

FREQUENTLY ASKED QUESTIONS FROM REGIONAL RESPONSE WORKSHOPS¹



GENERAL QUESTIONS

Q *What is the difference between gender-based violence and sexual violence?*

A Gender-based violence is an umbrella term² used to describe any harassment, violence, and/or discrimination based on an individual's sex, gender identity, and/or sexual orientation. Gender-based violence is generally understood to include, but is not limited to, sexual assault, rape, intimate partner violence (including emotional, verbal, sexual, physical, and financial abuse), stalking, and sexual harassment. Gender-based violence can be perpetrated by and against individuals of all biological sexes, gender identities, and/or sexual orientations.

Sexual violence is a term that may be interpreted as a narrower set of conduct within gender-based violence that describes harassment, violence, and/or discrimination that is sexual in nature. Sexual violence would include sexual assault and sexual harassment, but would not include, for example, employee hiring practices that favor men over women, the latter would be discrimination based on sex and gender, but would not be considered sexual in nature.

Q *What are the different evidence standards for court and campus processes?*

A The campus process uses preponderance of evidence and the criminal court uses beyond a reasonable doubt. This is one of many differences in the two processes. Because there is a lot of confusion about these differences, the Ohio Alliance to End Sexual Violence (OAESV) technical assistance team as part of the Changing Campus Culture initiative led by the Ohio Department of Higher Department of Education developed a fact sheet: [The Campus Disciplinary Process is Different than Criminal Justice Proceedings: Using the Correct Terminology Matters](#).

CONFIDENTIALITY

Q *How can Ohio campuses better respond to requests from complainants for confidentiality and anonymity in a trauma-informed way?*

A It is important to be empathetic to why someone who has experienced gender-based violence would want to remain anonymous. Public attention to gender-based violence has increased awareness of this public health issue and positive steps have been made in addressing the root causes of and the response to this violence. However, the culture that supports rape continues to exist which is mired in pervasive and systemic victim blaming, social stigma, and lack of comprehensive, accurate education. Understandably, complainants have real concerns about reporting to anyone, including campus responders.

Second, campuses should try to uphold requests for confidentiality as much as possible, weighing the safety of the individual complainant and the larger campus. Campuses should ensure there are individuals on campus that complainants can speak to where confidentiality will be upheld. These individuals are referred to as confidential sources. For more information on this and how responsible employees should respond if a complainant asks that the information shared be kept confidential see the fact sheet, [Responding to Gender-Based Violence on Campuses: Helping Responsible Employees Understand Their Role](#), developed by the OAESV technical assistance team as part of the Changing Campus Culture initiative led by the Ohio Department of Higher Department of Education.

Finally, campus responders must have a high level of training, expertise, and experience to engage with complainants requesting confidentiality. Responders must approach the conversation with the understanding that, while we want students to report and we want the opportunity to respond to those reports, making a report is just the beginning of what will likely be a very difficult process for that complainant even in cases in which they receive the desired outcomes. Our work as campus responders must be directly informed by these facts. Strong policies and protocols and fair, compassionate implementation of those is critical, but they simply cannot and do not address the oftentimes painful, isolating, and damaging backlash students may face from family, friends, and other systems with which they may engage (e.g. legal, medical) around what they have experienced.

1 This document is designed to help Ohio campuses better respond when a student reveals that s/he is a victim of gender-based violence. The information in this document is intended for educational purposes only. Do not rely on it as legal advice and always consult with your General Counsel for campus-specific decisions.

2 See section 8, Glossary, of the Ohio Department of Higher Education & Ohio Alliance to End Sexual Violence, [Transforming Ohio Campuses: A Toolkit for Implementing the Changing Campus Culture Initiative, Ohio Alliance to End Sexual Violence](#) (2016)

The following are key conversations and messages campus responders should communicate to complainants requesting confidentiality or anonymity:

