



D. Getting Started: Student Conduct Complaints

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INTRODUCTION

The 2011 *Dear Colleague Letter* and subsequent federal legislation surrounding cases of interpersonal violence created expectations – and questions – regarding the ability of colleges to adequately address sexual violence and related crimes that may occur on campus. This concern is fueled in part by the sentiment that colleges should leave behaviors that constitute crimes to law enforcement and the courts. Campus conduct administrators would argue that their colleges are obligated to respond to any form of violence that affects their students. Bennett, Gregory and Loschiavo pose the following for consideration:

“Recently, it has been asked why, when campuses do not respond to murder, they should respond to rape? The answer is that we *would* respond to murder. We would provide support and assistance to those affected by the behavior and we would most likely take action against the student who committed the act. We certainly would not wait for the legal system to act before we would act to protect the campus community. We would not call the act “murder;” the act would fall under a policy prohibiting physical abuse or physical harm. Our response to sexual assault is similar. We acknowledge that we are a microcosm of larger society and that no one can “guarantee” the safety of others, but we also recognize the significance of our influence on student behavior. We not only have an obligation to protect the members of our campus community; federal legislation requires us to do so—and it is the right thing to do...”

The misperception exists that the campus conduct process is designed to replicate court proceedings. Bennett, Gregory and Loschiavo note that it is critical for colleges to educate their constituents that campus conduct processes are not criminal or legal in nature, but focused on students’ relationships to the educational institution and on upholding its behavioral standards. In general, colleges must have processes to determine whether student behaviors have violated institutional policies and impose consequences where appropriate (that fit the violation, including suspension or expulsion). They also need similar processes to address behavior of their employees and any nonstudents on their campuses. Beyond sanctioning violators and offering remedies for victims, colleges should consider broad actions to improve comprehensive campus response. At the same time, colleges should provide victims information about options available to them beyond what their institutions can offer or impose, including criminal justice, civil legal and other non-legal options to address interpersonal violence.



Terms used in student conduct processes are different from those used in the legal system. Sokolow notes: “Very few colleges refer to their campus judicial processes as ‘trials.’ They are called ‘hearings.’ ‘Charges’ are not filed against students. ‘Complaints’ are made. Alleged perpetrators are called ‘respondents,’ and alleged victims are ‘complainants.’ Complaints against respondents do not allege ‘offenses’ or ‘breaking the law,’ but rather allege ‘violations’ or ‘infractions.’ ‘Findings’ are preferred to ‘verdicts.’ ‘Punishments’ are not meted out to violators; they receive ‘sanctions.’ Those who receive sanctions are not ‘guilty,’ but found ‘responsible’...”

Clarity about the specific role of the campus conduct process in the college’s response to interpersonal violence is important. Bennett, Gregory and Loschiavo (2014) offer **overarching recommendations for colleges related to their campus conduct process for sexual misconduct** (which applies to other forms of interpersonal violence). Key points include:

- Communicate campus conduct policies widely to students, and then follow them.
- Ensure that institutional behavioral standards comply with Title IX. If resolution processes differ if the accused is an employee, a student or a nonstudent, clearly explain the differences to students.
- Train college employees on related policies, resolution processes and information to provide students about campus and off-campus options for reporting and support.

- Carefully consider mandated reporting or sanctions, as they may discourage reporting.
- Honor victims' requests for confidentiality whenever possible, but also weigh requests against the institution's obligations to all students.
- Recognize that there is no one-size-fits-all campus model to resolve conduct complaints. Rather than mirror the criminal proceedings, the method selected should fit the campus culture and promote reporting and the best resolution process for students.
- Interim actions should be offered to increase the safety and well-being of the complainant and the campus community while formal complaints are being resolved and when no formal complaint is made.
- Use the preponderance of evidence standard to resolve allegations.
- Facilitate equitable and sensitive proceedings. For example, avoid direct questioning of respondents and complainants by each other. The parties need not be in the same room. Both may consult with an advisor of choice, but institutions should impose guidelines limiting advisors' participation in conduct proceedings.
- Dedicate sufficient staff and resources to manage cases in a prompt and thorough manner.
- Consider developing a team to review and revise policy, assess campus climate, lead prevention efforts and assist the Title IX Coordinator.
- Provide training specific to campus conduct procedures to investigators, adjudicators, appeals board members, and other campus conduct personnel.

This section of the toolkit focuses on the student conduct officers' and judicial board members' roles in responding to complaints of interpersonal violence against a student. Review *B. What You Need to Know* so you have sufficient knowledge base on sexual violence, dating violence, domestic violence and stalking, critical victim issues, and resources to assist student victims. Section *C. Federal Legislation* of this toolkit provided you with an overview of federal legislation affecting campus response and a brief discussion of the importance of campus policies that speak to interpersonal violence.

D1. TRAINING OVERVIEW

Training for student conduct administrators and boards on the topic of hearing interpersonal violence cases will increase proper decision making and reduce liability. Not only should they be trained on campus policies and determining if those policies have been violated, but it is imperative that decision makers understand their role and the information being presented before them. Sexual assault victims often experience trauma, which affects nearly every aspect of their lives, including their ability to recall the assault. Bennett, Gregory and Loschiavo (2014), OCR and the Office on Violence Against Women identified the following topics that training should address in order to increase competency to hear sexual misconduct cases (and can extend to other forms of interpersonal violence):

<ul style="list-style-type: none"> • Students' rights and procedural protections; 	<ul style="list-style-type: none"> • Handling sexual violence complaints; • Campus grievance procedures;
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<ul style="list-style-type: none"> • Terminology used in student conduct; • College's conduct policies (as well as any policies on sexual misconduct if they are separate) and their role on campus; • Overview of the campus conduct process, including appeals; • How campus conduct processes differ from criminal or civil court; • Goals of the adjudication process; • Responsibilities and expectations of the hearing body; • Roles of the participants (complainant, respondent, witnesses, board, advisors, etc.); • How to facilitate a hearing; • How to ask questions effectively and appropriately; • How to evaluate various types of evidence; • How to evaluate credibility; • How to analyze policy; • How to deliberate toward resolution; • Standard of proof (preponderance of evidence); • Sanctions and how to determine appropriate ones; • FERPA and privacy of information; • Cultural competencies, including understanding of differences that may be exhibited during a hearing or investigation; and • Common problems that may arise and how to address them. 	<ul style="list-style-type: none"> • Interviewing persons subjected to sexual violence; • Types of conduct that would constitute sexual violence, including same-sex sexual violence; • Consent and how drugs or alcohol may impact the ability to consent; • Accountability for persons found to have committed sexual violence; • Remedial actions for the perpetrator, complainant, and school community; • Effects of trauma, including neurobiological changes; • Cultural differences and the impact on reporting; • How both trauma and defense mechanisms can impact testimony in a hearing; and • Dispelling common misperceptions about sexual assault in society (e.g., "rape myths"). <p>* This column was drawn from the April 2014 OCR Q & A Guidance and recommendations from the Office of Violence Against Women.</p>
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In *Minimum Standards of Training for Campus Security Personnel and Campus Disciplinary and Judicial Boards* (2007), the federal Office on Violence Against Women (OVW), in conjunction with the California Coalition Against Sexual Assault recommended that prior to conducting training for campus student conduct boards, a campus should review the current code of student conduct and ensure that the code: is victim-centered over offender-focused; considers offender accountability; defines a clear and concise disciplinary process; defines uniform and consistent penalties; identifies and clearly defines domestic violence, dating violence, sexual assault and stalking; and addresses confidentiality issues. Additional training topics can be found in *B. What you Need to Know*, and training content is in *D. Training Resources*.

