

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

Questions and Answers on Title IX and Sexual Violence<sup>1</sup>

is a federal civil rights law that prohibits discrimination on the basis of sex in federally funded education programs and activities. All public and private elementary and secondary schools, school districts, colleges, and universities receiving any federal financial assistance must comply with Title IX.

On April 4, 2011, the Office for Civil Rights (OCR) in the U.S. Department of Education issued a Dear Colleague Letter on student-on-student sexual harassment. The OCR is providing this information to students in accordance with the requirements of Title IX.

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Notice of Language Assistance  
Questions and Answers on Title IX and Sexual Violence

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

A-1. What is sexual violence?

Answer: Sexual violence, as that term is used in this document and prior OCR guidance, includes acts such as rape, sexual assault, sexual battery, sexual abuse, and sexual coercion, including acts that are committed against a student who is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

A-2. How does Title IX apply to student-on-student sexual violence?

Answer:



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effects. But a school should not wait to take steps to protect its students until students have already been deprived of educational opportunities.

Title IX requires a school to protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of an investigation.<sup>10</sup> The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. If the school determines that the sexual violence occurred, the school must continue to take these steps to protect the complainant and ensure his or her safety, as necessary. The school should also ensure that the complainant is aware of any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, legal assistance, and the right to report a crime to campus or local law enforcement. For additional information on interim measures, see questions G-1 to G-6.

sexual harassment generally does not extend to legitimate nonsexual touching or other nonsexual conduct. But in some circumstances, nonsexual conduct may take on sexual connotations and rise to the level of sexual harassment. For example, a teacher repeatedly hugging and putting his or her arms around students under inappropriate circumstances could create a hostile environment. Early signs of inappropriate behavior with a child can be the key to identifying and preventing sexual abuse by school personnel.

A school's Title IX obligations regarding sexual harassment by employees can, in some instances, be greater than those described in this document and the DCL. Recipients of the DCL should refer to the DCL for further information about Title IX obligations regarding harassment of students by school employees. In addition, many state and local laws have mandatory reporting requirements for schools working with minors. Recipients should be careful to satisfy their state and local legal obligations in addition to their Title IX obligations, including training to ensure that school employees are aware of their obligations under such state and local laws and the consequences for failing to satisfy

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uses in all complaints involving sexual violence. The fact that incidents of sexual violence may be accompanied by anti-gay comments or be partly based on actual or perceived sexual orientation does not relieve a school of its obligation under Title IX to investigate and remedy those instances of sexual violence.

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violence. In addition, students with disabilities who experience sexual violence may require additional services and supports, including psychological services and counseling services. Postsecondary students who need these additional services and supports can

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A student who has not been previously determined to have a disability may, as a result of experiencing sexual violence, develop a mental health-related disability that could cause the student to need special education and related services. At the elementary and secondary education level, this may trigger a school's child find obligations under IDEA

aside for victims of certain crimes who have suffered substantial mental or physical abuse as a result of the crime and are helpful to law enforcement agency in the investigation or prosecution of the qualifying criminal activity.<sup>15</sup> The T nonimmigrant status is available for victims of severe forms of human trafficking who generally comply with a law enforcement agency in the investigation or prosecution of the human trafficking and who would suffer extreme hardship involving unusual and severe harm if they were removed from the United States.<sup>16</sup>

A school should be mindful that unique issues may arise when a foreign student on a student visa experiences sexual violence. For example, certain student visas require the student to maintain a full-time course load (generally at least 12 academic credit hours per term), but a student may need to take a reduced course load while recovering from the immediate effects of the sexual violence. OCR recommends that a school take steps to ensure that international students on student visas understand that they must typically seek prior approval of the designated school official (DSO) for student visas to drop below a full-time course load. A school may also want to encourage its employees involved in handling sexual violence complaints and counseling students who have experienced

- A school should be aware that international students on student visas may encounter special issues that international students may encounter. See questions J-1 to J-4 for additional information regarding training.

