to the local law enforcement and help coordinate that contact if the survivor wants to do so.
- • Ask about any needed interim measures and explain options.
- • Minimize burden on survivor to receive information, access supports, and create a safe learning environment.

- Impose a no contact order on the respondent.
- Offer security assistance such as escorts so complainant can move safely between classes and activities; between increased patrol, accompaniment to interviews, appointments, and other services related complaint.
- Provide or directly connect to medical services.
- Offer transportation assistance.
- Accommodate academic modifications such as rescheduling of exams and assignments; providing alternative course completion options; changing class schedules; allowing complainant to retake course or exam without penalty; or other academic accommodations, without disadvantaging either party.
- Aide access to either on or off campus counseling services.
- Change work schedules or job assignments.
- Allow voluntary leave of absence.
- Impose interim suspension or campus-imposed leave.

**Assess interim measures using the standard “fair under the circumstances.”** Many small campuses experience challenges assessing and putting in place interim measures around housing, dining, classes and the like because alternate options are limited. Equitable means fair under the circumstances not equal. It may be that a smaller campus will assess that interim measures may have to be put in place to meet Title IX that may impact the respondent more detrimentally than may have been the case on a larger campus with more options; however, the smaller campus and lack of alternatives are part of the circumstances under which campuses must make that fair under the circumstances analysis. If, for example, both the complainant and the respondent are in the same major and the campus only has one class that both are required to take to graduate, Title IX staff will need to consider and weigh the facts (e.g. egregiousness, safety) and OCR language on minimizing burden on complainant around interim measures when making determination of potential solutions to a challenging situation. Leverage relationships and collaboration with faculty and staff in designing solutions to these circumstances and should seek support from University leadership if roadblocks to solutions are presented. Mitigation for a respondent found not responsible (discussed below) may be particularly salient in this situation.

**Address equitable mitigation in policy, implementation, and in its initial conversations with student complainants and respondents.** If, to meet the needs of a reporting party under Title IX, interim measures are put into place that detrimentally impact a respondent’s academics, participation in campus activities, housing, and/or the like and that respondent is found not responsible, you must work to mitigate harm to that person because of those measures.

The campus should have formal partnerships in place with service providers with expertise in gender-based violence. This should include rape crisis services, domestic violence service providers, specialized trauma informed medical and mental health professionals, and culturally-specific organizations.

The campus should connect complainants with professionals that are able to keep conversations with the complainant private and confidential.

If academic accommodations are requested, the campus should facilitate the request by

seeking agreement from the pertinent faculty members without informing the faculty the specifics of their necessity.

A responding party can be prohibited from having any type of contact with the complainant pending the results of the campus's investigation, throughout the hearing, or as part of a sanction. The campus should minimize the burden on the complainant when taking steps to separate the complainant and the respondent.

A campus no contact order should not be imposed automatically as it can increase lethality for a complainant, especially in intimate partner violence situations. If a campus after consultation with the complainant and with consideration of safety for the larger campus community decides to put into effect a no contact order, then there should be:

- Direct guidance to the respondent about their behavior and what “no contact” means. The campus might need to help the respondent fulfill these expectations by changing class schedules, housing, work, and other schedules that could impede the “no contact” order;
- A clear written statement and understanding that the no contact is on the respondent and not the complainant;
- Proactive checking-in on compliance with the no contact order (i.e. a more trauma-informed response would be for the Title IX staff to let the complainant know at the outset that should the Title IX person learn that they have contacted the respondent after the issuance that the Title IX staff will reach out to the complainant to discuss the situation, revisit the No Contact Notice, and potentially remove it depending on the circumstances that have occurred);
- Clear indication of what consequences are if the respondent violates the no contact order;
- Oversight and enforcement of the no contact order assigned to an individual or entity on campus with the authority to do so; and
- Consequences enforced if a violation occurs.

Campuses should see if there have been any disciplinary actions taken against the complainant and review to see if there is a causal connection between the violence and behavior that may have resulted in the complainant being disciplined.

A campus should support the right of a complainant to seek a civil protection order or pursue a criminal justice action. If a civil protection order is obtained, the campus must honor the CPO and should work with the complainant to figure out what interim measures would best help enforce the CPO.

If a campus has its own police or security officers, the department should be made aware of the CPO and if a violation occurs, work with survivor and off-campus law enforcement to report the violations.