- Learn why the complainant is requesting confidentiality. You may be able to address some of their concerns, such as retaliation and harassment fears. You may be able to offer enough interim measures that a student may decide they do feel comfortable going forward.
- If a complainant expresses that the reason they don't want to proceed is because of fear of social backlash from friends, they don't want to be identified as a rape victim, they fear public backlash should the respondent have a higher profile or the like, campus responders should honor that complainant's understanding of the culture surrounding these issues. You can and should express your campus' values and community expectations around these issues, but to be trauma-informed, don't ignore or minimize that complainant's feelings.
- Campus responders need to be willing to give complainants time to process their options and decide what is best for them. Being trauma-informed means being willing to give complainants time to sleep, eat, think, connect with their support systems, seek advocacy, and have a safe, supportive environment in which to consider the information the campus has provided. In many cases doing so may result in an individual deciding they do feel supported enough to participate. If campus responders allow space and time to establish rapport with the complainant, s/he may decide proceeding without confidentiality does feel like the right decision for them.
- The information campuses need to share when there is a request for confidentiality is complex for anyone to process let alone someone who has had a traumatic experience. Campuses should do everything they can in their materials, outreach, education, and training to inform students about how campuses assess requests for confidentiality and highlight confidential resources before a student is sitting in the Title IX Office. Doing so will enhance the likelihood that if and when a complainant decides to share personally identifying information with campus responders they are doing so because they intentionally chose that path after evaluating all options and resources in a safe, supportive setting.
- Should a campus assess that it must proceed with an investigation despite a request for confidentiality so that it can meet its obligation to provide a safe and non-discriminatory environment for that complainant and all students:
 - Campus responders should have an ongoing, open dialogue with the complainant about the what, why, and when of the campus response to keep them as informed as possible.
 - Explain to the complainant the campus' obligation to take all reasonable steps to mitigate harm against the complainant and then follow through on those steps.
 - Ensure that the complainant knows they will not be compelled to participate in any way with the response steps.
 - Share with the complainant the option of the campus responder communicating with the respondent that the complainant specifically requested no investigation and/or conduct response, but that the campus assessed it would need to proceed despite that request. This may support the respondent focusing on the campus rather than the complainant.

Q *How can smaller campuses address students not wanting to report because of the size of the campus/community (fear of information spreading)?*

A This is an important issue for smaller campuses. OAESV receives calls from complainants who worry about revealing their victimization due to the insular nature of their campus. To reduce barriers to reporting that come with smaller campuses, campuses should directly discuss these challenges through outreach, awareness and prevention efforts that leverages peer-to-peer messaging. Utilizing current student leader perspectives expressing the message may strengthen the impact. Additionally, campuses should strongly and visibly address harassment, gossip, and speculation on anonymous social media sites.

The following are suggestions of themes which can be integrated into prevention and response materials:

- Make a strong statement on the commitment of the campus to have a process in which all parties' dignity and privacy are respected.
- Emphasize the confidentiality of the process and that any retaliation/harassment will be addressed strongly and swiftly by the campus.
- Highlight the value of advocacy and support resources on and off campus to bolster complainant experiences during investigation and grievance processes.
- Recognize that while campus responders will uphold FERPA regulations and respect the complainant's privacy and confidentiality to the extent that is possible, acknowledge that this does not address the difficult social and broader community pressures and threats that a student may experience.
- Emphasize that campus responders will work to address issues of gossip, speculation, and the like regardless of whether it reaches the level considered retaliation or harassment. Acknowledge the potential negative impact of this behavior on complainant lives and their decisions regarding whether to report.
- Leverage student leaders to spread messaging, emphasizing the power students have to create a safe and supportive community for their peers.

Another important step campuses should consider is outlining in their protocol and communicating with students that if a real or perceived conflict of interest exists with any of the employees who are involved in the Title IX process to report that to the Title IX Coordinator or other designee. If the conflict of interest exists with the Title IX Coordinator the campus should outline the steps the campus will take to address any real or perceived conflict of interest.

TRAUMA-INFORMED APPROACHES/SURVIVOR-CENTRIC APPROACHES

Q *Isn't a victim-centered response a biased approach from the perspective of the respondent?*

A No. Victim-centered means that responders are cognizant of the trauma that a victim (i.e. complainant) can experience from the gender-based violence and takes that into account in their responses. Responding to gender-based violence using a trauma-informed approach means that trained campus employees with expertise and experience on gender-based violence's prevalence, dynamics, impact, and effects appropriately engage with both the complainant and the respondent and protect the rights of both parties. This approach was developed as a result of a long history of various systems (e.g. legal, medical, advocacy) treating survivors differently than individuals reporting other types of crimes, which resulted in victim blaming and less robust responses to gender-based violence.

Campus responders with proper trauma-informed training understand that bias and lack of education can result in responses such as assuming that a sexual assault did not happen because the student did not report right away, did not physically fight during the reported assault, and/or is not crying when talking about what happened. Campus responders with proper trauma-informed training understand that these factors can be common responses to experiencing trauma and will proceed with a full investigation into the matter rather than dismissing it or further traumatizing the survivor.