A school should also be aware that threatening students with deportation or invoking a

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<sup>15</sup> For more information on the U nonimmigrant status, [see: //www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-nonimmigrant-status/questions-answers-victims-criminal-activity-u-nonimmigrant-status](http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-nonimmigrant-status/questions-answers-victims-criminal-activity-u-nonimmigrant-status)

<sup>16</sup> For more information on the T nonimmigrant status, [see: //www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status](http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status)

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(3) adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee sex discrimination complaints (see questions C-5 to C-6).<sup>19</sup>

These requirements apply to all forms of sex discrimination and are particularly important for preventing and effectively responding to sexual violence.

reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office of the investigation will be conducted by another individual or office. The school should ensure that the Title IX coordinator is given the training, authority, and visibility necessary to fulfill these responsibilities.

Because the Title IX coordinator must

the same employee to serve both as the Title IX coordinator and the general counsel

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the school processes complaints, Title IX grievance procedures should also explicitly include the following in writing, some of which themselves are mandatory obligations under Title IX

- (1) adequate definitions of sexual violence and an explanation as to when such conduct creates a hostile environment;
- (2) adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment;
- (3) reporting policies and protocols, including provisions for confidential reporting;
- (4) identification of the employee or employees responsible for evaluating requests for confidentiality;
- (5) notice that Title IX prohibits retaliation;
- (6) notice that a Title IX complaint and a Title IX complaint can be filed simultaneously;
- (7) notice of available interim measures that may be taken to protect the student in the educational setting;
- (8) the evidentiary standard that must be used (preponderance of the evidence) (more likely than not that sexual violence occurred) in resolving a complaint;
- (9) notice of potential remedies for students;
- (10) notice of potential sanctions against perpetrators; and
- (11) sources of counseling, advocacy, and support.

For more information on interim measures, see questions G-1 to G-3.

The rights established under Title IX must be interpreted consistently with any federally guaranteed due process rights. Procedures that ensure the Title IX rights of the complainant, while at the same time according any federally guaranteed due process to both parties involved, will lead to sound and supportable decisions. Of course, a school should ensure that steps to accord any due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.



complaint was initially filed with another individual or office, subject to the exemption for school counseling employees discussed in question E-3.

D-2. Who is a responsible employee?

Answer: According to OCR 2001 Guidance a responsible employee includes any employee: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom student could reasonably believe has this authority or duty.

A school must make clear to all of its employees and students which staff members are responsible employees so that students can make informed decisions about whether to disclose information to those employees. A school must also inform all employees of their own reporting responsibilities and the importance of informing complainants of: the

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party files a formal complaint& } Œ ]š}}v o ]v (} Œ u š responsibilities Œ}}o [•  
address student-on-student sexual violence, see question 5A. For additional information  
on training for school employees, see questions J-1 to J-3.

D-3. What information is a responsible employee obligated to report about an incident of possible student-on-student sexual violence?

Answer: Subject to the exemption for school counseling employees discussed in question E-3, a responsible employee should report to the appropriate school designee, all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location. A school must make clear to its responsible employees to whom they should report an incident of alleged sexual violence.

To ensure compliance with the reporting obligations, it is important for a school to train its responsible employees on the appropriate reporting procedures. For more information on appropriate training for school employees, see question J-1 to J-3.

D-4. What should a responsible employee tell a student who discloses an incident of sexual violence?

Answer: Before a student reveals information that he or she may wish to keep confidential, a responsible employee should make every effort to ensure that the student and student involved in the alleged sexual violence, as well as relevant facts regarding the alleged incident (including the date, time, and location), to the Title IX coordinator or other appropriate school official. The responsible employee should also inform the student of the school's confidentiality policy, which the school (or Title IX coordinator) will maintain. Confidentiality will be maintained for all requests for confidentiality, including requests for counseling, advocacy, health, mental health, or sexual-assault-related services (sexual assault resource centers, campus health centers, pastoral counselors, and campus mental health centers). As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to respect this request.

and should evaluate the request in the context of a safe and nondiscriminatory environment for all students.