Training should be continuous so that new student conduct personnel and board members receive information, especially if the board is appointed on a rotation. Consider developing a training schedule and offering the material in various ways. For example, the college can work with the local rape crisis center and domestic violence shelter to provide training on the dynamics of interpersonal violence and the impact of trauma. Other topics could be covered through an online program. WV FRIS has an online training course, SASTA (Sexual Assault Services Training Academy), which offers over 20 modules and is available on their website at www.fris.org. The [Clery Center](#) and [NCHERM Group](#) offer webinars and online resources for group members, or non-members for a fee. Additional training programs can be found at [End Violence Against Women International](#) (EVAWI) and the [Office for Victims of Crime Training and Technical Assistance Center](#) (OVCTTAC). Colleges also may consider independent learning utilizing nationally recognized resources (e.g., PaperClip Communications has four binders of information related to Title IX and sexual violence on campus).



Sokolow (2001) notes that “Some colleges say they won’t train their hearing boards on sexual misconduct issues because it will bias them in favor of the victim. This is like saying that in criminal cases, the judge should not know the rules of evidence, there should be no expert witness testimony to educate the jury, and the judge should not charge the jury with instructions on the law, because it will bias the outcome. Not training your board will get you sued because your board will not know what it needs to know to make the proper decision, and from that liability is but a misstep away.”

D2. ELEMENTS OF GRIEVANCE PROCEDURES

Conduct policies should include an explanation of what will happen when a report is made to the college regarding a violation, reflective of its procedures for how a report will be investigated and adjudicated, potential results of the resolution process, if and how hearing decisions can be appealed, steps in place to protect complainants, etc. The college must then consistently implement the procedures laid out in its policies.

As was mentioned in *C. Federal Legislation*, college procedures to resolve student complaints of sexual misconduct or other interpersonal violence may also be used for Title IX reports; alternatively, your college can develop separate grievance procedures for Title IX complaints. The key for Title IX compliance—and a good idea in general—is to make sure procedures afford the complainant a prompt and equitable resolution (OCR, 2014; Falto, 2014). Grievance procedures should be widely publicized across the campus community. Critical elements include, as per Title IX (OCR, 2014):

- ✓ Notice to college students and employees of the grievance procedures, including where complaints may be filed;
- ✓ Application of the grievance procedures to complaints filed by students or on their behalf alleging sexual violence carried out by employees, other students or third parties;
- ✓ Provisions for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and respondent to present witnesses and evidence;

- ✓ Designated and reasonably prompt time frames for the major stages of the complaint process (OCR indicates that in most cases, the process is about 60 days from start to finish);
- ✓ Written notice to the complainant and respondent of the outcome of the complaint; and
- ✓ Assurance that the school will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others, if appropriate.

D3. METHODS TO RESOLVE CONDUCT COMPLAINTS

It was mentioned earlier that some colleges use their student conduct process for Title IX investigations, while others have separate Title IX grievance processes. On campuses combining the two processes, the Title IX Coordinator should review the policies and procedures to ensure they comply with Title IX. The student conduct policies and procedures should also comply with other applicable state and federal laws.

Bennett, Gregory and Loschiavo (2014) stress that colleges have the flexibility to resolve student conduct complaints through whatever means they determine are most effective, efficient and equitable, given the resources and support available. They note that no single model fits all institutional types; important considerations exist for all options, including the single-investigator and adjudicator model, the administrative or panel hearing board model, or a hybrid model:

- ✓ In a **hearing model**, the hearing is often an in-person event and varies in length depending on the complexity of the case. Some hearing bodies have the authority to issue sanctions, while others may give sanction recommendations to student conduct staff who have the authority to impose sanctions appropriate for the violation. *Administrative hearings* most often involve one adjudicator who is trained in student conduct. Large and residential campuses may have student conduct offices with multiple administrative hearing officers, while small or commuter campuses may only have one officer or may train employees from outside of student conduct or student affairs to serve as officers. *Panel hearings* range in size, with at least three members. More than five members can be very intimidating and possibly deter victims from reporting. Composition varies and can include a combination of faculty, staff, and students. Both composition and size are often dependent on campus culture: A commuter college with a transient student population may have fewer students than employees on the panel. (See below for Sokolow's argument against students on boards.) In the hearing model, an investigation typically occurs prior to the hearing to (a) ensure that there is enough information to substantiate a complaint going forward for consideration, (b) provide separation between investigation and adjudication of the case, and/or (c) promote an efficient hearing by having a trained professional conduct much of the fact-finding work for the hearing body. (See *additional information below on selecting hearing members*.)
- ✓ An **investigation model** removes the need for an in-person hearing, while still providing procedural protections to both complainant and respondent.
- ✓ A **hybrid model** combines aspects of the hearing model and investigation model. For example, one student conduct staff member might conduct the investigation; a different staff member would review the information and offer an administrative resolution for the case. If

either the complainant or respondent does not wish to accept the resolution, the case goes to a hearing body to analyze the information and determine outcomes and any sanctions. Another model might include a Title IX investigation completed by an equity office, with the case being referred to the campus conduct process to determine appropriate sanctions for policy violations.

In addition to formal traditional resolution methods, other options may be appropriate in certain cases (e.g., informal resolution or restorative justice) if they are equitable to all parties involved. In most instances, mediation is **not** an appropriate model for resolving complaints involving interpersonal violence, as the power dynamics between parties are not equal and the potential for re-victimization as well as unintended effects are significant. The United States Department of Education's (DOE) *Dear Colleague Letter* (2011) affirms that mediation should **not** be used to resolve complaints of sexual assault.

