



# TITLE IX AND BEYOND

## FAQs on Federal Laws and Guidance Regarding Campus Sexual Violence

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Every educational institution should have a sexual assault policy that complies with federal requirements to protect students against sexual violence. This document answers some of the most frequently asked questions concerning these laws to help you better understand the requirements.

Q

Which federal laws relevant to campus sexual violence affect my institution?

A

The critical laws in this area are **Title IX** and the **Clery Act**.

**Title IX** prohibits discrimination on the basis of sex—including sexual harassment and sexual violence—in all education programs and activities that receive federal funding. The law, which applies to both higher education and k-12 schools, is enforced primarily by the Office for Civil Rights (OCR) within the U.S. Department of Education (ED). Title IX protects both students and employees.

OCR has issued guidance on how to comply with Title IX in its April 2014 “Questions and Answers on Title IX and Sexual Violence” (Q&A) and its April 2011 “Dear Colleague” letter (DCL). Although these guidance documents are not themselves law, they are statements of OCR’s enforcement policies.

The **Clery Act** requires higher education institutions that participate in federal student aid programs to disclose statistics about certain crimes occurring on or near campus as well as other security information. The Clery Act is primarily enforced by the Federal Student Aid (FSA) office within the ED, which conducts on-site reviews of compliance.



Previously, the Clery Act covered sexual assault. Recently, Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) added domestic violence, dating violence, and stalking to the list of Clery crimes. This section of VAWA is also known as the Campus Sexual Violence Elimination (SaVE) Act, and it requires institutions to implement and publicize procedures for addressing reports of domestic violence, dating violence, sexual assault, and stalking. It also requires institutions to develop educational programs for students and employees on preventing and responding to such incidents.

**Q**

**When are these new requirements effective?**

**A**

Title IX policy guidance issued by OCR, including the 2014 Q&A, is considered effective upon release.

The Campus SaVE Act became effective in March 2014, and the additional Clery Act crime reporting requirements will apply to the annual security report due on Oct. 1, 2014. Until the regulations to implement the SaVE Act are released, the ED expects institutions to make a “good faith effort” to comply with the new law.

**Q**

**When will the regulations under the Campus SaVE Act be available?**

**A**

Final regulations are expected to be published around Nov. 1, 2014. On that timetable, the regulations would likely become effective in July 2015.

**Q**

**What is the White House Task Force Report? How does it relate to the requirements of Title IX and the Clery Act?**

**A**

In January 2014, President Obama created a task force and charged it with developing recommendations for higher education institutions to prevent and respond to sexual violence. Although it has no direct impact on Title IX or the Clery Act, the task force’s creation demonstrates the federal government’s strong emphasis on addressing campus sexual assaults and holding institutions accountable for their individual prevention and response efforts.

In April 2014, the task force released its “Not Alone” report, which focuses on four key areas:

- Identifying the scope of the problem through campus climate surveys
- Preventing sexual assaults, particularly through bystander intervention programs
- Responding effectively when a student is sexually assaulted
- Increasing the transparency of and improving the federal government’s enforcement efforts

The task force report includes links to tools to help combat sexual violence, including sample campus climate survey questions, a Centers for Disease Control and Prevention report on which sexual violence prevention programs are most and least effective, and a checklist for developing sexual misconduct policies.

Q

**Does my institution have to conduct a campus climate survey?**

A

Climate surveys are not currently mandatory, but that may change. The task force found that climate surveys are the best way to measure the extent of sexual violence on a campus. It recommended that institutions voluntarily conduct these surveys in 2015 and is considering ways to require them in 2016. OCR usually requires institutions to conduct campus climate surveys in resolution agreements involving alleged mishandling of sexual assault matters.

In addition, in July 2014, a bipartisan group of senators introduced legislation that, if passed, would require annual campus climate surveys.

Q

**Which employees are required to report sexual misconduct, and to whom?**

A

Under Title IX, “responsible employees” are expected to report incidents of sexual misconduct to the institution, and the institution must respond. According to the 2014 Q&A, a “responsible employee” is an employee who:

- has the authority to take action to redress sexual harassment/misconduct
- has been given the duty of reporting incidents of sexual harassment/misconduct or any other misconduct by students to the Title IX coordinator or other appropriate designee, or
- a student reasonably believes has this authority or duty

Incidents of sexual misconduct should be reported to the institution’s Title IX coordinator. Every institution that is subject to Title IX must name at least one Title IX coordinator who is responsible for the institution’s response to all Title IX complaints and who addresses any patterns of sexual harassment or violence. The Title IX coordinator must be made aware of all internal complaints that raise Title IX issues. Accordingly, the institution should require that the Title IX coordinator be advised about every internal report involving sexual harassment or violence, with limited exceptions (discussed below) for those made to professional or pastoral counselors.