- D-5. If a student informs a resident assistant/advisor (RA) that he or she was subjected to sexual violence by a fellow student, is the RA obligated under Title IX to report the incident to school officials?

Answer: As discussed in questions D-1 and D-2, for Title IX purposes, whether an individual is obligated under Title IX to report alleged sexual violence to the Title IX coordinator or other appropriate school designee generally depends on whether the individual is a responsible employee.

The duties and responsibilities of RAs vary among schools, and, therefore, a school should consider its own policies and procedures to determine whether its RAs are responsible employees who must report incidents of sexual violence to the Title IX coordinator or other appropriate school designee. When making this determination, a school should consider



should also explain to the student (again, before the student reveals information that he or she may wish to keep confidential) that, although the RA must report the names of the alleged perpetrator (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location to the Title IX coordinator or other appropriate school designee, the school will protect the student's confidentiality to the greatest extent possible. Prior to providing information about the incident to the Title IX coordinator or other appropriate school designee, the RA should consult with the student about how to protect his or her safety and the details of what will be shared with the Title IX coordinator. The RA should explain to the student that reporting this information to the Title IX coordinator or other appropriate school designee does not necessarily mean that a Title IX complaint will be initiated if the student requests confidentiality. As discussed in questions E-1 and E-2, if the student requests confidentiality, the Title IX coordinator or other appropriate school designee responsible for evaluating requests for confidentiality should make every effort to ensure that the student's confidentiality is maintained. The school has a responsibility to provide a safe and nondiscriminatory environment for all students.

Regardless of whether a reporting obligation exists, all RAs should inform students of their right to file a Title IX complaint with the school and report a crime to campus or local law enforcement. If a student discloses sexual violence to an RA who is a responsible employee, the school will be deemed to have notice of the sexual violence even if the student does not file a Title IX complaint. Additionally, all RAs should provide students with information regarding on-campus resources, including victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance. RAs should also be familiar with local rape crisis centers or other off-campus resources and provide this information to students.

#### E. Confidentiality and a School's Obligation to Respond to Sexual Violence

- E-1. How should a school respond to a student who requests that his or her name not be disclosed to the alleged perpetrator or that no investigation or disciplinary action be pursued to address the alleged sexual violence?

Answer: Students, or parents of minor students, reporting incidents of sexual violence sometimes ask that the student's name not be disclosed to the alleged perpetrators or that no investigation or disciplinary action be pursued to address the alleged sexual violence. OCR strongly supports a student's interest in confidentiality in cases involving sexual violence. There are situations in which a school must override a student's request for confidentiality.





E2. What factors should a school consider in weighing confidentiality?

Answer: When weighing a student's

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OCR recognizes that some people who provide assistance to students who experience sexual violence are not professional or pastoral counselors. They include all individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, professional counseling centers, and other campus organizations, including front desk staff and students. OCR wants students to feel free to seek their

health centers. Such individuals should report only general information about incidents of sexual violence such as the nature, date, time, and general location of the incident and should take care to avoid reporting personally identifiable information about a student. Non-professional counselors and advocates should consult with students regarding what information needs to be withheld to protect their identity.

E.4. Is a school required to investigate information regarding sexual violence incidents

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Answer: No. OCR wants students to feel free to participate in preventive education programs and access resources for survivors. Therefore, public awareness events such as ^ d l l š Z E ] P Z š \_ } Œ } š Z Œ ( } Œ μ u • š Á Z ] Z • š μ v š • ] • o violence are not considered notice to the school for the purpose of triggering an individual investigation unless the survivor initiates a complaint. The school should instead respond to these disclosures by reviewing sexual assault policies, creating campus-wide educational programs, and conducting climate surveys to learn more about the prevalence of sexual violence at the school. Although Title IX does not require the school to investigate particular incidents discussed at such events, the school should ensure that survivors are aware of any available resources, including counseling, health, and mental health services. To ensure that the entire school community understands their Title IX rights related to sexual violence, the school should also provide information at these events on Title IX and how to file a Title IX complaint with the school, as well as options for reporting an incident of sexual violence to campus or local law enforcement.