Trauma-informed approaches also reflect that survivors must have a say in the aftermath of their victimization. When a person experiences gender-based violence their power and control are stripped from them. Historically, systems have told survivors what they should or should not do in response to that trauma. That approach, which still occurs today, compounds and exponentially increases the trauma the individual has already experienced.

Therefore, when a system- such as advocacy or law enforcement- talks about using a victim-centered or trauma-informed approach- rather than demonstrating bias, that system is sharing its commitment to treating individuals who report gender-based violence the same as those reporting other trauma.

Q *How can we help survivors advocate for their own safety and healing?*

A Self-advocacy starts with being offered as many choices as possible early on in the process. Our job is not to take over someone's crisis, but remind them early and often that they have the strength and ability to handle anything—including the choices they make about working with on-campus or off-campus resources. No matter what your role is in responding to gender-based violence, you can explain the options available to complainants, even when they feel as though they have run out of them.

Most importantly, we can remind a survivor that they are strong and capable and that they deserve opportunities to cultivate their own coping mechanisms. Counseling, advocacy, and other services can help provide opportunities for this type of cultivation—but serve to enhance, rather than replace, the strength and resilience of survivors.

Q *What are the checks and balances in a process that is both trauma-informed and equitable?*

A Some key components that need to be in place to promote strong “checks and balances” include:

- Robust campus protocols demonstrating the commitment of campus leadership, investigators, and decision-makers to facilitate a process that strives to protect and balance the rights of both the complainant and respondent, rather than a process designed to mitigate some perceived source of liability or disbelief of the existence of gender-based violence.
- Investigators and decision-makers undertake regular, quality training that explores all aspects of the work, such as the impact of trauma, due process, implicit bias, applying preponderance of the evidence, and evaluating and implementing interim measures.
- If a campus uses a single investigator model, in which one individual conducts the investigation and makes the finding of responsible or not, that person should, as a matter of practice, consult with at least one other trained source with expertise to promote an equitable process.
- Title IX officials should have a strong relationship with general counsel and the proper scope and authority to properly grapple with the complex issues that arise in these matters.
- Clear, articulated roles for and collaboration among investigators, decision-makers, and other relevant campus departments, including, but not limited to general counsel and advocates.
- Strong, early, and equitable on campus support (in whatever form the party chooses as their advisor of choice) for both the complainant and respondent.
- Advocacy resources for students reporting gender-based violence.

CAMPUS PROTOCOLS

Q *When someone serves in more than one role on a campus, what guidance is there about who should or should not be a Title IX Coordinator?*

A The Office for Civil Rights (OCR) has addressed this very question in section C-4 of [Questions and Answers on Title IX and Sexual Violence](#): *Title IX does not categorically preclude particular employees from serving as Title IX coordinators. However, Title IX coordinators should not have other job responsibilities that may create a conflict of interest. Because some complaints may raise issues as to whether or how well the school has met its Title IX obligations, designating the same employee to serve both as the Title IX coordinator and the general counsel (which could include representing the school in legal claims alleging Title IX violations) poses a serious risk of a conflict of interest. Other employees whose job responsibilities may conflict with a Title IX coordinator’s responsibilities include Directors of Athletics, Deans of Students, and any employee who serves on the judicial/hearing board or to whom an appeal might be made. Designating a full-time Title IX coordinator will minimize the risk of a conflict of interest.*

Campuses who do not have the resources and/or have not made the commitment to a full-time, dedicated Title IX coordinator should carefully consider potential perceived and actual conflict of interests when assigning the Title IX duty to personnel with another role(s). Campuses should consider engaging different constituencies, including staff, students, and faculty, in that conversation to ensure the campus is not inadvertently putting a chilling effect on reporting and/or raising campus concerns about the equitability and fairness of the response system.

Q *What is the purpose of campus amnesty policies? Are campuses utilizing written or informal policies?*

A Implementing an amnesty policy for minor drug or alcohol offenses is an important consideration for campuses. These types of policies may help to alleviate some of the barriers to reporting and reduce the perception of victim blaming. When choosing whether such a policy should be written or informal it is important to consider whether or not the exclusion of a written procedure within the policy could create a lack of consistency from case to case. Additionally, student education, outreach and communication about the policy is clearer if it is written. Having an amnesty policy without educating the campus community of its existence may not yield an increase in reporting, and survivors might not feel comfortable in coming forward if they are unaware of the policy.

