Investigation, Evaluation, and Adjudication of Sexual Misconduct:

Practical Implementation of Title IX and the Dear Colleague Letter

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Investigations
Title IX Obligation to Investigate

- “[B]ecause legal standards for criminal investigations are different, police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively. (2001 Guidance, p. 21)

- “A law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct.” (DCL, p. 4)

- “A criminal investigation into allegations of sexual harassment or sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.” (Department of Education, Know Your Rights, http://www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.html#note1)
Dear Colleague Letter Checklist: Investigation

MUST

- Promptly investigate to determine what occurred and then take appropriate steps to resolve the situation (DCL, p. 4, 2001 Guidance, p. 15)
- Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX (DCL, p. 10)
- Process off-campus complaints in accordance with its established procedures. (DCL, p. 4)
- Consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus (DCL, p. 4)

MUST

- Determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified (DCL, p. 5)
- Promptly resume and complete its fact-finding for the Title IX investigation once notified that the police department has completed its gathering of evidence (DCL, p. 10)
- In one recent OCR sexual violence case, the prosecutor’s office informed OCR that the police department’s evidence gathering stage typically takes three to ten calendar days, although the delay in the school’s investigation may be longer in certain instances (DCL, p. 10)
Dear Colleague Letter: Investigation

**SHOULD**

- Not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation (DCL, p. 10)
- Notify a complainant of the right to file a criminal complaint, and not dissuade a victim from doing so either during or after the school’s internal Title IX investigation (DCL, p. 10)
- If an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner (DCL, p. 12)
- Follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred (DCL, p. 16)

**SHOULD**

- The Title IX coordinator should be given access to school law enforcement unit investigation notes and findings as necessary for the Title IX investigation, so long as it does not compromise the criminal investigation (DCL, pp. 7-8)
- Law enforcement should be trained on:
  - Grievance procedures
  - Instructing complainants of rights under Title IX
  - Reporting incidents to Title IX Coordinator (DCL, p. 7)
MAY NOT

☐ A school **may not absolve** itself of its **Title IX obligations** to **investigate and resolve** complaints of sexual harassment or violence **by delegating**, whether through express contractual agreement or other less formal arrangement, **the responsibility** to administer school discipline to school resource officers or “contract” law enforcement officers. (DCL, p. 8)
2001 Guidance: Investigation

MUST
- **Promptly investigate to determine what occurred** and then take appropriate steps to resolve the situation. (2001 Guidance, p. 15)
- Regardless of whether the student who was harassed, or his or her parent, decides to file a formal complaint or otherwise request action on the student’s behalf (2001 Guidance, p. 15)

SHOULD
- If the student continues to ask that his or her name not be revealed, the school **should** take all reasonable steps to investigate and respond to the complaint consistent with the student’s request as long as doing so does not prevent the school from responding effectively to the harassment and preventing harassment of other students. (2001 Guidance, p. 17)
- Make follow-up inquiries to see if there have been any new incidents or any retaliation (2001 Guidance, p. 17)
Choosing an Investigative Model

• Who in your community is best positioned/suited to conduct fact-finding?

• What are the pros/cons of the student conduct model? The law enforcement model?

• Can the Title IX Coordinator be the investigator?

• How do you ensure that you thoroughly capture and integrate all necessary information?

• How do you coordinate the sharing of information?

• What are the FERPA considerations?
Practical Considerations

• Who conducts investigation?
• How is investigation conducted?
• How far should an investigation go?
• Who bears the cost of gathering physical, medical evidence?
• How is evidence gathered, recorded, and maintained?
• Are experts consulted?
• Do we share law enforcement/Title IX investigations with conduct boards?
Setting the Stage

• A good investigator should be:
  - Objective
  - Fair
  - Impartial
  - Open-minded
  - Professional
  - Appropriate in demeanor
  - An active listener
  - Polite and respectful to all parties

• A good investigator should not:
  - Allow emotion to overrule reason
  - Make assumptions as to how a person “should” react
  - Pre-judge the facts
  - Put him/herself in the shoes of the victim or the accused
  - Allow bias or prejudice to affect his/her judgment
How is Credible Evidence Obtained?