### *Our campus: Interim Measures*

- Ensures that lead Title IX staff has ultimate oversight on interim measures assessment and implementation. The actual execution of this work may be done by other staff on the Title IX team (e.g. Title IX investigator).
- Implements available interim measures even when the respondent is unknown or the complainant does not share the respondent's name or requests no further investigation.
- Allows a complainant to work solely with a confidential community-based and/or campus advocate.
- Honors requests from complainants not to work with Title IX staff.
- Title IX should honor that request. Title IX staff works in partnership with confidential community-based and/or campus advocates to ensure available interim measures are implemented if the complainant does not wish to interact with Title IX staff.
- Facilitates a conversation with the complainant about how certain interim measures will impact the student's confidentiality, understand and follow the student's wishes around confidentiality, and proceed with interim measures implementation in a way that is consistent with that student's wishes.
  - For example, a student may request more time on an exam, but does not want the professor to know the specifics of what has happened. Title IX staff should offer the student the option of just sharing with the professor that the student has experienced a form of Sex Discrimination, is working with the Title IX Office on this issue, and is requesting the specific assistance. Should the faculty member ask for more details it is the responsibility of the Title IX staff to explain the importance of respecting the student's privacy and that, under Title IX and the campus's policies, the campus needs to take steps to ensure the student has equal access to their education and this assistance is part of that.
- Facilitate proactive conversations with campus partners about interim measures to promote a more streamlined, effective process during an actual case. This work is best accomplished in collaboration with relevant campus partners, such as faculty, Residence Life staff, Financial Aid.
- Does not automatically issue No Contact Orders to both parties when a report is received.
  - First, we know that, particularly in intimate partner violence situations, our automatic issuing of even just the No Contact Notice to a respondent may increase safety risks for the complainant.
  - Second, when we automatically issue mutual No Contact Notices, the message the complainant may receive is that they have done something wrong. This practice can lead to a chilling effect on reports, increased barriers to students accessing reporting resources, and can be perceived as (or be) prohibited retaliation under Title IX and internal protocol. Title IX staff should have the skills and expertise necessary to assess a request and need for a No Contact Notice. Many campuses explain this automatic mutual No Contact Notice issuance by citing the fact that some complainants contact the respondent post-issuance and that this complicates matters.
  - We know that contacting the respondent in some way can be a common response of someone who has survived gender-based violence.
- Assesses the feasibility of interim measures using the "fair under the circumstances" standard.
- Addresses equitable mitigation in policy, implementation, and in its initial conversations with student complainants and respondents.

**To be fair and equitable during the disciplinary hearing phase, the complainant and respondent should both:**

- Be treated with respect, dignity, and sensitivity throughout the process.
- Be fully informed about the adjudication process, including timeframes and possible outcomes.
- Receive referrals to support services on or off campus, as needed.
- Obtain similar and timely access to any information that will be used at the hearing.
- Allow a challenge to the adjudicator if there is a perceived conflict of interest.
- Have an equal opportunity to present relevant witnesses and other evidence.
- Have the ability to decline participation in the adjudication.
- Be provided the same right to have someone support them during the process, such as a trained advisor of choice.
- Receive timely, updated information on the progress and outcome of the adjudication.
- Be notified in writing, about the outcome of both the complaint and appeal (if a campus affords an appeal process).

**Due Process Does Not Mean:**

- The respondent is allowed to present character witnesses at a hearing.
- The respondent is allowed to review the complainant's statement without also allowing the complainant to review the respondent's statement.
- The parties are allowed to question or cross-examine each other during the hearing.

**KEY POINTS****DISCIPLINARY ACTIONS/ADJUDICATION**

Due process is guided by the same principles of fundamental fairness and respect, which requires notice, an equitable opportunity to be heard, and an equitable opportunity to respond.

A balanced and fair process that provides the opportunities to the complainant and respondent will lead to sound and supportable decisions.

A campus must use the preponderance of the evidence standard in its determinations of whether there was a violation of its code of conduct.

Hearing officers or anyone adjudicating the complaint must be impartial. Any real or perceived conflicts of interest should be disclosed and respondents and complainants should have the right to challenge an adjudicator's impartiality.

Adjudicators should have the expertise to hear and decide the complexities of allegations of gender-based violence. They should be trained on how to protect a complainant's prior sexual history.

Campuses should maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings.

If an informal process was started as a means of addressing the complaint, the complainants can end that process at any time and initiate a more formal disciplinary response. Mediation should never be used, even on a voluntary basis, in cases involving allegations of sexual or intimate partner violence.

If sanctions are mandated, the campus should monitor for compliance. Complainants should be informed of protocols in case they experience any type of retaliation.

A complainant should never be required to enter into a nondisclosure agreement.

## COMPLIANCE

Both the investigation and adjudication should be completed in a timely manner (recommended 60 days except for good cause). There may be variance in this time frame to account for the severity and complexity of the case. In those instances, the campus must remain in contact with the respondent and complainant and provide an estimated completion date.