## F. Investigations and Hearings

### Overview

F-1. What elements • Z } μ o • Z } } o [ • d ] š o include? Á • š ] P š ] } v

Answer: d Z • % o ] ( ) • š % o • ] v • Z } } o [ • d ] š o / y ] v Á • š ] P š ] } v Á nature of the allegation, the age of the student or students involved, the size and administrative structure of the school, state or local legal requirements (including





to ensure that it (1) complies with the prompt and equitable requirements of Title IX (2) allows for appropriate interim measures to be taken to protect the complainant during the process; and (3) provides for remedies to the complainant and school community where appropriate. For more information about interim measures, see questions G-1 to G-3, and about remedies, see questions H-1 and H-2.

The investigation may include, but is not limited to, conducting interviews of the complainant, the alleged perpetrator, and any witnesses; reviewing law enforcement investigation documents, if applicable; reviewing student and personnel files; and gathering and examining other relevant documents or evidence. While a school has flexibility in how it structures its processes, see 9plic.866 0 Td (: )mu, proc for T4 (g )-2 (i-2 (it))10 (e )- 4

## Intersection with Criminal Investigations

F-3. How should a school proceed when campus or local law enforcement agencies are conducting a criminal investigation while the school is conducting a parallel Title IX investigation?

Answer: A school should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, it is important for a school to understand that during this brief delay in the Title IX investigation, it must take interim measures to protect the complainant in the educational setting. The school should also continue to update the parties on the status of the investigation and inform the parties when the school resumes its Title IX investigation. For additional information on interim measures see questions G-1 to G-3.

If a school delays the fact-finding portion of a Title IX investigation, the school must promptly resume and complete its fact-finding for the Title IX investigation once it learns that the police department has completed its evidence gathering stage of the criminal investigation. The school should not delay its investigation until the ultimate outcome of the criminal investigation or the filing of any charges. OCR recommends that a school work with its campus police, local law enforcement, or other law enforcement agencies when the evidence gathering stage of the criminal investigation is complete. A school may also want to enter into a memorandum of understanding (MOU) or other agreement with these agencies regarding the protocols and procedures for referring allegations of sexual violence, sharing information, and conducting contemporaneous investigations. Any MOU or other agreement must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably, and must comply with the Family Educational Rights and Privacy Act (FERPA) and other applicable privacy laws.

OCR understands that this example may not be representative and that law enforcement processes often takes more than ten days. OCR recognizes that the length of time for evidence gathering by criminal investigators will vary depending on the specific circumstances of each case.

## Off-Campus Conduct

F-4. Is a school required to process complaints of alleged sexual violence that occurred off campus?

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

A school must determine whether the alleged off-campus sexual violence occurred in the context of an education program or activity of the school; if so, the school must treat the complaint in the same manner that it treats complaints regarding on-campus conduct. In other words, if a school determines that the alleged misconduct took place in the context of an education program or activity of the school, the fact that the alleged misconduct took place off campus does not relieve the school of its obligation to investigate the complaint as it would investigate a complaint of sexual violence that occurred on campus.

Whether the alleged misconduct occurred in this context may not always be apparent from the complaint, so a school may need to gather additional information in order to make such a determination. Off-campus education programs and activities are clearly covered and include, but are not limited to: activities that take place at houses of fraternities or sororities recognized by the school; school-sponsored field trips, including athletic team travel; and events for school clubs that occur off campus (a debate team trip to another school or to a weekend competition).

Even if the misconduct did not occur in the context of an education program or activity, a school must consider the effects of the off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or



F-6. May every witness at the hearing, including the parties, be cross-examined?

Answer: OCR does not require that a school allow cross-examination of witnesses, including the parties if they testify at the hearing. But if the school allows one party to cross-examine witnesses, it must do so equally for both parties.