- Competent Investigators Trained in Dynamics of Sexual Assault
- Comprehensive Interview Techniques
- Timing and Location of Interview
- Establish Rapport and Trust with Complainant
- Consider Independent Advocate
- Evidence Collection
- Witness Statements
- Report Writing
- Consider Follow-up Interview
Competent Witness Interview

- Invest in learning the language of your witness
- Allow your witness to give a narrative
- Refrain from interrupting or from asking clarifying questions
- Go back and follow up to clarify details
- Explore areas of inquiry that can be corroborated
- Identify circumstances of disclosure and prompt complaint witnesses
- Create timeline
- Set the stage for a follow-up interview
A Full and Fair Investigation

- Exhaustive search for corroboration
- Assess import of lack of corroboration
- Question opportunity, access, means, and motive
- Gather physical and/or physical evidence
- Exhaust all areas of inquiry to give the fact-finder the tools needed to make a just decision
- Be alert to evolving evidence – social media and/or intimidation/retribution
Template Form for All Incidents of Sexual Misconduct

- Victim’s name or anonymity requested
- Place of occurrence
- Nature of occurrence
- Time of occurrence
- Time of reporting
- Alcohol involved; Drugs involved
- Physical Injury
- Name of accused; known or unknown
- Pattern evidence/Prior misconduct
- Complainant’s description of event
- Names of witnesses
- Interviews of all parties
- Prior contacts between complainant and accused
- School records
- Intimidation attempts
- Court / No-contact orders

- Physical evidence:
  - Injury / Medical Evidence - records
  - Security Monitoring Records / Visitor Logs / Audio-Video recordings
  - Telephone records
  - Voicemail
  - Text / E-mail / Social Media
  - Clothing / Tangible Objects
  - Any other physical / forensic evidence
  - 911 Tape
  - Photographs of the scene
  - Photographs of injuries
  - Advised re: law enforcement report
  - Advised re: preservation and medical treatment
  - Advised re: counseling
  - Concerns regarding safety of community
  - Discharge Title IX responsibilities
  - Discharge Clery responsibilities
Investigation Checklist: Complainant

- Reports are consistent over time?
  - Is the complainant’s basic story consistent?
  - Is basic timeline consistent?
  - Do allegations change? If so, is there a reasonable explanation?
  - After support services?
  - With different interviewers?
  - In terms of content?
- Actions are consistent with known behaviors of sex offenders?
  - Did accused have access?
  - Grooming?
  - Presents?
  - Trips?
  - Money?
  - Favored status?
  - Compliments?
  - Use of pornography?
  - Sexual remarks?
  - Use of drugs or alcohol?
  - Other?
- Progression of physical behaviors?
  - Physical space violations?
  - Hugging?
  - Kissing?
  - Exposure?
  - Touching of body parts over clothes?
  - Touching of genitalia (of either party)?
  - Masturbation?
  - Oral sex?
  - Anal sex?
  - Vaginal sex?
- More than 1 complainant?
  - How many?
  - Adult/Minor?
- More than one allegation per complainant?
  - How many?
  - As an adult/miniar?
- Consistent with stalking behaviors?
  - Following in person or cyber space?
  - Texting/e-mailing/social media?
  - Threats or intimidation?
Investigation Checklist: Complainant

- Secondary gain?
  - Educational?
  - Situational?
  - Occupational?
  - Financial?
- Overall credibility?
  - Cognitive impairment?
  - Evidence of psychosis?
  - Evidence of coaching?
  - Current situation impacted by results or conclusions?
- Demeanor?
  - At time of event?
  - At time of reporting?
  - As reported by other witnesses? If so, identify witnesses.
  - In our interview?
- Interests or bias?
- Details of description:
  - Central issues
  - Peripheral issues
- Corroboration?
- Do facts hang together? Why? Why not?
- Explore past relationship:
  - Whether and how long accuser had known the accused?
  - Circumstances of their meeting
  - Extent of any previous relationship
  - Details of any prior sexual relationship
## Investigation Checklist: Alleged Offender