OFFICE FOR CIVIL RIGHTS (OCR), U.S. DEPARTMENT OF EDUCATION³

Q *What’s OCR’s timeline for an investigation they may conduct into an institution?*

A The timeframe for an OCR investigation varies depending on factors such as the complexity of the issues raised in a complaint, the scope and severity of the allegations, and the volume and availability of evidence and witnesses. Sexual violence investigations, for example, tend to be complex and may involve systematic, campus- and institution-wide issues, in addition to issues pertaining to specific students.

When OCR receives allegations of noncompliance with Title IX, OCR must first determine the whether or not the correspondence is a complaint (a complaint should include a written explanation of what happened, identify the person or group injured by the alleged discrimination, and identify the person or institution alleged to have discriminated) and whether OCR has authority to investigate the allegations. OCR may also initiate investigations of institutions on its own (i.e., compliance reviews).

After opening a case for investigation, OCR conducts a comprehensive investigation to determine whether the institution violated Title IX and its implementing regulations. Those regulations, among other matters, provide that, in providing any aid, benefit, or service to a student, a recipient institution shall not, on the basis of sex: treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service; deny any person any such aid, benefit, or service on the basis of sex; or otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity on the basis of sex. 34 C.F.R. §106.31(b).

The regulations also require recipient institutions to adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any form of sex discrimination prohibited by Title IX, including sexual violence. 34 C.F.R. §106.8(b). For example, to make a determination as to whether an institution has responded in a prompt and equitable manner to complaints and reports of sexual violence, OCR would not just review the adequacy of an institution’s sexual harassment policies and procedures, but also issues such as: how the institution responded to reports of sexual violence; training for employees and students; the overall campus climate; and student awareness of available resources and applicable reporting procedures. When OCR finds that a recipient institution has not taken prompt and effective steps to respond sexual harassment or violence, OCR seeks remedies for both the complainant and the broader student population, as appropriate.

More information about OCR’s enforcement practices is available in OCR’s [Case Processing Manual](#).

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3 Correspondence issued by OCR in response to an inquiry from the public does not constitute a formal statement of OCR policy and should not be construed as creating or articulating new policy.

Q *How should school officials respond upon notice that OCR has opened an investigation of their school?*

A Under Section 109 of OCR's [Case Processing Manual](#), when OCR opens a case for investigation, it will issue letters of notification to the complainant and the school that contain, at a minimum, the following information:

- OCR's jurisdiction with applicable regulatory citations.
- The allegations to be investigated.
- A statement that OCR is a neutral fact-finder and citing the CPM.
- Information about OCR's Early Complaint Resolution process.
- Contact information for the OCR staff person who will serve as the complainant's and the school's primary contact during the investigation and resolution of the complaint.

OCR will generally send a data request along with the notification letter asking the school to provide information and records relevant to the investigation. A data request will generally seek copies of relevant policies, procedures, and related documents, including files for Title IX complaints, investigations, and resolutions, from the three years preceding OCR's opening of an investigation. Maintaining written records of a school's Title IX complaints, investigations, and resolutions will help ensure that a school can identify and resolve recurring or systemic problems and can also be helpful in an OCR investigation when preparing a response to a data request.

Q *What is the most common error found when OCR gets a complaint about a college/university?*

A Between October 1, 2012, and September 30, 2016, OCR received 47,051 complaints alleging civil rights violations, including 16,531⁴ complaints with Title IX allegations. 682 of those Title IX complaints included allegations related to sexual violence against students. Some of the most common issues that arise in OCR's sexual violence investigations relate to a recipient's failure to comply with regulatory requirements to adopt grievance procedures for the prompt and equitable resolution of Title IX complaints, including providing for adequate, reliable, and impartial investigations and providing the same opportunities to both parties. OCR has also found that some of the most egregious and harmful Title IX violations occur when a school fails to designate a Title IX coordinator or when a Title IX coordinator has not been sufficiently trained or given the appropriate level of authority to oversee the recipient's compliance with Title IX.

OCR provides access to resolution letters with agreements reached on or after October 1, 2013. Those documents are available in a searchable database here: <http://www.ed.gov/ocr-search-resolutions-letters-and-agreements>. OCR has also highlighted certain Title IX case resolutions here: www.ed.gov/ocr/frontpage/casesolutions/sex-cr.html.

Q *Does OCR have a position or has OCR issued guidance on the question of lifting or monitoring a sanction imposed on a respondent found responsible for gender-based violence?*

A When a school knows or reasonably should know of possible sexual violence, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. Title IX requires a school to protect complainants and ensure their safety as necessary, including taking interim steps before the final outcome of any investigation.