Selecting individuals to serve on hearing panels (also commonly referred to as judicial boards), and how long members will serve, should be outlined in the college's policy and procedures. Questions to consider when creating a policy might include:

- Will members be appointed or volunteer?
- What is the screening process? (It is highly recommended that each potential member be screened to determine their comfort level and personal biases for hearing sexual assault complaints.)
- Who will make the final approval for allowing members to be on the board?
- How long will members serve (e.g., one academic year, five years, etc.)?
- How will conflicts of interest be addressed and selection of alternates?
- Is there a large enough pool to create a separate panel for sexual misconduct hearings?
- Will the board recommend or implement sanctions? What's the process?
- What is the appeals process? What are grounds for an appeal?
- What are the training requirements? (*See xxx for further discussion on this topic.*)

What is the board's responsibility and role in student conduct administration?

Student conduct hearing boards have an important role in addressing sexual misconduct: behaviors that can have an adverse impact on the safety of individuals in the campus community. Their role includes facilitating a resolution process for complaints and implementing accountability measures (sanctions), when necessary. Part of the resolution process, as mentioned throughout this toolkit, requires a fair and equitable process, taking into consideration related laws, rules of evidence and the college's policies. Therefore, it is imperative to provide adequate training for student conduct staff and hearing boards, not only on due process and campus policies, but the dynamics of and trauma associated with interpersonal violence. Understanding both components will reduce the risk of liability to the college and improve the process for all parties involved, because, ultimately there is a responsibility to the college **and** students.

For a comparison of resolution models, see p. 18 of Bennett, Gregory and Loschiavo's [Student Conduct Administration & Title IX: Gold Standard Practices for Resolution of Allegations of Sexual Misconduct on College Campuses](#).



An argument against students on hearing panels and hearing panels in general to resolve interpersonal violence cases on campus has been made by Brett Sokolow, president and CEO of the National Center for Higher Education Risk Management (NCHERM). Sokolow is a vocal proponent of removing students from hearing panels. His objections are not due to their student status per se, but because: **“Any untrained panel is a potential liability and that panels with students generally are less trained than other panels; and the chilling effect of having students on these panels on student victims’ willingness to report.”** (Sokolow, 2015)

Sokolow also argues that use of the **hearing panel model for resolving instances of interpersonal violence is probably part of the reason why there is such systematic underreporting on college campuses**. He notes that colleges “have adversarialized resolutions as the only option for victims who have already experienced the receiving end of an adversarial attack in the first place. They don’t want to go through that again...” He believes an investigation interview is a hearing and that an investigation is all that is needed.

D4. JUDICIAL PROCEDURE COMPONENTS

CONFIDENTIALITY

It is critical that colleges honor student requests for confidentiality to the extent possible, as disregarding such requests can discourage reporting (OCR, 2014). It could also inadvertently lead to re-traumatization and physical harm to victims. The OCR’s [Questions and Answers on Title IX and Sexual Violence](#) (2014) discussed several questions related to complainant confidentiality during Title IX investigations. Below is a summary of the guidance provided. (See page 18-24 for more details and examples.)

- ✓ **How should a school respond to a student’s request (or parents of minor students) that her/his name not be disclosed to the alleged perpetrator or that no investigation or disciplinary action be pursued to address the alleged sexual violence?** There are limited situations in which the college needs to override such a request in order to meet its Title IX obligations. In those cases, information should only be shared with individuals who are responsible for handling the college’s response to incidents of sexual violence. State mandatory reporting laws may also require disclosure in cases of minors to child protective services or law enforcement. The college should notify students of what specific information will be shared, to whom it will be shared and why. A student complainant should be informed that honoring such a request may limit the college’s ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator. Regardless of whether the student requests confidentiality, the college must

take steps to protect her/him as necessary (see interim measures below). The college, via the Title IX Coordinator or other designated employee or a dean, will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. If the college determines that it can respect the student's request not to disclose his or her identity to the alleged perpetrator, it should take all reasonable steps to respond to the complaint consistent with the request. There are steps the college can take to limit the impact of the reported sexual violence and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the student complainant. Examples include providing increased monitoring, supervision or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; changing and publicizing the school's policies on sexual violence; and conducting climate surveys regarding sexual violence. In cases involving multiple students, an alleged perpetrator can be put on notice of allegations of harassing behavior and be counseled appropriately without revealing, even indirectly, the identity of the student complainant. The college should also take immediate action as necessary to protect the student while keeping her/his identity confidential (again, see below on interim measures).

- ✓ **What factors should the college consider in weighing a student's request for confidentiality?** There are a range of factors to consider. Is there an increased risk that the alleged perpetrator will commit additional acts of sexual violence or other violence? Is there an increased risk of sexual violence under similar circumstances (e.g., if the complainant's report reveals a pattern of perpetration, such as via illicit use of drugs or alcohol, at a given location or by a particular group)? Was the sexual violence perpetrated with a weapon? What is the age of the complainant? Does the college have other means to obtain relevant evidence (e.g., security cameras)? The college should take requests for confidentiality seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence.
- ✓ **What are the reporting responsibilities of school employees who provide or support the provision of counseling, advocacy, health, mental health, or sexual assault-related services to students who have experienced sexual violence?** Campus mental-health counselors, pastoral counselors, social workers, psychologists, health center employees or any other person with a professional license requiring confidentiality, or who is supervised by such a person, are not required to report sexual violence to the college without the student's consent (although counseling offices may provide data with no personal identifiers to the college on crimes disclosed by students). OCR notes that some people who provide assistance to students who experience sexual violence are not professional or pastoral counselors, including individuals who work or volunteer at on-campus sexual assault centers, victim advocacy offices, women's centers or health centers, including front desk staff and students. OCR says that colleges have the latitude under Title IX not to require these individuals to report incidents of sexual violence in a way that identifies the student without the student's consent. Pastoral and professional counselors and non-professional counselors or advocates should be instructed to inform students of their right to file a Title IX complaint with the college and a separate complaint with law enforcement. In addition to informing students about campus resources for counseling, medical and academic support, these persons can also assist students in filing complaints.

- ✓ **Is a school required to investigate information regarding sexual violence incidents shared by survivors during public awareness events, such as “Take Back the Night”?**

No. Such public awareness forums at which students disclose experiences with sexual violence are not considered notice to the school for the purpose of triggering an individual investigation unless the survivor initiates a complaint.



Take victims’ concerns related to their safety and wellbeing seriously. Do not discount them. The backlash against victims of interpersonal violence when others in their community learn about their reports can be deeply humiliating as well as traumatizing. It has short- and long-term health implications, including contributing in some instances to increased risk for suicide. The backlash can also include retaliation by the perpetrator and his/her allies. Given the possible consequences, colleges need to be careful when making a decision to disregard the complainant’s request for confidentiality in favor of a focus on a safe and nondiscriminatory campus environment. It is imperative that campus personnel making such decisions are able to accurately evaluate safety risks to individual victims and the campus community, while considering victim concerns. For these purposes, it might be useful to consult with experts in your community to address health risks posed to victims and assess any risk of danger posed by perpetrators. The stark reality is that a disclosure by the college of a victim’s identity to a perpetrator could inadvertently lead to great harm to the victim. In some situations, no interim protective measures the college could take will deter a perpetrator who is determined at any cost to seek revenge against his/her victim.