OCR strongly discourages a school from allowing the parties to personally question or cross-examine each other during a hearing on alleged sexual violence. Allowing an alleged perpetrator to question a complainant directly may be traumatic or intimidating and may perpetuate a hostile environment. A school may choose, instead, to allow the parties to submit questions to a trained third party (e.g., the hearing panel) to ask the questions on their behalf. OCR recommends that the third party screen the questions submitted by the parties and only ask those it deems appropriate and relevant to the case.

F-7. May a school introduce evidence about a current or previous consensual dating or sexual relationship between the parties at a hearing?

Answer: Questioning about a current or previous consensual dating or sexual relationship between the parties at a hearing should not be permitted. Further, a school should recognize that the mere fact of a current or previous consensual dating or sexual relationship between the two parties does not itself imply consent or preclude a finding of sexual violence. The school should also ensure that hearings are conducted in a manner that does not inflict additional trauma on the complainant.

### Timeframes

F-8. What stages of the investigation are included in the 60-day timeframe referenced in the DCL as the length for a typical investigation?

Answer: As noted in the DCL, the 60-calendar day timeframe for investigations is based on OCR's experience in typical cases. The 60-calendar day timeframe refers to the entire investigation process, which includes conducting the fact-finding investigation, holding a hearing or engaging in another decision-making process to determine whether the alleged sexual violence occurred and created a hostile environment, and determining what actions the school will take to eliminate the hostile environment and prevent its recurrence, including imposing sanctions against the perpetrator and providing remedies for the complainant and school community, as appropriate. Although this timeframe does not include appeals, a school should be aware that an unduly long appeals process may be required by Title IX.

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OCR does not require a school to complete investigations within 60 days; rather OCR evaluates on a case-by-case basis whether the resolution of sexual violence complaints is

complainant; changing living arrangements or course schedules, assignments, or tests; and providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred.

G-2. How should a school determine what interim measures to take?

Answer: The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. Schools should consider a number of factors in determining what interim measures to take, including, for example, the specific need expressed by the complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged perpetrator share the same residence hall, dining hall, class, transportation, or job location; and whether other judicial measures have been taken to protect the complainant (e.g., civil protection orders).

In general, wh 7sing



H. Remedies and Notice of Outcome<sup>31</sup>

H-1. What remedies should a school consider in a case of student sexual violence?

Answer: Effective remedial action may include disciplinary action against the perpetrator, providing counseling for the perpetrator, remedies for the complainant and others, as the hostile environment should be offered to the complainant. These remedies are separate from, and in addition to, any interim measure that may have been provided prior to the incident. If a complainant declines a specific service (counseling) when offered as an interim measure, the complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the complainant declined as an interim measure. A refusal at the interim stage does not mean the refused service or set of services should not be offered as a remedy.

If a school uses its student disciplinary procedures to address sexual violence



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- x Conducting, in conjunction with student leaders, a campus climate check to assess the effectiveness of efforts to ensure that the school is free from sexual violence,







harassment or sexual violence creates a hostile environment and how the school should respond. There may also be situations in which individual incidents of sexual harassment do not, by themselves, create a hostile environment; however when considered together, those incidents may create a hostile environment.

J-3. What type of training should a school provide to employees who are involved in implementing the Title IX coordinator's role?

Answer: A school should provide training to Title IX coordinators, others who receive complaints, in-4, 5, in-volvement J-

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and redress discrimination, must respect the free-speech rights of students, faculty, and other speakers.

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In addition to guidance from OCR, a school may also find resources from the Departments of Education and Justice helpful in preventing and responding to sexual violence:

- x ~~Letter to Chief State School Officers on Teen Dating Violence Awareness and Prevention (February 28, 2013)~~  
<https://www2.ed.gov/policy/gen/guid/secletter/130228.html>
- x ~~National Center on Safe Supportive Learning Environments~~  
<http://safesupportivelearning.ed.gov/>
- x Department of Justice, Office on Violence Against Women  
<http://www.ovw.usdoj.gov/>