If a campus permits one party to have a support person in addition to an advisor of choice accompany them to meetings and hearings, the other party must also have that same opportunity. Campuses should develop a list of trained advisors that complainants and respondents can select from. Outside advisors or supports should be required to meet with the Title IX Coordinator to better understand the protocols and the overall goals of investigation and adjudication.

### *Our campus:*

- Ensures timely resolutions to complaints about gender-based violence.
- Forbids mediation when there was sexual violence.
- Provides information to both the respondent and complainant so that they are informed of time frames, potential outcomes, including sanctions, and whether there is a right to appeal.
- Uses trained adjudicators.
- Uses adjudicators that are independent and free of conflict of interest.
- Allows both the complainant and respondent to challenge the impartiality of an adjudicator and review all applicable documents prior to the review by the adjudicator.
- Ensures that complainants and respondents have due process, including receiving updated information about the progress of the adjudication and written final outcomes of the adjudication or any appeal process.
- Monitors any sanctions imposed for noncompliance.



## CONSIDERATIONS AND CHALLENGES IN INVESTIGATION & ADJUDICATION PROCESS

- **Establish a selection process** for investigators and decision-makers that will optimize appropriate training opportunities, expertise, and therefore, overall quality of the decision-makers and complaint resolution system. Apply what we know about effective training- multiple dosage, multi-entry points, range of modalities for different learning styles- to investigator and decision-maker training.
- **Develop strategies to identify, train, and support individuals serving as investigators and/or decision-makers.** Some campuses are finding it increasingly difficult to find individuals willing and able to serve as decision-makers for a variety of reasons, including time commitment, stress of participating because of issue area, and fear of personal liability for serving in the role. Addressing this challenge may mean identifying a small group of staff and/or faculty members who you identify as having the appropriate capacity for and interest in serving as a decision-maker with this level of commitment and expertise. It may mean building in this role as part of the staff member's job responsibility.

**Consider the potential ramifications if you still have students participating as decision-makers given OCR's strong recommendation to not do so due to confidentiality concerns and potential chilling effect.** If you do have students in this role, consider conducting focus groups to get feedback on if and how this may be perceived and may be impacting the climate and community and let that campus community-specific information inform whether and how you might consider revising that component of your process. If you do not have students serving as decision-makers to consider what may be lost- student perspective, "translation" of modern culture and norms to non-student members, power and impact of peer inclusive accountability- and develop strategies on how campuses might ensure that student voice and critical community member presence is retained in the process. It is also recommended to consult with the campus's General Counsel regarding policies to allow or not allow students as decision-makers in these matters.

- **Proactively develop relationships with likely expert witnesses.** When medical records (e.g. medical portion of SANE exam) and mental health records (e.g., documentation of a respondent's cognitive disability) are part of the complaint resolution process, ensure that investigators and decision-makers have access to information and testimony from experts on these issues. Conduct reciprocal trainings with experts on these issues so that they can effectively participate in and benefit the complaint resolution processes.
- **Allow an advisor of choice in all gender-based violence matters.** Consider expanding the Clery Act Advisor of Choice requirement to all forms of Sex Discrimination rather than applying it just to domestic violence, dating violence, stalking, and sexual assault. Splitting it out can create confusion for students.
- **Prior Sexual History and Mental Health Status/History.** We know from OCR that prior sexual history and mental health information of the complainant should not be permitted in the investigation and complaint resolution process, but what if the complainant themselves includes this information on documents that come into the process (e.g. SANE report, police report) and/or raises these issues themselves during the process? For example, a complainant may want to disclose that they had or had not taken to demonstrate that in their state of mind they did not give consent. The role of the Title IX Coordinator here is manifold and requires strong professional judgment.
  - First, the Title IX Coordinator should proactively inform the complainant of the type of information that will or will not be permitted in the process, review the potential and various outcomes of sharing that type of information with the complainant, assess the relevancy of such information if it is shared (either directly with the Title IX Coordinator or via some other document like a police report or SANE record), and ensure that decision-makers do not improperly consider information that a complainant may end up sharing in their assessment and decision-making.
  - Ideally, a confidential advocate and/or attorney will be having this conversation with a complainant as soon as possible in the complaint resolution process.
- **Private investigators.** It is becoming a more and more common for respondents (typically via their lawyers) to hire private investigators during the complainant resolution process. The role of the campus here is to be clear with both parties that they do not have to speak with private investigators (or other party lawyer) and that should they feel they are being harassed in any way by the private investigators they should report that to the Title IX Coordinator immediately for response/investigation. In terms of allowing private investigators to testify, a Title IX Coordinator would need to follow its policy (allowed or not), assess relevance, ensure testimony was appropriate under Title IX and equally apply the same policy to both sides. It is also recommended to consult with the campus's General Counsel regarding policies to allow or not allow private investigators to testify.
- **Polygraph.** It is a best practice to exclude polygraph evidence based on these factors:
  - **Inaccuracy/reliability** due to variety of factors (potential intoxication or one/both parties, medications at time for one or both, no memory due to alcohol or other drug (AOD) or other issues, competency of polygrapher, cases where each party perceives events differently rather than one telling the truth and one outright lying).
  - Typically **not admissible** in criminal court.
  - The key for campuses here is to address why you exclude clearly and explicitly it in your policy and **apply policy equitably to both parties**. It is recommended to that you consult with your General Counsel regarding this issue. If you do allow polygraph evidence, investigator and decision-makers need training on the technology, limitations, and how to interpret results.