INTERIM REMEDIAL MEASURES

In [*Questions and Answers on Title IX and Sexual Violence*](#) (2014), OCR says that Title IX requires a college “to take steps to ensure equal access to its education programs and activities and protect the complainant as necessary, including taking interim measures before the final outcome of an investigation. The school should take these steps promptly once it has notice of a sexual violence allegation and should provide the complainant with periodic updates on the status of the investigation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow the complainant to change academic and extracurricular activities or his or her living, transportation, dining, and working situation as appropriate. The school should also ensure that the complainant is aware of his or her Title IX rights and any available resources (such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance), and the right to report a crime to campus or local law enforcement. If a school does not offer these services on campus, it should enter into an MOU with a local victim services provider if possible.

Even when the college determines that it can respect a complainant’s request for confidentiality, and therefore may not be able to respond fully to an allegation of sexual violence and initiate formal action against an alleged perpetrator, it must take immediate action to protect the complainant while keeping the identity of the complainant confidential” The college “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, when taking interim measures, schools should minimize the burden on the complainant. For example, if the complainant and alleged perpetrator share the same class or residence hall, the school should not, as a matter of course, remove the complainant from the class or housing while allowing the alleged perpetrator to remain without carefully considering the facts of the case.”

SAMPLE COMPLAINANT RIGHTS STATEMENT

Phillips and Falto (2014) offer this sample statement outlining complainant’s rights and protections. It is based on the DOE’s [Dear Colleague Letter](#) (2011) and [Know Your Rights: Title IX Prohibits Sexual Harassment and Sexual Violence Where You Go to School](#); and [the University of Oklahoma, Remedial Measures](#).

In order to eliminate a hostile environment, prevent the recurrence of a sexual harassment/violence incident and address its effects, you as a complainant are entitled to remedies that include, but are not limited to, the following:

- ✓ Having an escort provided by the school to ensure that you can move safely between classes and activities;
- ✓ The assurance that you and the alleged perpetrator will not attend the same classes;
- ✓ Alternate housing arrangements in a different residence hall, house or apartment;
- ✓ The availability of counseling services;
- ✓ Access to sexual assault response team advocates;
- ✓ The availability of medical services;
- ✓ Academic support services, such as tutoring;
- ✓ Arrangements to re-take a course or withdraw from a class without penalty, including ensuring that any changes won’t adversely affect your academic record;
- ✓ The review of any disciplinary action taken against you (e.g., missing a class because the alleged perpetrator was enrolled and you wanted to avoid contact) to see if there is a connection between the harassment and the misconduct that may have resulted in disciplinary action; and
- ✓ The knowledge that you can file a complaint with local law enforcement at any time and that you have the option to be assisted by campus personnel in notifying such authorities.

You also have the right to:

- ✓ Present your case, which includes for both parties the right to adequate, reliable and impartial investigation of the complaint, the right to have an equal opportunity to present witnesses and other evidence, and the right to the same appeal process;

- ✓ Be notified of the time frame within which your school will conduct a full investigation of the complaint, the parties will be notified of the outcome of the complaint and the parties may file an appeal, if applicable;
- ✓ Interim steps to protect you, the complainant, *before* the final outcome of the investigation is reached;
- ✓ Have your complaint decided using a preponderance of the evidence standard (e.g., it's more likely than not that sexual violence occurred);
- ✓ Be notified in writing of the outcome of the complaint. You're entitled to information about the sanction imposed on the perpetrator when the sanction directly relates to you;
- ✓ Not be required to abide by a non-disclosure agreement, in writing or otherwise, because the Clery Act requires that both parties be informed of the outcome, including sanction information, of any institutional proceeding alleging a sex offense; and
- ✓ Know that you can end the informal process at any time and begin the formal stage of the complaint process.

You have the option to avoid contact with the alleged perpetrator. If you want to learn more about your rights or if you believe your institution is violating federal law, you can contact the U.S. Department of Education, Office for Civil Rights, at ocr@ed.gov or (800) 421-3481. You can also [fill out a complaint form online](#) or through the [website of the White House Task Force to Protect Students from Sexual Assault](#).

RIGHTS OF THE RESPONDENT/ACCUSED

Phillips and Falto (2014) also stress that colleges must interact effectively with students accused of Title IX violations or violations of campus conduct policies related to sexual and interpersonal violence, while respecting and upholding their rights. They emphasize that colleges should:

- ✓ Not assume their guilt or judge them;
- ✓ Let them know what their rights are;
- ✓ Provide them with information about the process;
- ✓ Answer their questions;
- ✓ Provide online and other resources;
- ✓ Listen to their requests to change academic and/or living situations;
- ✓ Conduct a timely and thorough investigation;
- ✓ Make reasonable efforts to protect their confidentiality, within FERPA parameters;
- ✓ Make referrals for counseling and other services;
- ✓ Treat them with dignity and respect; and
- ✓ Keep them updated during an investigation.

HOW DOES CRIMINAL REPORTING AND INVESTIGATION IMPACT COLLEGE GRIEVANCE PROCEDURES?

In some cases, students who disclose interpersonal violence to the college will also choose to report interpersonal violence to law enforcement, which may trigger a criminal investigation.

Student conduct administrators understand that, as noted in DOE's [Dear Colleague Letter](#) (2011), a criminal investigation does not relieve a college of its obligation under Title IX to investigate and resolve a complaint of sexual misconduct. Nor does an investigation by the college relieve law enforcement agencies (whether on campus or local) of their duty to investigate crimes reported in their jurisdictions.

In [Questions and Answers on Title IX and Sexual Violence](#) (2014), the DOE's Office on Civil Rights noted that **colleges should notify complainants of their right to file a criminal complaint and should not dissuade them from doing so**, either during or after a Title IX investigation. Title IX does not require the college to report sexual violence to law enforcement, but a school may have reporting obligations under state, local or other federal laws. It makes sense that any student conduct grievance procedures related to interpersonal violence should follow this guidance.