Under the Clery Act, employees who qualify as Campus Security Authorities (CSAs) must report any allegations of Clery crimes they receive, which, as a reminder, now include domestic violence, dating violence, and stalking in addition to sexual assault. CSAs include:

- An institution's campus police or security department
- Other individuals who have responsibility for campus security, such as individuals who monitor entrances to campus facilities or provide "safe escorts" after dark
- Individuals or organizations specified in an institution's security policy as those to whom students and employees should report criminal offenses
- An official of an institution, meaning someone who has authority and duty to take action or respond to issues on behalf of the institution, who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings

A CSA who receives a report of a Clery crime that he or she believes was made in good faith must report it to the campus official or office the institution designates to collect this information—typically, the campus police or security department.

Your institution should carefully review the definitions of CSAs and "responsible employees" to determine which employees qualify as either or both, as well as what they are required to report and to whom. Also, Title IX requires that institutions make clear to the campus community which staff members are "responsible employees," but the same requirement does not apply for CSAs under the Clery Act.

Rather than separately determining who are responsible employees under Title IX and who are campus security authorities under the Clery Act, some institutions choose to make reporting of sexual violence mandatory for all employees, except those specifically designated as confidential resources.



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Q

**Are resident advisors (RAs) both “responsible employees” under Title IX and CSAs under the Clery Act?**

A

In most circumstances, yes. Although the 2014 Q&A notes that it is possible for an RA to be a CSA, but not a “responsible employee,” UE recommends that an institution treat its RAs as both “responsible employees” and CSAs.

Q

**Some students on my campus only want to tell someone about an assault so they can get help and support. They don’t want to pursue the internal disciplinary process or file criminal charges. Is there a way we can meet those students’ needs?**

A

Yes. Title IX and the Clery Act provide exemptions for professional and pastoral counselors, who can offer confidential support services to sexual assault survivors. A professional counselor must be licensed or certified or be a person (e.g., a graduate student) acting in that role and working under the supervision of a licensed or certified professional. A pastoral counselor is an individual recognized by his or her religious denomination as a person who provides confidential counseling and who is acting as such.

Note: The 2014 Q&A expanded the category of potential confidential resources under Title IX to include individuals who do not meet the definition of professional or pastoral counselors, but who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women’s centers, or health centers, including front desk staff and students, and provide assistance to students who experience sexual violence. Some institutions, however, are choosing not to expand their definition of confidential resources to include this group of non-professional counselors or advocates, often out of concern that a person within this group, for example, someone staffing a front desk, lacks the protection of confidentiality under state law and thus might have to disclose information pursuant to a police investigation or civil litigation. If a campus does decide to expand its definition of confidential resources consistent with the 2014 Q&A, it should make clear that these non-professional counselors or advocates are still expected to provide the institution with general information about a reported assault (e.g., date, time, general location), but not any information that would reveal a student’s identity.

The key is that the institution must make clear to the entire campus community which employees are confidential resources. All other employees—including faculty and coaches—need to understand that they cannot keep reports of sexual assault confidential and should not promise students they will.

**Q****What are the limits of confidentiality under Title IX?****A**

Although the 2011 DCL was ambiguous about confidentiality, the 2014 Q&A helped clarify confidentiality issues, saying that OCR strongly supports a student's right to confidentiality in cases of sexual violence. The Q&A states that an institution must respect a request for confidentiality except in "limited" instances when doing so would prevent it from meeting its Title IX obligations. For example, a school may override a request for confidentiality if the circumstances suggest a risk that the same perpetrator(s) will commit further acts of sexual violence, because this would clearly affect the school's primary responsibility to provide a safe and nondiscriminatory educational environment for all students.

**Q****What training requirements apply to my institution now?****A**

The training requirements described by OCR in the 2014 Q&A and those established by Congress in the Campus SaVE Act are similar but not identical, so institutions should review both sets of requirements carefully.