If a school's investigation reveals that sexual violence created a hostile environment, the school must take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects. Effective remedial action may include disciplinary action against the perpetrator, but imposing sanctions against the perpetrator, without more, likely will not be sufficient to satisfy its Title IX obligation. Section H of OCR's [2014 Q&A on Title IX and Sexual Violence](#) provides additional information on appropriate remedies when a school finds that sexual violence created a hostile environment. OCR has not issued guidance on lifting or monitoring sanctions, but schools have a continuing obligation to take steps reasonably calculated to eliminate the hostile environment and prevent its recurrence. OCR monitors a school's fulfillment of this obligation as part of a resolution agreement.

A school also must inform the complainant about any sanctions imposed on the perpetrator that directly relate to the complainant and other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence. Sanctions that directly relate to the complainant include, but are not limited to, requiring that the perpetrator stay away from the complainant until both parties graduate, prohibiting the perpetrator from attending school for a period of time, or transferring the perpetrator to another residence hall, other classes, or another school.

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4 Note that in fiscal year 2016, one individual filed 7,747 complaints alleging Title IX violations.

TITLE IX AUTHORITY/REACH

Q *What are the boundaries of Title IX related to incidents that involve a non-student or former student as a victim and a current student as a perpetrator when the incident does not occur on campus property?*

A Campuses may have a responsibility to address off-campus incidents if it disrupts on-campus activities or puts the community in danger. The Association of Title IX Administrators (ATIXA) developed a rubric for determining jurisdiction, which can be found [here](#). Additional information can also be found in within [The Top Ten Things We Need to Know About Title IX \(That the DCL Didn't Tell Us\)](#) white paper.⁵

Title IX does not have geographically-defined jurisdiction. We can't say it applies to one place or another, or on- or off-campus. It is instead a nexus rule⁶, applying to those situations with sufficient connection to the activities of a funding recipient such that the recipient is responsible for addressing them. The courts have uniformly applied a two prong test to Title IX's applicability, assessing whether the institution has:

1. control over the harasser (subject to our rules) and
2. control over the context of the harassment (on our property, in our programs, on land we lease or control, or at events we sponsor). If both prongs are met, we are obligated to respond to notice in accord with Title IX.

It is also recommended that campuses develop a Memorandum of Understanding (MOU) with local law enforcement agencies to identify collaboration, jurisdiction and protocols for investigation.^{7 8}

Q *For a commuter campus, when a student reports an assault that occurred on an off campus location, what are the investigative steps required? What off-campus authority do campus officials have?*

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It is also recommended that campuses develop a Memorandum of Understanding (MOU) with local law enforcement agencies to identify collaboration, jurisdiction and protocols for investigation.^{11 12}

Q *A student confides that while she was a student at a previous college a possible Title IX violation occurred. What is the statute of limitations and the responsibilities of both colleges? Does it matter if both are state colleges?*

A We know that victims face a range of significant barriers to reporting and that, given this reality, delayed reporting is very common. Therefore, it is a best practice that all campuses, private and public, should not have a time limit for individuals to be able to report gender-based violence.

Campuses should educate responsible employees to report every incident to the Title IX Coordinator. The Title IX Coordinator will then make a determination if it falls under the jurisdiction of Clery or Title IX. When considering these types of questions the [ATIXA Rubric for Determining Jurisdiction](#) is a helpful resource to examine, as are the charts created by the Ohio Alliance to End Sexual Violence included within the Transforming Ohio Campuses: A Toolkit for Implementing the Changing Campus Culture Initiative found in the [Confidentiality](#) section. Additionally, campuses can also reach out to the Office for Civil Rights directly if they are unsure whether the report would fall under Title IX jurisdiction.

5 Lewis, Scott, Schuster, Sandra, Sokolow, Brett, and Daniel Swinton, The NCHERM Group, LCC and ATIXA, *The Top Ten Things We Need to Know About Title IX (That the DCL Didn't Tell Us)*. 2013.

6 As set forth by Justice O'Conner in the Davis v. Monroe County case.

7 RECOMMENDATIONS FOR CRAFTING A MEMORANDUM OF UNDERSTANDING BETWEEN CRITICAL PARTNERS RESPONDING TO REPORTS OF CAMPUS SEXUAL ASSAULT, <http://www.ohioattorneygeneral.gov/MOU>

8 Building Partnerships among Law Enforcement Agencies, Colleges and Universities: Developing a Memorandum of Understanding to Prevent and Respond Effectively to Sexual Assaults at Colleges and Universities, White House Task Force to Protect Students from Sexual Assault, https://www.whitehouse.gov/sites/default/files/docs/white_house_task_force_law_enforcement_mou.pdf

9 Lewis, Scott, Schuster, Sandra, Sokolow, Brett, and Daniel Swinton, The NCHERM Group, LCC and ATIXA, *The Top Ten Things We Need to Know About Title IX (That the DCL Didn't Tell Us)*. 2013.