For clarity, the DOE also addresses the following question: **"What are the key differences between a school's Title IX investigation into allegations of sexual violence and a criminal investigation?"**

- ✓ A criminal investigation is intended to determine whether an accused individual violated criminal law. If the individual is tried and found guilty, he/she may be imprisoned or subject to criminal penalties. Criminal defendants who face the risk of incarceration are afforded numerous protections, including but not limited to the right to counsel, the right to a speedy trial, the right to a jury trial, the right against self-incrimination, and the right to confrontation. Law enforcement authorities normally have discretion as to which complaints from the public they will investigate. By contrast, a Title IX investigation [and any student conduct investigation] will never result in incarceration of an individual; thus procedural protections and legal standards used in criminal cases are not required. A Title IX investigation is not discretionary; a school has a duty under Title IX to resolve complaints promptly and equitably and to provide a safe and nondiscriminatory environment for its students. The termination of a criminal investigation without an arrest or conviction does not affect the college's Title IX obligations.
- ✓ Information gathered during a criminal investigation may be useful to the college if that investigation occurs within the recommended timeframe for Title IX investigations. However, if a criminal investigation is ongoing and related information cannot yet be shared, the college must still conduct its own Title IX investigation. If there is a temporary delay in the fact-finding portion of a Title IX investigation while the law enforcement officers are gathering evidence, the college must take interim measures to protect the complainant. The college should also continue to update the parties on the status of the investigation and when it resumes its Title IX investigation. The college must promptly resume and complete its fact-finding for the Title IX investigation once it learns that law enforcement has completed its evidence gathering stage of the criminal investigation.
- ✓ The college should seek to communicate with its campus law enforcement, local law enforcement, and local prosecutor's office to learn when the evidence gathering stage of the criminal investigation is complete. It may be useful to enter into a memorandum of understanding (MOU) with these agencies regarding the protocols and procedures for sharing information and conducting concurrent investigations. Such an agreement must

allow the school to meet its Title IX obligations as well as comply with applicable privacy laws.



Parallel On-Campus Investigations

A Title IX investigation could occur concurrently with other investigations of the same case on your campus. For instance, sexual misconduct may have been alleged as part of hazing. As a result, in addition to the sexual misconduct investigation under Title IX, there may be a separate institutional process for addressing the hazing component. Whatever processes are involved in each single case require coordination between departments and officials. Title IX Coordinators can help manage this communication to ensure no part of a student's complaint slips through the cracks and that there is no confusion as to *who* is doing *what* along the way. (Paragraph from Falto, 2014.)

Investigation

The Association for Student Conduct Administrators defines a student conduct investigation as “the process of collecting information pertaining to a complaint or incident, interviewing relevant parties, and synthesizing the material so it can be used to determine whether or not a policy violation occurred” (Bennett, Gregory & Loschiavo, 2014). In [Questions and Answers on Title IX and Sexual Violence](#) (2014), the DOE's Office on Civil Rights defines the Title IX investigation as “the process the school uses to resolve sexual violence complaints. This process 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 college 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.

While these definitions are slightly different, a student conduct investigation can be used to fulfill the Title IX investigation requirement as long as it is compliant with Title IX.



Specific steps in the college's Title IX investigation will vary depending on the nature of the allegation, the age of the student(s) involved, the college's size and administrative structure, legal requirements (including mandatory reporting requirements for schools working with minors), and what the college has learned from past experiences (OCR, 2014).

TIMEFRAME

In [Questions and Answers on Title IX and Sexual Violence](#) (2014), the OCR explains that the 60-calendar day timeframe for college-based investigations cited in the DOE *Dear Colleague Letter* refers to the entire investigation process for Title IX complaints (as described above). This timeframe does not include appeals—the college should be aware that an unduly long appeals process may impact whether its response was prompt and equitable. Whether OCR considers an individual investigation to be prompt as required by Title IX will vary depending on the

complexity of the investigation and the severity and extent of the alleged misconduct. OCR recognizes that the investigation process may take longer if there is a parallel criminal investigation or if it occurs partially during school breaks.

GROUND RULES FOR INVESTIGATIONS

Bennett, Gregory and Loschiavo (2014) offer the following promising practices for college investigations:

- ✓ Ensure that students know what to expect during an investigation of a complaint, including what will happen with information that they share.
- ✓ When possible, obtain consent from the complainant prior to beginning an investigation.
- ✓ Be prompt and appropriate, and keep the complainant and respondent informed as to the progress when possible, including simultaneous written notice of outcomes.
- ✓ Reveal only as much as necessary to get the necessary information about the case. Take time to be appropriately thorough but do not cause unnecessary delay.
- ✓ Be clear that the college may have an interest in conducting an investigation even if a student does not wish to file a formal complaint or have his/her identity disclosed.
- ✓ Conduct a broad sweep to learn what you can; there may be critical witnesses not identified by the complainant or respondent. Examine social media, text messages, and emails for additional information.
- ✓ Whether investigations are done through the college human resources office, a single investigator, an outside company, the student conduct office, or the student affairs division, have an adequate number of well-trained people to do this work, especially during high incident times. (See *D1. Training*.)



Falto (2014) urges colleges to avoid these pitfalls when handling a Title IX case, which could also apply to handling complaints of violations of campus conduct policies: Taking too long to start the investigation; disclosing private information inappropriately; failing to keep both parties properly updated throughout the investigation process; and conducting an investigation that is not sufficiently thorough or complete (originally drawn from National Association of College and University Attorneys, 2006).

BASIC INVESTIGATION

Falto (2014) offers the following overview:

- ✓ **Start with fact-finding:** Once you have an understanding of the violation that the complainant is alleging and have documented his or her report, the college needs to do some digging. Begin by reviewing your institution's policies to see if there was in fact a violation: Also check the judicial history of the individual being accused of the discrimination: Has he/she been reported before for similar violations? What about the complainant: Do they have a history that is relevant to the case in any way? Also consider if others are being adversely affected by the behavior in question: Is this a single instance of violence or is it

indicative of a larger problem? Either situation needs addressed, but this evaluation will help you determine the extent of the possible violation and how best to respond.

- ✓ **Determine if there a violation:** After the necessary fact finding, you should have a good idea of what happened and whether or not it is in fact a violation warranting a thorough, official investigation. If warranted, confer with the Title IX Coordinator(s) (if sex discrimination) to develop the charge that will be made against the respondent if the report does involve a policy violation. If no violation was found, document the reason for this outcome and conclude the matter without any charge or hearing.
- ✓ **Notify respondent of the charge:** Assuming a violation has been found and a charge determined, the respondent should be notified both verbally and via written documentation. The notification should include the specific policy or policies that have allegedly been violated. The complainant also needs to be informed as well. Many colleges also place a hold on the respondent's transcript to ensure his cooperation with the process. This ensures that if a respondent decides to drop out of college to avoid dealing with the charge, he would still have to go through the process should he want to re-enroll or apply elsewhere.