- **Other acts/behaviors suggestive of poor judgment:**
  - Evidence of substance abuse? If so, is it admitted?
  - Evidence of impulse control issues? If so, is it admitted?
  - Admission of physically inappropriate behavior?
  - Admission of sexually inappropriate behavior?
  - Evidence of fabrication in record (not limited to allegation)?

- **Overall Credibility**
  - Demeanor?
  - Interest or bias?
  - Corroboration?
  - Do facts hang together? Why or Why no?

- **Analysis of Alleged Offenders:**
  - Psychiatric/psychological assessment according to professional guidelines/standards
  - Psycho-sexual assessments
  - Standardized tests

- **Past History**
  - Evidence of other misconduct or disciplinary action?
    - Prior sexual misconduct?
    - Theft/misappropriation?
    - Legal history?
    - Substance abuse?
    - How did the accused handle these events?
  - Evidence of problematic behavior in multiple assignments?
  - Troubled relationships?
  - History of previous sanctions?
  - History of treatment/intervention of inappropriate or concerning behaviors?
  - Previous outside evaluations?
  - Previous concerns re: protection of others?
Credibility Considerations

From the 2001 *Revised Sexual Assault Guidance*:

- Based on the totality of the circumstances (p. 9)
- Witness statements (p. 9)
- Level of detail and consistency (p. 9)
- Existence or absence of corroborative evidence (p. 9)
- Prior bad acts and/or prior false reports (p. 9)
- Reaction or behavior after the alleged incident (p. 9)
- Behavioral changes (p. 9)
- Prompt complaint/disclosure (p. 9)
- Other contemporaneous evidence (p. 9)
Credibility Factors

- Demeanor
- Interest
- Detail
- Corroboration
- Common Sense *(Inherent plausibility in light of the context and attendant circumstances)*
## Integrated Credibility Analysis

<table>
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<tr>
<th>Dynamics of Sexual Assault</th>
<th>Informed understanding based on competent experts / debunking the myths.</th>
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</thead>
</table>
| Demeanor                   | Did the witness testify in a convincing manner? Was his/her testimony uncertain, confused, self-contradictory or evasive?  
How did he/she look, act and speak while testifying / reporting? |
| Interest / Motive / Bias   | Did the witness have any interest in the outcome of the case, bias, prejudice, or other motive that might affect his testimony? |
| Detail                     | Use direct quotes from testimony or statements.  
How well could the witness remember and describe the things about which he testified?  
Was the ability of the witness to see, hear, know, remember, or describe those things affected by youth or old age or by any physical, mental or intellectual deficiency? |
| Corroboration              | How well did the testimony of the witness square with the other evidence in the case, including the testimony of other witnesses?  
Was it contradicted or supported by the other testimony and evidence? |
| Common Sense               | Does it all add up? (Gut check)  
Is there something missing? |
Evaluating Consent

- Always start with nature of relationship
- Evaluate prior communication styles
- Identify manner of communication during incident from the perspective of each
  - Words
  - Actions
- Focus on circumstances of disclosure
- Objective and reasonable standard
- Evaluate effect of any alcohol use
Adding Alcohol to the Mix

- Assess pre-incident behavior
- Assess quantity/quality of alcohol use
- Identify expectations/mind set of each party
- Assess ability to reasonably know level of intoxication of other party
- Seek information from other witnesses as to the level of incapacitation
- Assess post-incident behavior
- Assess circumstances of disclosure & reaction to disclosure
- Behaviors that indicate state of mind
# Integrated Fact Analysis