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12 Building Partnerships among Law Enforcement Agencies, Colleges and Universities: Developing a Memorandum of Understanding to Prevent and Respond Effectively to Sexual Assaults at Colleges and Universities, White House Task Force to Protect Students from Sexual Assault, https://www.whitehouse.gov/sites/default/files/docs/white_house_task_force_law_enforcement_mou.pdf

Students should receive information about off campus reporting and resources for advocacy. It is important that students receive information about both the statute of limitation for the Title IX investigation on campus, as well as the statute of limitations for reporting the crime. Criminal statutes of limitations vary state to state and an advocate at a local rape crisis center can assist the student and campus in connecting with advocacy resources and legal services if in another state, to identify all options that exist for this student.

If an individual believes that their campus has violated Title IX, generally a complaint must be filed with the Office for Civil Rights (OCR) within 180 calendar days of the last act that the complainant believes was discriminatory. If the complaint is not filed on time, the complainant should provide the reason for the delay and request a waiver of this filing requirement. OCR will decide whether to grant the waiver.¹³

INTERIM MEASURES/ACCOMMODATIONS

Q *What would be the best practice in the following scenario: A year after experiencing a sexual assault, a complainant requests a single-person room which costs more than the double room she had previously, and requesting the university to relieve her of that cost as an accommodation as a reasonable accommodation.*

A There is no one answer. Every campus should take an individual approach to each complainant when deciding reasonable accommodations and safety measures during and after an incident has been dealt with by the campus. Campuses should document their decision-making and utilize any precedent set by similar matters to inform equitable steps. Factors campuses should consider when determining what is reasonable assistance under the circumstances include, but are not limited to:

- Severity of what was reported
- Time passed since conduct violation
- Ongoing presence of respondent
- If an investigation and/or complaint resolution process was facilitated and the outcome of that process
- Documentation of effect on complainant (see more below)
- Availability of assistance and/or accommodations
- Nature of campus (see more below)

Many smaller campuses point to the nature of their campus- such as limited class availability and only one dining hall- as challenges to meet their obligation under Title IX. We would challenge all campuses to explore creative options and strategies utilizing all campus partnerships to meet student needs, and it is important to note that the nature of the campus and availability of alternatives/options/assistance should be considered one of the circumstances we're referring to when we say a campus should take all steps that are reasonable under the circumstances.

Q *Should campuses issue mutual no contact orders?*

A No. Issuance of mutual no contact orders, even if it is done automatically as part of the campus response to gender-based violence, is problematic for many reasons.

The April 2011 OCR Dear Colleague Letter states that a campus “may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school’s investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on the complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain.”¹⁴ OCR also points to the 2001 Revised Sexual Harassment Guidance statement: “In some cases, it may be appropriate to further separate the harassed student and the harasser, e.g., by changing housing arrangements or directing the harasser to have no further contact with the harassed student. Responsive measures of this type should be designed to minimize, as much as possible, the burden on the student who was harassed.”¹⁵

When a campus requires a complainant to comply with a no contact order it is not minimizing the burden on the complainant and is in fact limiting the complainant’s ability to freely move around campus simply for filing a complaint, which at best could create a chilling effect for future reports and at worst could be interpreted as retaliatory. Campuses should consider what message issuing mutual orders sends to a complainant- potentially that they have done something wrong and/or their behavior needs to be managed in some way.

13 <http://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

14 2011 OCR Dear Colleague Letter, pp. 15-16

15 Language from two additional analogous resources support this premise. From Catherine F. Klein & Leslye Orloff, Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law, 21 HOFSTRA L. REV. 801, 1076 (1993): “Issuing mutual protection orders may place a battered woman at greater risk. Mutual orders confuse the police as to the truly dangerous party, and increase the batterer’s sense of legitimacy in his violence” by creating the impression that the victim is equally at fault. Second, from National Council of Juvenile and Family Court Judges, FAMILY VIOLENCE: A MODEL STATE CODE § 310 (1994): “Rather, the best practice is to issue an order of protection only where a party has specifically filed a petition requesting one, supported by allegations that the respondent is dangerous; mutual orders issued against both parties, where only one party has requested one, are disfavored.” Available at http://www.ncjfcj.org/sites/default/files/modcode_fin_printable.pdf.