Since alcohol is a factor in many campus sexual assault incidents, it is important to understand its potential role in these incidents. Consider these factors (in part from Phillip & Falto, 2014):

- ✓ Perpetrators may use the heavy drinking cultures found on many college campus as an opportunity to identify potential victims who are more vulnerable, accessible and easily manipulated due to alcohol consumption, and whose credibility will be questioned if they report due to the fact that they were drinking (see [Lisak & Miller, 2002](#));
- ✓ Perpetrators may use alcohol and drugs as tools to render their victims helpless (e.g., by putting a drug into their drink or just pushing alcohol on them);
- ✓ Alcohol can impair a victim's judgment so she's more likely to ignore risk cues;
- ✓ Victims who drink and are then assaulted may be blamed for "letting" the assault occur and/or sending mixed messages (hence the credibility problem);
- ✓ Perpetrators may use their own alcohol consumption as an excuse for their actions (e.g., claiming their judgment was impaired by alcohol so they disregarded indications that women didn't want to engage in sexual activity).

It is important to distinguish the following: Alcohol can render potential victims more vulnerable and accessible to perpetrators; however, alcohol consumption is not the cause of their victimization. Perpetrators are responsible for the violence they commit, regardless of their own alcohol consumption. Recognize that involvement of alcohol and drugs in a sexual assault incident does not diminish institution's role in addressing and resolving a complaint (Falto, 2014). Excessive alcohol consumption is not a defense for any criminal behavior (murder, robbery, etc.) and should not be an excuse for misconduct on a college campus.,

FORMAL INVESTIGATION

A formal investigation into a Title IX violation or a violation of campus conduct policies related to interpersonal violence may include, but is not limited to (if it has not be done already in the initial

investigative steps): 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 (OCR, 2014). OCR notes that, for Title IX purposes, the college must give the complainant any rights that it gives to the alleged perpetrator. For example, if it permits one party to have lawyers or other advisors at any stage of the proceedings, it must do so equally for both parties. The college must use a preponderance of evidence standard, including in any fact-finding and hearings. Any school-imposed restrictions on the ability of lawyers or other advisors to speak or otherwise participate in the proceedings must also apply equally. If the college permits one party to submit third-party expert testimony, it must do so equally for both parties. If the school provides for an appeal, it must do so equally for both parties. Both parties must be notified, in writing, of the outcome of the complaint and any appeal.



Preponderance of Evidence Standard

In order for your grievance procedures to be consistent with Title IX standards, colleges must use a preponderance of the evidence standard (e.g., it's more likely than not that sexual harassment or violence occurred). While a "clear and convincing" standard (e.g., it's highly probable or reasonably certain that sexual harassment or violence occurred) currently used by some colleges is a higher standard of proof, using this higher standard is not equitable under Title IX. (Drawn from Falto, 2014; Phillips & Falto, 2014)

Plan an Investigative Strategy

It is important for the college to first plan how it will conduct the formal investigation (Falto, 2014). Falto encourages colleges to consider in advance: Who may have witnessed the reported violation that you could interview? Do the complainant and respondent have any witnesses to whom you should speak? Where might you look for evidence? Who should the investigators/hearing officers be? What are the specific timelines for each stage of this particular process? The guidance of the institution's Title IX Coordinator(s) is important at this stage, if a Title IX violation is being investigated. Once the strategy has been decided, the college is ready to start the comprehensive investigation.

Interview the Complainant

Falto (2014) offers the following **tips when interviewing the complainant** in Title IX investigations, much of which applies to interpersonal violence complaints addressed via the student conduct process.

- ✓ **Choose an appropriate location for an initial interview with the complainant:** The physical space should be private, comfortable and unthreatening. Phones should be turned off and interruptions should be avoided.
- ✓ **Build rapport:** After receiving the initial report alleging sexual violence, obtain the complainant's account of what happened. Let the student speak freely and uninterrupted; you can ask follow-up questions later. Also review with the student the college's anti-discrimination and anti-retaliation policies to help them feel more comfortable filing a report.

- ✓ **Document the complainant’s statement.** Some colleges have complainants provide a written statement via a complaint form, and then ask follow up questions. Others simply ask relevant questions and do the documentation themselves. Note that if the interview is to be recorded, request permission of the student to record and, if she/he declines, take handwritten notes instead (National Association of College and University Attorneys, 2006). Don’t make promises that can’t be kept, such as a certain statement being “off the record.”
- ✓ **Use open- versus closed- ended questions:** After the student shares the basic facts about what happened, ask *open-ended* questions to elicit details, as opposed to closed inquiries that can be answered with a “yes” or “no” response (e.g., Ask “Where did the assault take place?”). rather than “Did the assault occur in your residence hall room?”). This approach may prompt an answer such as: “In my room, after I invited him in to look at my new computer” versus a simple “yes.” Closed inquiries are helpful when you wish to clarify something in the student’s account (e.g., “You were both in your room at that point?”).
- ✓ **Phrase your questions so they are unbiased.** By asking “Why would you invite him to your room alone?” you may be simply trying to gauge the complainant’s thought process when inviting the student to her room. But the wording of the question sounds as if you are blaming the victim. Instead you could ask, “What led you to invite him to your room?” Your tone of voice and facial expression can also imply judgment and impact the response.
- ✓ **Avoid asking two or more questions at a time.** For instance: “Was Mike at the party already when you arrived and was he intoxicated?” Separate the questions to avoid confusion.
- ✓ **Let student know you are listening closely:** Use techniques such as maintaining eye contact (unless this is counter to the student’s culture) and nodding often to indicate that you are paying close attention and have heard what was said. Be aware of your body language (e.g., avoid sitting with your arms and legs crossed as it can make you appear distant or disbelieving).
- ✓ **Avoid repetitive questioning to the extent possible:** Coordinate school-based investigative interviewing of the complainant so as to reduce re-traumatization.
- ✓ **Ask complainants what type of outcome they are seeking from reporting** (e.g., informal or a formal resolution). Be clear with them about resources available to them (see above on interim remedial measures as well as *B9. Resources for Victims on College Campuses*).



It is critical as you talk with the victim about what happened during the reported incident to be aware of the affect of trauma on memory and a person’s behavior.

Research on the neurobiology of trauma and specifically how it relates to sexual assault victims, indicates that trauma can lead to changes such as a flat affect and unexpected emotional responses or emotional swings. It can cause memory consolidation and recall to be difficult for victims. The victim’s story may come out in fragments and may be misinterpreted by investigators as the victim being evasive or lying. In most cases, the content of memory is accurate, it just takes time and patience for it to consolidate in the victim’s mind. However, if alcohol or drugs were a factor during an assault, it is possible that the victim may not have full or any memory recall. (Paragraph drawn from Campbell, 2014.)

So how much time—and sleep—is needed for memory consolidation? Law enforcement literature finds that “critical incident amnesia” from work-related trauma (such as a shooting) can temporarily affect their memory and ability to write an incident report due to the loss of cognitive

and motor skills, such as decreased ability to concentrate and irrational decision-making. Before the first sleep period, an officer experiencing critical incident amnesia will likely only be able to recall general characteristics of the incident. After the first sleep period, the officer's ability to remember will likely increase by 50 to 90 percent. The officer's ability to completely remember may not occur until after the second sleep period. (Drawn from Archambault & Canaff, 2008; PPCT Management Systems, Inc. (1989), *Use of Force Human Factors*.)