<table>
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<tr>
<th>Time</th>
<th>Date</th>
<th>Place</th>
<th>Relationship</th>
<th>Issue 1: Consent</th>
<th>Issue 2: Drugs / Alcohol</th>
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- **Complainant**
- **Accused**
- **Witnesses**
- **Physical Evidence**
- **Records**
The Confidentiality Conundrum

What if the complainant requests confidentiality?
Dear Colleague Letter: Consent and Confidentiality

• “Schools also should inform and obtain consent from the complainant … before beginning an investigation.” (DCL, p. 5; See 2001 Guidance, p. 17)

• “If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation.” (DCL, p. 5)

• If victim requests confidentiality, school should inform complainant:
  • Ability to respond may be limited (DCL, p. 5; See 2001 Guidance, p. 17)
  • School will take steps to prevent retaliation and take strong responsive action if it occurs (DCL, p. 5; See 2001 Guidance, p. 17)
Dear Colleague Letter:
Consent and Confidentiality

- School **should** evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. (2001 Guidance, p. 17)

- “Thus, the school **may weigh** the request for confidentiality against …:
  - the seriousness of the alleged harassment;
  - the complainant’s age;
  - whether there have been other harassment complaints about the same individual;
  - and the rights of the accused individual to receive information about the accuser; and (2001 Guidance, pp. 17-18)
  - the alleged harasser’s rights to receive information about the allegations if the information is maintained by the school as an “education record” under FERPA” (DCL, p. 5; 2001 Guidance, pp. 17-18)
Dear Colleague Letter: Consent and Confidentiality

- “The school **should** inform the complainant if it cannot ensure confidentiality.” (DCL, p. 5)

- “In some cases, such as those where the school is **required to report** the incident to local law enforcement or other officials, the school **may not** be able to maintain the complainant’s confidentiality” (DCL, p. 5)

- Even if the school cannot take disciplinary action against the accused, the school **should** pursue other steps to limit the effects of the alleged harassment and prevent its recurrence. (DCL, p. 5)
Practical Considerations

- Creates a new class of investigations for most schools
- Complainant community concerns
- What does this process look like?
  - What do we say?
  - What do we do?
  - What is put in writing?
  - How many times should we meet?
- How do we strike an appropriate balance?
A Practical Response

- Ensure policies clearly identify reporting and support resources both on and off campus
- Delineate confidential resources vs. non-confidential reporting options in policy and training
- Ensure all employees are familiar with Title IX reporting obligations
- Offer clear and easy to follow guidance as to what happens when a report is received
- Foster a climate that encourages reporting by providing consistency in message, policy, procedure, and outcome
Balance in Process
• Schools are required by the Title IX regulations to adopt and publish a policy against sex discrimination and grievance procedures providing for prompt and equitable resolution of complaints of discrimination on the basis of sex. (2001 Guidance, p. 19)

• In all cases, the inquiry must be prompt, thorough, and impartial. (2001 Guidance, p. 15)

• Procedures adopted by schools will vary considerably in detail, specificity, and components, reflecting differences in audiences, school sizes and administrative structures, State or local legal requirements, and past experience. (2001 Guidance, p. 20)

• The accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding. (Clery, p. 11)
DCL: Grievance Procedures

• Separate grievance procedures are not required…
  - So long as they comply with the prompt and equitable requirements of Title IX (DCL, p. 8)

• A school’s investigation and hearing processes cannot be equitable unless they are impartial (DCL, p. 12)

• Any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed (DCL, p. 12)
MUST

- Use a preponderance of the evidence standard (DCL, p. 11)
- Provide parties with an equal opportunity to present relevant witnesses and other evidence and afford them similar and timely access to any information that will be used at the hearing (DCL, p. 11)
- If a school provides for appeal of the findings or remedy, it must do so for both parties (DCL, p. 12)
- Notify both parties, in writing, about the outcome of both the complaint and any appeal (DCL, p. 12)

MUST

- Provide due process to the alleged perpetrator if the school is public or state-supported (DCL, p. 12)
- Provide parties with the same rights in regard to the participation of lawyers in the proceedings (DCL, p. 12)
- Maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings (DCL, p. 12)
- Apply to all students, including athletes (DCL, p. 8)
DCL: Grievance Procedures