The practice of automatic issuance of a no contact order to the respondent, even when a complainant specifically requests the campus not to, is also problematic. Campuses should consider the potential unintended, detrimental and even dangerous consequences this practice could have. For example, there could be a case in which the perpetrator may have told the complainant they will hurt them if they report what happened to anyone. We know that when a victim seeks help and/or is attempting to leave a relationship the safety risks to that person can significantly increase. Victims know the perpetrators far better than we do and we have to trust that they know what is best for their lives. If a complainant tells a campus that they will be less safe if a no contact notice order is issued, the campus should honor that, document all related conversations, and seek to address safety issues in ways that do not potentially increase safety risks to the complainant.

No contact orders should be issued (or not issued as the case may be) to increase the safety of the complainant and not as a catch-all way of telling the parties to stay away from each other while the matter is pending. Rooting a campus' no contact notice issuance policies and practice in a safety assessment framework allows the campus to inquire about and assess safety concerns of the complainant and issue the order if the complainant expresses safety concerns and expresses that they would like one issued. Under this safety-driven framework, if a respondent then comes to request a no contact order, a campus can and should ask the same safety-related questions and conduct the same safety analysis to see if there are facts to warrant issuing an order. If the respondent does not ultimately articulate safety reasons for the order then we recommend a campus does not issue one. If the respondent does articulate safety reasons for the order then the campus may also need to inform them of their right file a complaint if it appears that the complainant may have violated a policy, potentially through harassment or some other prohibited behavior.

SANCTIONS

Q *How should campuses handle a situation where a student is expelled or sanctioned for a Title IX violation, but transfers to another campus?*

A Campuses should proactively convene key campus constituents (e.g., Title IX, General Counsel, Admissions, Registrar) to develop campus policies and protocols on this issue. Specific areas to consider:

- Does the campus make a transcript notation of the sanction and policy violation?
- What does the campus currently ask and want to ask in its transfer application materials? Campuses should design transfer materials to promote their having as comprehensive as possible understanding of a student's conduct history to promote its ability to make informed decisions regarding the admission process available to that student.
- Train all individuals who review admission materials on what to look for; design a system for looping Title IX and relevant conduct personnel in, should any gender-based violence issues be flagged.
- Determine campus parameters and process for admitting students with prior gender-based violence policy violation history, with particular attention paid to issue of being on notice of prior conduct history should an admitted student known to have committed a similar policy violation do so to a student on your campus.
- Safeguards to ensure these policies are implemented in a consistent manner (e.g. different standard for a high profile student athlete than for a non-student athlete) are critical to ensure fairness and minimize campus liability risk.

COLLABORATION

Q *What can campuses do when they have no local rape crisis centers in their area to work with?*

A When there is no clear external partner to connect with, campus staff have to get creative and work with a mixture of on-campus resources, including [other rape crisis centers within the region](#) who might be willing to provide some consultation and statewide resources. Additionally, campuses should consider bringing in experts outside their community to train on-campus resources such as counseling centers, women's centers, LGBTQ centers, health services, and others to be better equipped to provide prevention education and a trauma-informed response around these issues.

Most areas have mental health services of some type that could be used as a referral source. There are opportunities statewide to promote trauma-informed approaches to serving survivors of sexual violence, so it is suggested that on-campus and local mental health providers attend trainings together in-advance.

Finally, the Ohio Alliance to End Sexual Violence works to provide services for survivors of sexual violence statewide and identify the closest potential partners for a given area. Moreover, they can work to identify peer campuses and other resources that can encourage peer sharing and support. They can be reached at (888) 886-8388. Survivors can contact the Ohio Sexual Violence Helpline 24/7 to access hotline support at 1.844.OHIO.HELP.

INVESTIGATION AND GRIEVANCE PROCESS

Q *Should we allow recording devices during a hearing or an interview by either party?*

A Campuses are not prohibited from allowing audio recording devices during interviews and hearings, and allowing recording may increase a sense of fairness and confidence in the process. If a campus does allow parties to audio record interviews, the campus should emphasize the sensitivity of that material and emphasize that to the parties as they determine with whom (e.g. advisor of choice, parent) and how (e.g. electronically) to share that material. Many campuses create their own audio recording of the hearing and/or interviews which students' may request access to, which may alleviate students feeling the need to create their own recording.