### SANCTIONS

Sanctions are part of a mechanism to help keep campuses safe learning environments and to maintain confidence in the campus' commitment to prevent and respond to gender-based violence.

Campuses must take immediate action to eliminate gender-based violence, prevent its reoccurrence, remedy hostile environments and address any remaining effects.

A single incident of gender-based violence may create a hostile environment.

All potential sanctions must be explicitly outlined in the campus' response protocols.

The campus should have the resources and capacity to implement and monitor all sanctions imposed.

Sanctions must consider the totality of circumstances and be tailored to fit the complaint and findings.

Sanctions can have corresponding protective measures/remedies<sup>19</sup> that assist the complainant to have a safe and supportive environment and can be restored to an equitable state. Therefore, Title IX remedies can extend beyond conclusion of case.

Some of the more common Title IX sanctions include one or more of the following: suspension or expulsion, alcohol awareness and prevention, educational programs focused on the roots of gender-based violence and respondent accountability for violent behavior, counseling and mentoring.

In determining sanctions, the campus should consider every case on an individual basis. Some factors a campus may want to consider are:

- The degree to which the conduct affected one or more students' education;
- The type, frequency, and duration of the conduct;
- The identity of and relationship between the respondent and the complainant and whether the respondent used a position of power to inflict violence;
- The age and gender of the parties involved;
- The number of individuals involved;
- The damage, injury or harm to the complainant and larger campus;
- Prior violations of the respondent;
- The current behavior of the respondent, including subsequent violations;
- The size of the campus, location of the incidents, and context in which they occurred; and
- Other considerations put forth by the complainant.

Complainant and respondent must be notified simultaneously and in writing of sanctions. Protective measures taken for the complainant's well-being and safety may not need to be shared with the respondent as it could further compromise the complainant's well-being and safety.

Making notations on respondents' transcripts about imposed sanctions is an emerging issue. Notations help educate others viewing the transcript about the behavior of the respondent that should be taken into consideration for future decisions about educational and recreational opportunities. If a campus makes transcript notations, protocols should indicate what notations may be eligible for removal and how a respondent can petition for removal of the transcript notation after a certain period of time. Campuses should discuss with their General Counsel and other key decision makers to determine if the campus will make notations and if so what the notation will include.

19 See checklist section on interim measures and supports for survivors.

**Goals of Sanctions**<sup>20 21</sup>

“Sanctions are the outcomes or consequences resulting from a violation in which a student is found responsible for violating the Code of Conduct. The purpose of sanctions is to provide students with an opportunity to learn from their experience, provide restitution (in some cases) and bring greater awareness of the impact of choices on themselves, others, and the campus community. Sanctions can range from a warning, to mandated community service or in worst case scenarios suspension or expulsion.”<sup>22</sup> This section provides guiding principles and questions to consider for your campus protocol.

FUNDAMENTALS	
1.	Eliminate hostile environment for the complainant with particular attention to safety issues.
2.	Have options based upon the nature of the violation.
3.	Take into consideration all information about the respondent.
4.	Increase safety of the campus, decrease likelihood of future offending by the respondent.

**Guiding Principles for Sanction Determination\***

Category	Actions	Warning	Probation	Suspension (less than 2 years)	Suspension (2-4 years)	Suspension (5+ years)	Expulsion
Sexual Harassment	Verbal sexual comments						
	Stalking						
	Relationship Violence						
Non-Consensual Sexual Contact	Touching over clothes						
	Kissing (above shoulders)						
	Light contact with hands under clothes						
	Sexual touching, fondling, and/or groping						
	Kissing below the neck (breasts or genitals)						
Non-Consensual Sexual Intercourse	Oral Sex						
	Digital penetration						
	Penetration						
Sexual Exploitation	Distributing naked photographs						
	Invasion of Sexual Privacy (taking photos, video, voyeurism)						
	Knowingly transmitting sexual infections or disease						
	Child pornography						

\*University of Minnesota (<http://oscai.umn.edu/title-ix-sanctions>)

20 Smith, G.M. & Gomez, L.M. (2013). *Effective Implementation of the Institutional Response to Sexual Misconduct Under Title IX and Related Guidance*

21 Ohio Department of Higher Education (October 2015). *Changing Campus Culture: Preventing and Responding to Sexual Violence*.