Question the Respondent

During the respondent interview, Falto (2014) suggests:

- ✓ Begin the interview with a review of the college's anti-discrimination and anti-retaliation policies and explain the resources available to him/her, the same way the complainant was advised (counseling, academic support, etc.).
- ✓ Acknowledge the respondent's difficult situation and thank him for speaking with you. For the most part, the tips for interviewing the complainant apply to interviewing the respondent. The respondent is often upset during this interview, either appearing hurt and shocked at being accused, defensive in trying to clear his/her name and/or evasive to obscure wrongdoing.
- ✓ Question the respondent. For example, what happened on the day/night in question? When did the incident occur? Where did the incident happen? Can you tell me about how you know the complainant? Why do you think the complainant has filed this report? Was anyone else present for all or part of this alleged incident? Is there anyone else you would like us to speak to about this report? Ask additional questions to elicit more details and clarification.
- ✓ Be mindful of the respondent's body language and look for inconsistencies within his own story or with that of the complainant.

Interview Witnesses

Seek out and speak with witnesses that the complainant and respondent suggest and/or who have been determined to be relevant to the case. Falto (2014) suggests:

- ✓ Again, for the most part, the general tips for interviewing the complainant apply to witnesses. Interview witnesses separately. Keep them separated before the interview and after; so that their accounts cannot be, or *appear* to be, compromised by one another.
- ✓ Keep detailed notes about each witness and the statement he/she provides.
- ✓ Explain to them the behavior that is being investigated. For example, "This investigation involves a report that Kevin has been sending graphic text messages to Lily. Can you tell me what you know about this?" However, only share details relevant to the discriminatory behavior in questions—do not reveal details of a personal nature to either party or that aren't directly applicable to the case.
- ✓ Question witnesses about facts of a particular case. For example, "Can you tell me how you know ____ (complainant's name)? How do you know ____ (respondent's name)? What did you see during the incident in question? What are your thoughts on why the (complainant) and/or (respondent) may have said/done that? What has the (complainant) and/or (respondent) told you about what happened?"

- ✓ Observe non-verbal cues. Is the witness hesitating often, even if you take into account the fact that he/she is likely nervous? Is the witness avoiding eye contact? Do his or her responses seem too perfect, almost as if they've been scripted and rehearsed? Do details change significantly as the interview progresses?

Never question the complainant and respondent together or allow either one to cross-examine the other. Don't question witnesses in the presence of either the complainant or respondent.

Look for Evidence

What evidence should you be looking for? Essentially, anything that can document any party's statement might be helpful. That can vary widely case-by-case.

Social media is a potentially rich source of evidence. Evidence of a violation might be found in writing, videos, photos, texts, tweets, posts, call histories mobile phones, blogs, e-mails, etc. For example, a perpetrator may have taken photos after the sexual assault with his cell phone, which he then might send out to his network of friends. People at a party that the victim and perpetrator attended prior to a sexual assault might text about what happened in the days following the incident. A perpetrator or others might electronically harass the victim or her friends following the assault. (See [Social Media and the Changing Role of Investigators](#), *Forensic Magazine*, 12/2012.)

Falto (2014) notes that other sources of evidence can be security camera footage, eyewitness accounts, receipts, phone call logs, voice messages, written notes, etc. Each party can be questioned about any evidence found, not just to give them an opportunity to respond to it but also to clarify any new questions you may have.

If there is a concurrent criminal investigation, it is useful to the college's fact finding process to access information gathered by law enforcement.

Adjudication

Bennett, Gregory and Loschiavo (2014) offer the following promising practices for college adjudication:

- ✓ **Ensure that resolution method(s) promote a culture of reporting.** Provide choices to students when possible, including the option for a complainant to be in a different room than the respondent during adjudication. If one student has the choice, both should have the choice.
- ✓ **Do not attempt to be a mini-courtroom.** There is no need to "prove beyond a reasonable doubt" that someone violated a college policy in order to find that person responsible. There should never be direct questioning between respondent and complainant when resolving allegations. While students may have an advisor present, the campus should set and uphold clear parameters for that person's involvement in the proceeding: to support and advise the student, not to represent or advocate on his/her behalf. Hearings and meetings should

always be closed. Do not succumb to attempts to delay the process; offer prompt resolution (generally 60 days). Hearings should be structured so that they encourage the parties to tell their stories without personal attacks or reference to prior sexual histories, unless they have direct bearing on the question of responsibility in the current case.

- ✓ **Ensure that both students have the opportunity to be heard.** Both complainant and respondent should have the chance to present information, review information ahead of time, vocalize their experience, and present witnesses to the incident. Ensure that the resolution body and investigator have adequate training regarding how to engage students in the process. Offer a pool of trained advisors who can support students as they participate in the campus conduct process (depending on the campus, this can be students, staff, and/or faculty). Facilitate a process that is socially just and equitable; do not permit attorneys, parents, or anyone to create power differentials that adversely affect the process, or re-victimize the victim.
- ✓ **Use preponderance of evidence as the standard of proof.** If the goal is to provide an equitable process, the complainant and respondent must be allowed to participate in the process equally. These cases sometimes come down to believing one party as more credible than the other.
- ✓ **Decision makers must be well trained.** Given the complexity and sensitive nature of these cases, all adjudicators must be well trained. (See *D1. Training.*)



In [Questions and Answers on Title IX and Sexual Violence](#) (2014), the OCR explains that if the college uses a hearing process to determine responsibility for acts of sexual violence, **the college is not required to allow a complainant to be present for the entire hearing; it is up to each school to make this determination.** But if the college allows one party to be present for the entirety of a hearing, it must do so equally for both parties. At the same time, when requested, the college should make arrangements so that the complainant and the alleged perpetrator do not have to be present in the same room at the same time. If a hearing is part of the school's Title IX investigation process, the school must not require a complainant to be present at the hearing as a prerequisite to proceed with the hearing.

The OCR also addressed **whether witnesses, including the parties, could be cross-examined if they testify at a hearing.** In Title IX investigations, OCR does not require schools to allow cross-examination; however, if one party is permitted to cross-examine witnesses, a college must do so equally for both parties. OCR discourages the college 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.

As to **whether the complainant's sexual history may be introduced at hearings**, the OCR indicated that this should not be permitted. It notes that colleges 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.