Q *What are some of the criticisms that surround the use of a single "investigator model"?*

A When a campus utilizes a single investigator model, respondents often raise the issue of due process and their inability to ask questions in real time to the complainant. Most campuses that have a physical hearing as part of their complaint resolution process will allow the respondent to ask questions of the complainant via a moderator. In physical hearings when both parties have the right to be in the room, campuses must offer the complainant the right to be separated from the respondent in some way (e.g. barrier wall, closed circuit video). While not the face-to-face questioning respondents typically desire, this real time questioning does often address this particular respondent due process concern. In a single investigator model, the two parties are typically never in the same room together and questions are asked by the investigator to each party separately.

It is important to note that courts have found that campuses are able to meet their responsibilities under Title IX and are not violating the due process (or fairness standards for a private institution) rights of a respondent by the simple fact of using a single investigator/no physical hearing model. That being said, a key strategy to alleviate due process concerns would be to include within the policy and communicate clearly to everyone involved that the complainant and respondent can ask questions of each other through the investigator. The investigator should assess the relevance and appropriateness of those questions (e.g. the investigator would not include questions related to a complainant's sexual history even if the respondent posed these questions) and clearly document the questions asked and the responses in the investigation report. This can likely only be done if the investigator meets with both parties more than one time. If an investigator only speaks with each party one time during the investigation prior to make a finding of responsibility that would certainly undermine the confidence of both parties that their full perspective, questions, and responses were being properly included into the report.

Concerns regarding due process with a single investigator model may also be addressed by sharing the on-going training they receive, and discussing their expertise and experience as the investigator in facilitating an equitable, impartial, and adequate investigation and complaint resolution process. In addition, campuses might demonstrate the equitability of their process by sharing some cases in which it was determined by the investigator that there was sufficient evidence to conclude that it was more likely than not that the respondent violated the policy and some cases in which there was not.

Q *We're seeing more and more private investigators involved in the process. Any advice on how best to handle that trend?*

A It is important to address it proactively in both policy and in practice. It is becoming more common for parties, particularly respondents who retain attorneys, to also hire private investigators. The Title IX Coordinator should clearly tell both parties that they do not have to speak with private investigators (or the other party's lawyer) and that if at any point they feel they are being harassed by a private investigator they should report that to the Title IX Coordinator immediately for response/investigation.

Q *At the conclusion of a campus proceeding, what should be released to the parties?*

A Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal.¹⁶ OCR recommends that a school provide written notice of the outcome to the complainant and the alleged perpetrator concurrently. For Title IX purposes, a school must inform the complainant as to whether or not it found that the alleged conduct occurred, any individual remedies offered or provided to the complainant or any sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence.

The perpetrator should not be notified of the individual remedies offered or provided to the complainant.

Sanctions that directly relate to the complainant (but that may also relate to eliminating the hostile environment and preventing recurrence) include, but are not limited to:

- Requiring that the perpetrator stay away from the complainant until both parties graduate;
- Prohibiting the perpetrator from attending school for a period of time;
- Transferring the perpetrator to another residence hall, other classes, or another school;
- Additional steps the school has taken to eliminate the hostile environment may include counseling and academic support services for the complainant and other affected students.

- Additional steps the school has taken to prevent recurrence may include sexual violence training for faculty and staff, revisions to the school's policies on sexual violence, and campus climate surveys.

In addition to the Title IX requirements described above, the Clery Act requires, and FERPA permits, postsecondary institutions to inform the complainant of the institution's final determination and any disciplinary sanctions imposed on the perpetrator in sexual violence cases (as opposed to all harassment and misconduct covered by Title IX) not just those sanctions that directly relate to the complainant.¹⁷

VICARIOUS TRAUMA/SELF-CARE

Q *What suggestions are there for dealing with vicarious trauma?*

A The phenomenon of “vicarious trauma” is quite real—that people who listen to and absorb stories of trauma in fact become traumatized themselves. Boundaries are critically important to both responders. We aren't doing anyone any good if we “join” someone in crisis—in fact, complainants need us to be firm in our support.

The most helpful way to put up these boundaries is by establishing a clear sense of process and each person's role in that process. Moreover, it is important for Title IX staff, responsible employees and advocates to consistently remind themselves that their role is to explain the process and options to complainants, reminding them that they regain their power by continuing to make choices and advocate for themselves.

Finally, it is important for everyone who is at risk of vicarious trauma to practice consistent self-care—taking proactive steps to refuel themselves to be able to better respond. There are countless resources with ideas for self-care online, including one example [here](#).

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17 20 U.S.C. §1092(f) and 20 U.S.C. §1232g(b)(6)(A).