MUST

- Not require a complainant to abide by a nondisclosure agreement that would prevent the redisclosure of information required by Clery (DCL, p. 14)

- Notify the complainant of the right to end the informal process at any time and begin the formal stage of the complaint process (DCL, p. 8)

- Never allow mediation, even on a voluntary basis, in cases involving allegations of sexual assault (DCL, p. 8)

MUST

- Not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual harassment or violence by delegating, whether through express contractual agreement or other less formal arrangement, the responsibility to administer school discipline to school resource officers or “contract” law enforcement officers. (DCL, p. 8; 34 CFR § 106.4)
DCL: Grievance Procedures

**SHOULD**

- Not conduct a pre-hearing meeting during which only the alleged perpetrator is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the complainant (DCL, pp. 11-12)

- Not allow only the alleged perpetrator to present character witnesses at a hearing (DCL, p. 12)

- Not allow the alleged perpetrator to review the complainant’s statement without also allowing the complainant to review the alleged perpetrator’s statement (DCL, p. 12)

**SHOULD**

- Not allow the parties personally to question or cross-examine each other during the hearing (DCL, p. 12)

- Provide an appeals process that is equally accessible to both parties (DCL, p. 12)

- Disclose any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties (DCL, p. 12)

- Ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant (DCL, p. 12)
DCL: Grievance Procedures

SHOULD

- Provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently (DCL, p. 12)

- Notify a complainant of the right to file a criminal complaint, and should not dissuade a victim from doing so either during or after the school’s internal Title IX investigation (DCL, p. 10)

SHOULD

- Consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus (DCL, p. 4)

- Give both parties period status updates (DCL, p. 12)
DCL: Grievance Procedures

**MAY**

- Use student disciplinary procedures or other separate procedures to resolve such complaints (DCL, p. 8)

- Disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution’s rules or policies (DCL, p. 14; 34 CFR § 99.31(a)(14))

**MAY**

- Disclose to the alleged victim the final results of a disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed, without violating FERPA (DCL, p. 14)

- Include in grievance procedures voluntary informal mechanisms (e.g., mediation) for resolving some complaints of sexual harassment, but never those involving sexual assault (DCL, p. 8)
Practical Considerations

• What is the judicial board composition?
• What are the issues unique to the use of students as fact-finders or decision-makers?
• Are there written operating procedures and rules of protocol for student conduct panels?
• How are processes different if accused is student vs. faculty?
• How is sexual misconduct process different from standard student conduct process?
• How are incidents with multiple offenders handled?
Practical Considerations

- Who presents the evidence?
- What form is it presented in?
- Is medical and forensic evidence considered?
- If so, who interprets and presents it?
- Are expert witnesses presented?
- How are hearing records maintained?
- What are the appeal procedures?
- Can conduct hearings and Title IX hearings be consolidated?
“OCR strongly discourages schools from allowing the parties personally to question or cross examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment.” (DCL, p. 12)

Questions may be submitted to the adjudicatory panel who will determine relevance and appropriateness.

All questions should be non-judgmental and designed to seek accurate information.

While panel may test the veracity of a party, the focus should always be educational.
Intoxication, Impairment, & Incapacitation

• Understanding the difference between intoxication, impairment and incapacitation
  - Impaired judgment vs. unconscious, unaware, or otherwise physically helpless
  - Incapacitation: a state where a person lacks the capacity to appreciate the nature of giving consent to participate in sexual activity – is this mental, physical or both?

• The vomit rule?