22 New Jersey City University (<http://web.njcu.edu/its/kbase/index.php?id=166&action=article>)

## COMPLIANCE

***Below are guiding principles and questions when developing and implementing your campus' sanction protocol: Consider:***

- Was force used?
- Was the reporting party incapacitated due to drugs or alcohol?
- Was consent obtained at every point throughout the interaction?
- Does the respondent accept responsibility for their actions?
- What is the supporting evidence in the case?
- Have witnesses corroborated the evidence?
- Does the respondent have a prior conduct history?

Sanctions should reflect the severity of policy violation, whether the respondent has prior conduct violation history, and should be considered through a needs (of the complainant and broader community) and respondent risk lens. When balancing the interests and rights of complainant and respondent if both are students, consider:

- Need for complainant to feel safe in the campus environment<sup>23</sup> - assess needs/wants of complainant regarding limiting contact with respondent<sup>24</sup>
- Respondent continuing his/her education (if campus does not view offense as rising to the level of suspension or expulsion). Specific considerations may include:
  - *What if complainant and respondent are in same major?*
    - Re-assignment of respondent to different classes
    - Respondent only in major building for courses---studying occurs in other building/residence hall room, etc.
  - *What if in same ethnic/racial/religious/sexual orientation minority group where clubs/organization offices are places frequented by both?*
  - *Same campus housing?*

### **Sanction Options**

As required by the Clery Act,<sup>25</sup> campuses must include in its gender-based violence policies the possible sanctions imposed following the results of disciplinary proceedings in matters of sexual assault, domestic violence, dating violence and stalking.

Sending a respondent to volunteer at a rape crisis center as a sanction is not an appropriate sanction in gender-based violence matters. Research does not support that the intended outcome of such a sanction- that of empathy building- has a strong association with decreasing sexual offense recidivism. In addition it would not be a best practice for rape crisis centers cannot take in individuals found responsible for gender-based violence policy violations to volunteer given the conflict with victims going to centers for a place of safety and support.

***Appropriate sanction options may include:***

- Verbal/written warning
- University probation
- Loss of campus privileges (suspension from campus organizations, limited access to campus events, scholarships)
- Counseling/education
- Probation/monitoring
- Suspension
- Expulsion

23 Smith, G.M. & Gomez, L.M. (2013). Effective Implementation of the Institutional Response to Sexual Misconduct Under Title IX and Related Guidance

24 <http://www.mediainstitute.edu/sites/default/files/Annual%20Crime%20Disclosure%202015%20-%20All%20Campuses.pdf> (downloaded 6/28/16)

25 The Clery Act requires institutions to disclose possible sanctions imposed following the results of disciplinary proceedings in matters of sexual assault, domestic violence, dating violence and stalking.

Cultural Considerations in Sanctions

- Addressing and eliminating hostile environment for a complainant from minority group
  - Monitor access to campus-sanctioned group activities by respondent.
  - What events and/or hours can respondent attend?
- If a respondent is a member in a national membership organization (e.g., National Pan-Hellenic Council, National Association of Latino Fraternal Organizations), how might sanctions impact that membership? (What will membership entail? Can respondent attend events sponsored by own group but may not be permitted to attend others? Alternate Participation arrangements?)
  - While a campus may not be able to determine membership within a national, voluntary membership organization (rather than a campus-based organization), because each local chapter typically has a campus-based advisor with responsibilities for students within group and related events, campuses should consider if and how sanctions may or may not impact respondent in this context. Campus-based advisors of these types of organizations can run the gamut from not being specifically tied to the national organization to being an active alumni member of the organization with full authority to assist with enforcement of campus conduct outcomes. Some culturally-based organizations may not have a national structure, but instead are built upon local alumni support.
  - Depending on the specific structure and circumstances, campuses should strive to engage both the campus advisor and/or alumni designate regarding organization sponsored events that take place both on and off campus, recognizing that this can vary for city-wide chapters vs. organizations recognized by the campus. Campuses should engage the regional/district authority as appropriate.
  - Campuses must comply with FERPA in all of these types of engagement. To maximize student privacy, campuses should strive to minimize the number of individuals connected to the organization who need to know about the circumstances and the amount of information that needs to be shared to effectively implement the sanction(s).