OCR states that institutions should:

- Train responsible employees on their reporting obligations and how to advise students about confidential resources and the rights, remedies, and services available to them
- Train all employees who are likely to receive student reports of sexual violence, including administrators, campus security, faculty, counselors, coaches, health personnel, and resident advisors, on how to respond
- Ensure that persons involved in implementing the campus grievance procedures have training or experience in addressing sexual violence complaints and in using the grievance procedures
- Provide training for students on sexual violence generally (including the meaning of consent, the role of alcohol and drugs, and bystander intervention) and on the operation of the institution's internal policies and disciplinary procedures specifically

The Campus SaVE Act states that institutions must provide training for incoming students and employees and ongoing education for existing students and employees to increase awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking. The SaVE Act specifically requires institutions to:

- Prohibit domestic violence, dating violence, sexual assault, and stalking
- Provide the definitions of domestic violence, dating violence, sexual assault, and stalking in the applicable jurisdiction
- Provide the definition of consent, for purposes of sexual activity, in the applicable jurisdiction
- Include safe and positive intervention options for bystanders who see potential domestic violence, dating violence, sexual assault, or stalking
- Provide information about risk reduction to recognize the warning signs of abusive behavior and avoid potential attacks

**Q****What are the potential penalties for violating these laws?****A**

The ED can fine an institution that violates any part of the Clery Act (including the new provisions added by the Campus SaVE Act) up to \$35,000 per violation. However, individuals cannot bring lawsuits under the Clery Act.

By contrast, individuals can sue institutions for violations of Title IX, and in some cases such individuals have received substantial money damages and attorney fees. In addition, institutions can lose federal funding for Title IX violations, although this has yet to happen.

Especially in the current environment, an institution that is accused of violating Title IX or the Clery Act should expect negative publicity that may cause long-lasting damage to its reputation, particularly if the government investigates. Furthermore, the ED can decide to investigate an institution on its own, regardless of whether a complaint is filed.

**Q****What should my institution do to help ensure we're in compliance?****A**

Carefully review these materials and compare them to the requirements of both the Campus SaVE Act and Title IX (as interpreted by OCR in the 2014 Q&A and the 2011 DCL) to determine where your policies and procedures may be falling short. In the meantime, some key questions that institutions should consider when reviewing their current policies and procedures include:

- Have you engaged a range of administrators and stakeholders in the development process to help ensure broad support from institutional leadership and the campus community?
- Do your policies establish that sexual harassment and sexual violence are forms of sex discrimination that are prohibited by Title IX?
- Do your grievance procedures explain how the institution will respond to allegations of sexual assault, including any interim measures it may take to protect the alleged victim?
- Do the grievance procedures describe your institution's reporting policies and protocols, including making clear which campus resources or officials can maintain student confidentiality and which ones cannot?

Update deficient policies and procedures as soon as possible, preferably with legal counsel's assistance.

Also, review all pertinent training and education programs currently used on your campus. Again, take a very broad approach and check for programs run by individual departments or groups—athletics, Greek organizations, your student health or wellness center, or an alcohol education office—that may not be familiar to others on campus. Evaluate training programs to decide which ones should be revised, and whether any new programs must be created, to meet the Title IX and SaVE Act requirements.

**Q****Are further changes in federal law on the horizon?****A**

Yes, further changes are likely, although their extent is unclear. For example, in late July 2014, a bipartisan group of senators introduced new legislation known as the Campus Accountability and Safety Act. In its current form, this bill would make significant changes to institutions' obligations to address sexual violence and to the possible penalties for failing to meet those obligations. For example, in addition to mandating annual participation in a standardized climate survey, the bill would add to reporting obligations and increase maximum fines under the Clery Act, require that institutions provide sexual violence survivors with specific support resources and services, and create a new civil penalty for violations.

**Q****What other laws affecting my institution's approach to sexual violence do we need to consider?****A**

In addition to federal law, every institution needs to be familiar with its state's laws, which may impose additional requirements relating to campus sexual violence. Consult an attorney licensed in your state who has experience with education law.

**Q****If we comply with the requirements of the Campus SaVE Act and Title IX, how soon should we expect to see a reduction in our sexual assault reports?****A**

After updating their policies and procedures, many institutions see an increase in reports of sexual violence and sexual harassment. This can be a positive development because it indicates that those in the campus community who have experienced sexual misconduct better understand their options and are more comfortable coming forward.

There is no "quick fix" for the problem of sexual violence on campus. Simply complying with the laws and other guidance does not guarantee that reports of sexual violence will decrease, even in the long term. The best way to reduce sexual harassment and assault is by changing the culture that allows it to exist, which may mean a sustained effort over several years which will require involvement of and coordination with various offices on campus—for example, student and residential life, academic affairs, health and counseling, and campus security—as well as clear support and commitment from your institution's top-level administrators.



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UE-113176 08/14