Institutional Response

If investigative/adjudication processes find that the respondent is responsible for committing the policy violation with which he/she has been charged, the college must determine sanctions and remedies. In [Questions and Answers on Title IX and Sexual Violence](#) (2014), the OCR notes that remedial action in a case of student-on-student sexual violence may include disciplinary action against the perpetrator, providing counseling for the perpetrator, remedies for the complainant and others, as well as changes to the school's overall services or policies. How the college goes about deciding institutional response varies with the resolution method used by each college. In Title IX cases, the Title IX Coordinator should be involved and notify each party regarding the outcomes. (Falto, 2014)

Bennett, Gregory and Loschiavo (2014) offer the following promising practices related to institutional response (recommendations related to appeals are discussed later):

- ✓ **Be intentional and appropriate in sanction selection.** As sexual misconduct ranges from repeated unwanted comments to single acts of sexual violence, there must be a wide range of sanctions available and an understanding of factors relevant to sanction selection. If you have minimum sanctions for certain violations, ensure that there are no unintended consequences, such as hindrance to reporting or a hearing board wanting to adjust a finding of responsibility in order to issue or avoid a specific sanction. Include the rationale for sanctions so that all parties understand the decisions.
- ✓ **Monitor future behavior.** Implement adequate measures to uphold sanctions. For example, if a student is suspended or expelled, include notations on transcripts that reflect his/her new relationship to the institution. Think beyond sanctions (if someone is not a student), reach out to other colleges, talk to local law enforcement, etc.. Work with your campus to ensure that climate check follow-up occurs. Ensure that the Title IX Coordinator is informed of sanctions so he/she can assess trends. Keep in mind that sanctions are one component of an institution's response and that additional remedies may be warranted.
- ✓ **Understand the difference between “processing” and retaliation.** Complainants and respondents may need to discuss what is happening to them as they engage in conduct proceedings. They may seek support from formal sources (e.g., counselors, clergy, victim advocates and attorneys) as well as informal sources (e.g., parents, friends, advisors and coaches). The college should take immediate action if this processing leads to potential retaliatory activity (e.g., if the respondent discusses the case with his/her friends in such a way that continues to promulgate a hostile environment for the complainant).

NOTE ON SANCTIONS

It is critical that the sanction the college decides upon is suitable for the violation that occurred. As the OCR (2014) notes, the sanctions depend on the specific nature of the misconduct. In some cases where the respondent is found responsible for the violation,

expelling or suspending him/her may be the most appropriate sanction. Other cases may only result in limitations as to which campus buildings a respondent can enter. Also, the college must not simply impose sanctions on the respondent while overlooking ways to remedy the effects of the violence on the complainant and the campus. (Falto, 2014; OCR, 2014.)



Sokolow (2001) notes that suspension and expulsion need to be the default sanctions for severe violations of a college's sexual misconduct policy, or they are courting a risk management nightmare. Serious sanctions are also necessary if the policy is to have any deterrent effect. Otherwise, students who are aware that you fail to deal meaningfully with sexual violence will feel as if they have an unrestricted ability to commit conduct violations.

REMEDIES FOR COMPLAINANTS AND BROADER STUDENT POPULATION

In [*Questions and Answers on Title IX and Sexual Violence*](#) (2014), the OCR explains that services to remedy the hostile environment should be offered to the complainant. These remedies are separate from, and in addition to, interim measure that may have been offered prior to the conclusion of the school's investigation. Depending on the case, the OCR says remedies for the complainant may include but are not limited to:

- ✓ Providing an escort to ensure that she/he can move safely between classes and activities;
- ✓ Moving the perpetrator or complainant (if the complainant requests to be moved) living on campus to a different residence hall;
- ✓ Providing victim services, including medical, counseling and academic support services;
- ✓ Arranging for the complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty; and
- ✓ Reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the sexual violence and the misconduct that may have resulted in the complainant being disciplined.

The OCR also gives examples of remedies for the broader student population:

- ✓ Designating a school counselor who is specifically trained in providing trauma-informed comprehensive services to victims of sexual violence to be on call to assist students;
- ✓ Training or retraining school employees on the school's responsibilities to address allegations of sexual violence;
- ✓ Developing materials on sexual violence, which should be distributed to all students;
- ✓ Conducting bystander intervention and sexual violence prevention programs with students;
- ✓ Taking steps that clearly communicate that the college does not tolerate sexual violence and will respond to any incidents and any student who reports such incidents;
- ✓ 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, and using that information to inform future proactive steps that the school will take;
- ✓ Targeted training for a group of students if, for example, the sexual violence created a hostile environment in a residence hall, fraternity or sorority, or on an athletic team; and

- ✓ The ORC notes that when the college is unable to conduct a full investigation into a particular incident (e.g., because the report had no personal identifying information), it should consider remedies for the broader student population in response.

NOTIFICATION OF OUTCOMES

Title IX requires written notification to both parties regarding the outcome of the complaint and any appeal. OCR (2014) recommends that the college provide this notice concurrently to the parties. For Title IX purposes, the college should inform the complainant: if it found that the alleged conduct occurred, individual remedies offered or provided to the complainant or sanctions imposed on the perpetrator that directly relate to the complainant, and other steps the college has taken to eliminate the hostile environment, if it is found to exist, and prevent recurrence. The perpetrator should not be notified of the individual remedies offered or provided to the complainant. Note that the Clery Act requires and FERPA permits the college to inform the complainant of its final determination and disciplinary sanctions imposed on the perpetrator in sexual violence cases, not just those sanctions that directly relate to the complainant.

Appeals Process

Bennett, Gregory and Loschiavo (2014) note it is essential to provide both parties the opportunity to appeal, based on specific criteria. Rather than simply rehearing the case or providing an opportunity for the appellate body to substitute its judgment for that of the original hearing body, they suggest that typical criteria for an appeal include the following:

- ✓ An error of due process that adversely influenced the outcome;
- ✓ Newly discovered material information that was not available at the time of the hearing and would have a significant impact on the outcome;
- ✓ Demonstrable bias by a hearing official; or
- ✓ Sanction(s) that are inappropriate for the violation(s).

They recommend adequate training for appeals personnel; only one level of appeal; timely resolution relative to the case; and enactment of sanctions while the appeal is considered.

Who handles the appeal can vary from college to college. Whether your institution has appointed a specific staff member to hear appeals or has created a committee, the arrangement should be mentioned in your policies (Falto, 2014).



A **resource for college staff and students** is NotAlone.gov, the website of the White House Task Force to Protect Students from Sexual Assault. See the following sections:

<u>Students</u>	<u>Schools</u>	<u>Resources</u>	<u>Data</u>
✓ Know Your Rights	✓ Legal Guidance	✓ Find a Service	✓ School Enforcement Map
✓ How to File a Complaint	✓ Developing Policies	✓ Organizations	✓ Data.gov
✓ Confidentiality	✓ Maintaining Confidentiality		

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