• Effect of a blackout?
  - A person in an alcoholic blackout state may appear to act normally – may walk, talk, drive, etc., but have no memory of these events
  - If the person in a blackout affirmatively gives words or actions indicating a willingness to engage in sexual activity and the other person is unaware—or reasonably could not have known—of the alcohol consumption or blackout, then consent may be considered to have been given
Incapacitation: Drawing the Line

- Need for a bright line rule to achieve equity
- An individual who is incapacitated cannot consent to sexual activity
- An individual is incapacitated if he/she is physically helpless, unconscious, or unaware, due to drug or alcohol consumption (voluntarily or involuntarily) or for some other reason
- Where alcohol is involved, incapacitation is a state beyond drunkenness or intoxication
- Some indicators of incapacitation may include, but are not limited to, lack of control over physical movements, being unaware of circumstances or surroundings, or being unable to communicate for any reason
Defining Consent

- Most common defense in a sexual assault case
- How do you define consent?
- Where does your school place the burden?
  - The initiator?
  - Both parties?
- Does consent have to be verbal?
- How do we educate our students in advance?
- Battling the “hook up culture”
Each participant should obtain and give effective consent in each instance of sexual activity.

Informed, freely and actively given, mutually understandable words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity.

In the absence of mutually understandable words or actions, whose responsibility is it to make sure that the other is consenting?

Relying solely upon non-verbal communication can lead to miscommunication.

If confusion or ambiguity on the issue of consent arises anytime during the sexual interaction, the sexual activity should cease.
Effective Consent

• Consent may not be inferred from silence, passivity or lack of active resistance alone

• A current or previous dating or sexual relationship (or the existence of such a relationship with anyone else) may not, in itself, be taken to imply consent.

• Consent to one type of sexual act may not, in itself, be taken to imply consent to another type of sexual act

• Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly; upon clear communication, all sexual activity must cease
Effective Consent

- Consent which is obtained through the use of fraud or force, whether that force is physical force, threats, intimidation, or coercion, is ineffective.

- One may not engage in sexual activity with another who one knows, or should reasonably have known, is incapacitated as a result of alcohol or other drugs.

- The use of alcohol or other drugs can have unintended consequences and can create an atmosphere of confusion over whether consent is freely and effectively given.

- Being intoxicated or high does not diminish one’s responsibility to obtain consent and is never an excuse for sexual misconduct.
Pattern Evidence

• Prior bad acts/pattern evidence
  - “Weigh… whether there have been other harassment complaints about the same individual (DCL, p. 5)

• Under traditional relevance analysis, other crimes evidence of an accused may be admissible
  - To the determination of responsibility
  - To the level of the sanction
Practical Considerations

• Where is this information stored on campus?
• How do you obtain the information from off-campus sources?
• Does your policy address how and when it is used?
• Who determines if it is relevant? Are there pre-hearing procedures that apply?
• How do you present the information to the conduct board?
• Can you share it with the complainant in the current case?
• Can you tell the first complainant why you need him/her to participate in the proceedings?
• What are the FERPA considerations?
Victim’s Sexual History

• Rape Shield
  - “The alleged perpetrator should not be given access to communications between the complainant and the counselor or information regarding the complainant’s sexual history.” (DCL, p. 11, n 29)

• Recognize that the accused may have his own knowledge as to the victim’s sexual history, shared or otherwise

• Rape shield laws preclude the use of direct or reputational evidence as to a victim’s past sexual history unless a relevant, exculpatory evidentiary link can be established

• In general, prior consensual relationships between the accused and the accuser are admissible
Practical Considerations

• Does your policy address its use?
• Who determines if it is relevant? Are there pre-hearing procedures that apply?
• Is there a limit to the scope of information a respondent may share with the board?
• Does complainant have pre-hearing opportunity to review?
Intersections With Minors
“In cases involving potential criminal conduct, school personnel must determine, consistent with state and local law, whether appropriate law enforcement or other appropriate authorities should be notified.”

“In states with mandatory reporting laws, schools may be required to report certain incidents to local law enforcement or child protection agencies.”