**EXAMPLES OF SANCTIONS**

<p><b>Sexual Harassment, including cyber harassment</b></p> <p>Review of Campus Title IX policy.</p> <p>Psychoeducation on what constitutes harassment and harm associated with harassment.</p> <p>Implementation of a written plan related to contact with identified victim (in-person as well as social media).</p> <p>Determine legality of monitoring of social media accounts of respondent.</p> <p>Warning Notice: A notice, in writing, that continuation or repetition of conduct found wrongful, within a period of time stated in the warning, may be cause for more severe disciplinary action.</p> <p>Admonition: An oral statement that the Student violated the Policy.</p> <p>Possible Disciplinary Probation: Exclusion from participation in privileged or extracurricular activities for a definite period of time.</p> <p>Restitution to victim for counseling services or other costs directly related to impact and healing from gender-based violence.</p>
<p><b>Stalking, including cyber-based stalking</b></p> <p>All listed above.</p> <p>Possible restraining order related to contact with complainant.</p> <p>Review of coursework schedule to minimize participation in same classes as complainant.</p> <p>Changing of campus work assignment if would involve contact with complainant.</p>
<p><b>Voyeurism</b></p> <p>Review of Campus Title IX policy and all other items in Sexual Harassment, including cyber harassment section.</p>
<p><b>Non-consensual sexual intercourse, which is any sexual intercourse by any person upon another without consent</b></p> <p>Suspension or expulsion.</p>

**FACTORS SUPPORTING INCREASED SEVERITY OF SANCTION**





**MONITORING/TRACKING**

It is imperative for campuses to be proactive in their gender-based violence response.

Developing and implementing gender-based violence response protocols is not a static, one-time event.

Campuses should integrate information learned through climate surveys to assess the effectiveness of efforts and needs for future steps.

At a minimum, Title IX Coordinators should review gender-based response protocols to ensure that they comply with federal requirements and reflect any new guidance.

Once placed on notice that there is an incident of gender-based violence, the campus should conduct periodic assessments to ensure that there are no new incidents and that the protocols are being complied with in response to the gender-based violence. This means the campus must be proactive in checking in with the complainant and respondent to determine that the protocols are being upheld, and any interim measures in place are working.

Campuses should undertake efforts to conduct periodic assessments of whether responsible employees are reporting incidents to the Title IX coordinator and in general, faculty and students understand the protocols.

Because a campus must take corrective actions to stop the gender-based violence, prevent its recurrence, and remedy the effects on the complainant, the campus should check-in with the complaint throughout and post investigation and disciplinary/criminal action (if taken) to see if the complainant has felt safe and free of ongoing or new incidents of gender-based violence.

When a campus receives notice that a student has experienced gender-based violence, a larger investigation should occur to determine if any other students also may have been subjected to gender-based violence.

To avoid a gap in response, Title IX Coordinators should review campus police records on a regular basis to determine if there was an incident of gender-based violence that was not reported to the Title IX Coordinator, even if the incident was referred to the local law enforcement. If the Title IX Coordinator finds this to be true, they should attempt to contact the complainant in a manner that does not increase safety issues, to see if that person needs any supports or services or has questions about the campus response. The Title IX Coordinator may want to partner with an advocate who can make that contact on their behalf.

The Title IX Coordinator should be looking for any trends for where the Title IX Coordinator was not notified when an act of gender-based violence was reported to the campus police or where the campus police did not identify the act as gender-based violence.

Similarly, it is recommended that a Title IX Coordinator work with local law enforcement to review their reports involving students that experienced or perpetrated gender-based violence off-campus and where the campus was not informed.

<b>EXAMPLES OF INCREASED SANCTIONS</b>	
<b>Suspension</b>	Exclusion from classes and other privileges or activities or from the campus for a definite period of time..
<b>Campus housing expulsion</b>	Permanent separation of the student from campus housing, specifically if offense occurred in campus housing.
<b>Expulsion</b>	Termination of student status for any indefinite period.
<b>Withholding of diploma or degree</b>	The withholding of diploma or degree otherwise earned for a defined period of time or until the completion of assigned sanctions.

**Our campus:**

- At least annually reviews its gender-based response protocols to ensure that they comply with federal requirements and reflect any new guidance.
- Integrates information gathered through climate surveys to assess the effectiveness of response efforts and needs for future steps.
- Conducts periodic assessments of student and faculty activities to ensure that the practices and behavior of either do not violate the campus' protocols.
- Proactively reviews campus and community law enforcement police reports to ensure links between the Title IX Coordinator were made in all instances of gender-based violence and that opportunities to assist survivors were not missed.

## BALANCING COMPLIANCE AND HUMANITY

### Creating a fair, equitable campus adjudication process

When there are allegations of gender-based violence, due process and fairness must permeate the protocol investigation and enforcement process. This means that there must be transparency about the campus protocols and process used to enforce them. It also means that there should be equal opportunity for both a complainant and respondent to share and receive information and to obtain resources and supports. However, within those categories the actions might look different. In fact, to ensure due process, a campus might have to help one party receive equity by providing more and/or different levels of assistance to one than the other.

One essential piece to responding equitably to gender-based violence is ensuring that whenever possible, responses are trauma-informed. Helping a complainant feel safe and respected does not negate due process, but on the contrary, fosters it.

#### **Recommendations:**

- 1** Campuses can create safe, supportive and confidential spaces where responders to gender-based violence can meet with complainants or respondents to discuss options, conduct an investigation, or follow-up after a disciplinary hearing.
  - a. Spaces should be easily accessible. This can mean different things depending upon the size, structure, and location of a campus.
  - b. Spaces should be free of association of bias and negative history.
  - c. Spaces should be well lit.
  - d. Spaces should be flexible so that chairs and tables can be moved to create a space that is comfortable to complainants and respondents.
  - e. Spaces should have rooms that are private and where conversation cannot be overheard though the walls.
  - f. Sometimes there is also a stigma association with walking through certain doors. Therefore, where these spaces are located should be assessed for that type of stigma. This includes any historical trauma that might be associated with the space.
  - g. Spaces should be culturally-relevant or located where other support networks could be accessed, such as multi-cultural centers.
- 2** Separate complainant and respondent whenever possible. Ensure meetings and access to information occurs at different times and even different locales. It is helpful to consider developing a schedule for both parties to access and prepare their information and receive updates.

## COMPLIANCE

- 3** Offer options so that people can produce a space that feels comfortable. Some examples:
- *Where do you prefer to sit?*
  - *Would you like water/coffee/tea?*
  - *Is this room okay for you?*
  - *My name is \_\_\_\_\_. My role is \_\_\_\_\_. Is it okay to talk through some things with me today?*
  - *This is \_\_\_\_\_. The reason they are here is because of \_\_\_\_\_. Will it be okay if \_\_\_\_?*
  - *How can I help make sure you have the support you need? Some options are \_\_\_\_\_.*
  - *Let me know if you need a break for any reason.*
  - *Is there a place on campus that you would rather meet? E.g. a student might indicate they would prefer a meeting in a conference space at the LGBTQIA+/Multi-Cultural/Women's Center conference room.*
  - *Would you like an advocate or support person with you during our conversations?*
- 4** Talking through case-specific safety plans and utilizing rape crisis and/or domestic violence trained staff in this process. Things to think about:
- *Safe place to stay?*
  - *Safe/support person?*
  - *Do you feel safe going to classes? Work? Getting food? Accessing the library and other study resources?*
  - *What happens if the respondent contacts you - by phone? By email? In person?*
  - *What worries you the most? How can we strategize to reduce that fear?*
  - *How might participating in this process be impacting your academic success?*
- 5** Communicate with both the respondent and complainant in a respectful, ongoing manner and share the same information about the status and outcome of the investigation and any disciplinary proceedings. What does that look like?

### Respect

- Using all-inclusive gender-neutral language at all times and in all forms of communication directly with the individual and from the campus to the public and the campus community.
- Inquiring what pronoun(s) the individual uses.
- Providing resources and outreach for whom English is not their primary language (Limited English Proficient) and for students who are D/deaf or hard of hearing. Resources should be provided by qualified interpreters and not by friends or family members.
- Offering breaks in communication/meetings if needed
  - *"Would it be best to meet again within the next few days? What works for your schedule...?"*
- When possible, allowing a minimum of 48 hours between contacting either party—particularly immediately after an act of physical or sexual violence has occurred.
- Explaining provisions of no contact orders so that people are fully informed about expectations and possible consequences of not meeting those expectations.
- Allowing both complainant and respondent to bring an advisor, advocate, support person or attorney of their choice as they prepare--this could be during meetings with anyone in the conduct office, police, Title IX, hearing process and/or while they prepare their materials for the conduct hearing.

## Information Sharing

- Provide timely updates when new information about the case has been added.
- Check-in with both people to see if there are any questions or concerns about the case to be addressed.
- Let both parties know who may be contacting them and for what purpose.
- Create a plan that minimizes the number of times an individual needs to provide specific details related to their trauma. This could mean arranging a meeting time for campus police, Title IX and any other necessary party to talk with the individual at one time.
- Offering options for each party to communicate and how best to be reached: call, text, email, etc.
- Inquiring how parties can safely receive communication in any way. Some examples:
  - *“Is it okay for me to say who I am and where I’m calling from on a voicemail?”*
  - *“Are you the only one who monitors your email since you said that is the best way to reach you?”*
  - *“Is it safe for me to send a text (if available) to your cell with the updates you’ve requested?”*
  - *“Is it safe for me to mail the documentation you have requested?”*