DCL, p. 5
Practical Considerations for Child Protective Services

• What percentage of your students are minors?
• Do adult employees and students have regular contact with minors in formal or informal programs?
• Do you have a mandatory reporter policy or training program?
• How do determine whether you have cause to suspect abuse?
• How do you coordinate with the parent?
State Child Protective Services Laws

- Know your state’s definition of child abuse:
  - What is required to be reported?
  - Who is required to report – any person or are there delineated mandatory reporters?
  - Is there a good faith exception?
  - Can reports be anonymous?
  - Can the reporter’s identity remain confidential?
  - Is there criminal liability for not reporting?
State Child Protective Services Laws

- **Practical Considerations:**
  - Who makes the report?
  - Where will the report be stored?
  - Is there a policy in place?
  - Is there uniform training on the policy?

- **When in doubt, report it out**

- **U.S. Department of Health and Human Services, Child Welfare Information Gateway:**
  
Prevention
On-Campus Support Services

Institutions should decide on:

- Level or extent
- Implement range of programs
- Collaborative partnerships
Factors Influencing Level of Support Services

- Qualified staff
  - crisis counseling
  - long-term therapeutic services
- Facilities for confidential services
- Liability concerns
- Resources available
Identifying Service Needs - Strategies

Check the Pulse of:

- Students
- Faculty
- Administration
Types of Education

- Risk-Reduction

- Programming aimed at potential perpetrators (consent, rape myths)

- Primary Prevention
Educational Programming

• *Educational community professionals to build network of services:*
  - Rape crisis center
  - Alcohol and drug
  - Courthouse
  - Other local/regional campuses

• *Networks to advance knowledge and support students:*
  - Victim/witness coalitions
  - Sexual assault coalitions
  - Substance abuse consortions
  - Detective Groups
  - Sex Crime Councils
## National Calendar

<table>
<thead>
<tr>
<th>Month</th>
<th>Events</th>
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<tbody>
<tr>
<td>Jan</td>
<td>• Nat'l Stalking Awareness Month</td>
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<tr>
<td>Apr</td>
<td>• Nat'l Victims’ Rights Week</td>
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<td>• Nat'l Child Abuse Month</td>
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<td>• Nat'l Sexual Assault Awareness Month</td>
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<td>Aug</td>
<td>• Nat'l Night Out</td>
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<tr>
<td>Sept</td>
<td>• Nat'l Campus Safety Awareness Month</td>
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<tr>
<td>Oct</td>
<td>• Nat'l Domestic Violence Month</td>
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<td>• Nat'l Alcohol Awareness Month</td>
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<td>• Nat'l Crime Prevention Month</td>
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<tr>
<td>Dec</td>
<td>• World AIDS Day</td>
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Educational Programming

• *Statewide and campus sexual assault coalitions to:*
  - Exchange information
  - Improve campus services
  - Create program initiatives
  - Train campus victim service providers

• *Half-day or day long trainings for campus and to the community on campus security issues*
Participant Questions
Complying with the DCL

- How can you be victim-centered while remaining balanced?
- Can campus victim advocates operate with confidentiality?
- Can anonymous reporting still be respected post-DCL?
When to Take Action

- If a victim advocate submits a Clery report on sexual assault without the survivor’s name, is the university required to “EPA” under Title IX and if so, how?

- If assault occurs off campus, what investigation is done by campus officials and what investigation by police?

- If a sexual battery/assault complaint to the police department is determined not to be a sexual assault or battery, does this still need to be reported to the Title IX officer?

- What is your opinion on the threshold of when (what type of situation) you need to investigate a case based on the DCL even if the victim does not want the case investigated?
Nuts and Bolts

• If the student is a minor, does the school have to notify the parent if the student requests confidentiality?

• What should the consequences be for a student who falsely reports a sexual violence incident?

• How do you recommend that a college communicate between interested administrators without creating liability while documenting the process?

• For Clery reporting, how do we encourage our university departments to share forcible and non-forcible sex offenses that have been shared confidentially?

• Great ideas for connecting with new students/parents, but are there ideas for connecting with returning students?
Thank you!

- Slides and recording to follow

- Submitting questions
  - Q&A box
  - Via email

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