**6** Provide resources on campus gender-based violence response system. These materials should reflect the diversity of the campus population. Resource materials must be current, accessible available both online and in hard copy form. Responders should be familiar with the resources on the list and disseminate applicable resources to complainants and respondents. Depending on the intended recipient of the resource material, the following on- and off-campus resources should be included:

- 24/7 hotlines for local/campus supportive services
- Hospitals with SANE services
- Campus police/security
- Title IX Coordinator
- Description of campus gender-based violence protocols
- Local police
- Description of all reporting options with confidentiality considerations
- Rape crisis services
- Domestic violence assistance/support/agencies
- Community-based and campus LGBTQIA+ supportive resources
- Housing and transportation assistance
- Language assistance
- Immigration assistance
- Student multi-cultural and/or international program centers, women’s center
- Healthcare
- Counseling services and/or support groups
- Civil legal services
- Other campus/individual needs-based resources and information
- Local courts
- Local shelters
- Food pantries
- Faith-based resources
- Confidential resources

## Transcript Notation

Best practices on how student policy violations of a campus's gender-based violence protocols should be noted and/or shared is at the forefront of the national conversation on these issues and are still being developed.<sup>26</sup> Three ideas for campuses to consider as they develop and/or revise their own protocols in this area:

- Consider how a practice of not sharing a finding of responsible impacts our objective of changing campus culture given what we know about the repeat offender behavior of some individuals who commit gender-based violence. When we are on clear notice that a student has been found responsible for gender-based violence and we pass them on to the next campus with no notification to that campus (because many do not ask us for those records) are we contributing to changing campus culture or are we doing compliance then looking the other way once the student has left our community?
- More work is needed across systems to identify sanctions that work to reduce recidivism. Campuses have an opportunity to provide an educational intervention, ranging from treatment, suspension and expulsion, to address the misconduct and reduce the likelihood to reoffend. Many advocates, survivors of sexual violence and community members have raised questions about an effective approach for addressing gender-based violence on campuses, rather than replicating an existing registration system that often creates a false sense of security not focused on preventing gender-based violence. Evidence-based practices are currently being piloted through efforts of the SMART office, and campus administrators and advocates are carefully weighing the issue of both sanctions and transcript notations<sup>27</sup> as two vehicles to reduce recidivism.
- Identifying and implementing best practices around transcript notation as they evolve will require cross-campus collaboration between Title X staff, Admissions, Dean of Students, Deans of Colleges, General Counsel, and others depending on the structure of your campus.

## Ohio Public Records Law changes impact on private institutions

- In June 2015 the Ohio Supreme Court<sup>28</sup> ruled that a private college or university's police department is a public office and can be compelled to provide public records. The court determined that the private university's police department was established by statute to enforce criminal laws and that function makes the police department a public office under Ohio's Public Records Act. The university argued that the police department is not a public office because the university is private and the police department is a subdivision of the university. However, the court found that because the university campus police department was established by state law for the purpose of exercising a core function of government-the enforcement of criminal laws- it met the definition of a public office and must produce public records upon request.
- House Bill Number 504, which is currently pending in the House Government Oversight Committee, proposes to amend the law governing private institutions of higher education to protect them from liability for a breach of confidentiality or other claim that arises from the institution's disclosure of public records.
- Private institutions should proactively address the impact of this case law as it relates to its potential impact on students' confidentiality and should revise policies and implementation if necessary to protect student confidentiality to the greatest extent possible. It is recommended that campuses consult with General Counsel regarding this matter.

26 For example, the ASCA addresses this issue: [Student Conduct Administration & Title IX: Gold Standard Practices for Resolution of Allegations of Sexual Misconduct on College Campuses](#) page 13.

27 Sanctions and transcript notations are critical elements that institutions of higher education are weighing in their student conduct process. While recommended sanctions should be based on risk and treatment available within the larger community to reduce recidivism, one ongoing debate involves whether or not transcript notations are a best practice and if they act as a tertiary measure to prevent sexual violence. A survey by the American Association of Collegiate Registrars and Admissions Officers revealed that 84% of institutions make transcript notations when a student is ineligible to re-enroll for academic reasons and 29% note suspensions or dismissals for disciplinary reasons. In contrast, the Association for Student Conduct Administration recommends that when a student is expelled or suspended for a violence offense, that campuses make the notation on a student's transcript. The group cited in a white paper that "transcript notations alone will not be effective at reducing the risk of violence to a campus, but the comprehensive approach to admissions, review of information and appropriate action based on that review may be helpful to institutions as they seek to manage risks on their campuses to the best of their abilities." See: Association for Student Conduct Administration, Student Conduct Administration & Transcript Notation: Issues and Practices, [Best Practices/Transcript Notation - Final Report](#)

28 State ex rel. Schiffbauer v. Banaszak, 142 Ohio St.3d 535, 2015-Ohio-1854