

PRESENTATION

SaVE-ing Your Campus: The Role of the Responsible Employee and Key Components for Effective Title IX Grievance Procedures

AGENDA

- Overview of Title IX and the SaVE Act
- Responsible Employees
- Confidentiality
- Title IX Grievance Procedures

OVERVIEW OF TITLE IX AND THE SAVE ACT

OVERVIEW OF TITLE IX

Title IX of the Education Amendments of 1972

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681 et seq.

-Title IX of the Education Amendments of 1972 to the Civil Rights Act of 1964

OVERVIEW OF TITLE IX: Other Specific Provisions

- Recruitment and admissions
- Housing
- Access to course offerings
- Financial assistance
- Marital and parental status
- Athletics
- Textbooks and curricular materials
- **Sex-based harassment**
- Employment

SOURCES: 34 CFR Subtitle B, Chapter 1, Part 106, Subparts B-E; 20 U.S.C. § § 1681 and 1682; *see also Proposed Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (2000); *Title IX Resource Guide, U.S. Dep't of Educ. Office of Civil Rights, April 2015.*

OVERVIEW OF TITLE IX: Key Requirements

34 CFR § 106.8. Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee (i.e. Title IX Coordinator). Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

ADDITIONAL SOURCE: 20 U.S.C. § § 1681 and 1682.

OVERVIEW OF TITLE IX: Key Requirements

34 CFR § 106.9. Dissemination of Policy.

Section 106.9 requires schools and colleges to implement specific and continuing steps to inform students and others of the protections against discrimination on the basis of sex. The notification must state that the requirement of non-discrimination in educational programs and activities extends to employment and admission. It also must say that questions about Title IX may be referred to the employee designated to coordinate Title IX compliance or to the assistant secretary for civil rights. Schools are required to include the name, address and telephone number of the designated coordinator in their notifications.

ADDITIONAL SOURCES: 20 U.S.C. § § 1681 and 1682; Notice of Non-Discrimination, U.S. Dep't of Educ. Office of Civil Rights (August 2010), available at <http://www.ed.gov/ocr/docs/nondisc.pdf>.

OVERVIEW:

Campus Sexual Violence Elimination (SaVE) Act

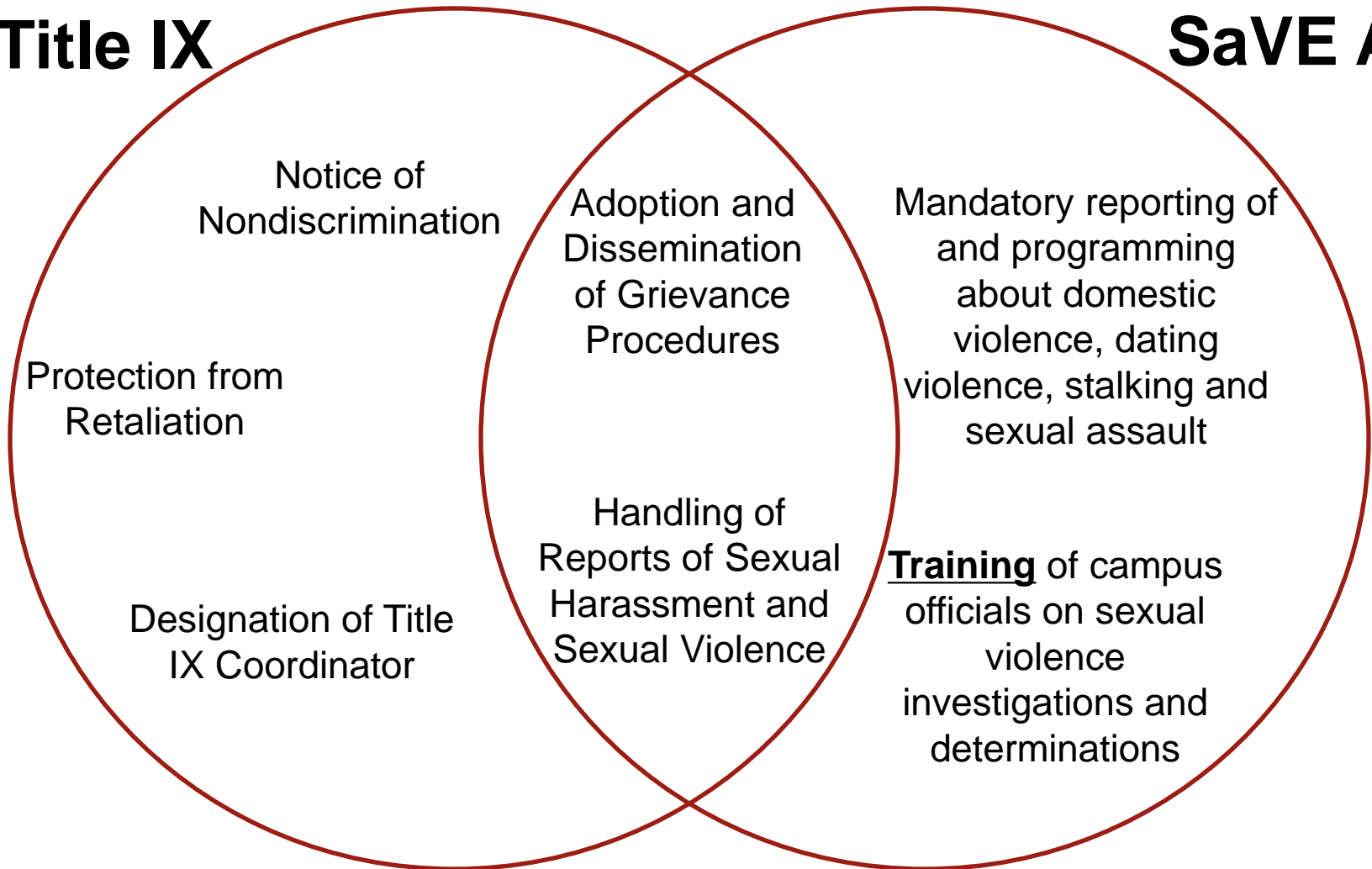
- Signed into law as part of the *Violence Against Women Reauthorization Act of 2013* (VAWA) on March 7, 2013.
- Amends the federal *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* (Clery Act).
- Requires public and private colleges and universities participating in federal student aid programs to increase transparency about the scope of sexual violence on campus, guarantee victims enhanced rights, provide for standards in institutional conduct proceedings and provide campus community-wide prevention educational programming related to campus sexual violence, domestic violence, dating violence and stalking.

SOURCE: 20 U.S.C. § 1092(f).

Interplay Between Title IX and the Campus SaVE Act

Title IX

SaVE Act



RESPONSIBLE EMPLOYEES

WHO IS A “RESPONSIBLE EMPLOYEE”?

A Responsible Employee includes any employee:

Who has the authority to take action to redress sexual violence

OR

Who has been given the duty of reporting incidents of sexual violence or any other misconduct by students or employees to the Title IX Coordinator or other appropriate University officials

OR

Whom a student could reasonably believe has this authority or duty

SOURCE: Revised Sexual Harassment Guidance: Harassment of Students by School Employee, Other Students, or Third Parties, January 18, 2001, Dep’t of Educ. Office of Civil Rights, available at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>.

THE RESPONSIBLE EMPLOYEE: Liability Standards

Office of Civil Rights

*Known or Reasonably
Should Have Known*

SOURCE: *Revised Sexual Harassment Guidance: Harassment of Students by School Employee, Other Students, or Third Parties*, January 18, 2001, Office of Civil Rights of the Department of Education, available at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

Courts

Actual Notice

SOURCES: *Gebser v. Lago Vista Ind. Sch. Dist.*, 524 U.S. 274, 290 (1998), *Davis v. Monroe Cnty Bd. of Educ.*, 526 U.S. 629, 642 (1999); see also *Wylar v. Conn. State Univ. Sys.*, No. 3:12-cv-0097 (RNC), 2015 WL 1456750 at *4 (D. Conn. Mar. 30, 2015); *Matthews v. Nwanko*, 36 F. Supp. 3d 718, 722-23 (N.D. Miss. 2014)

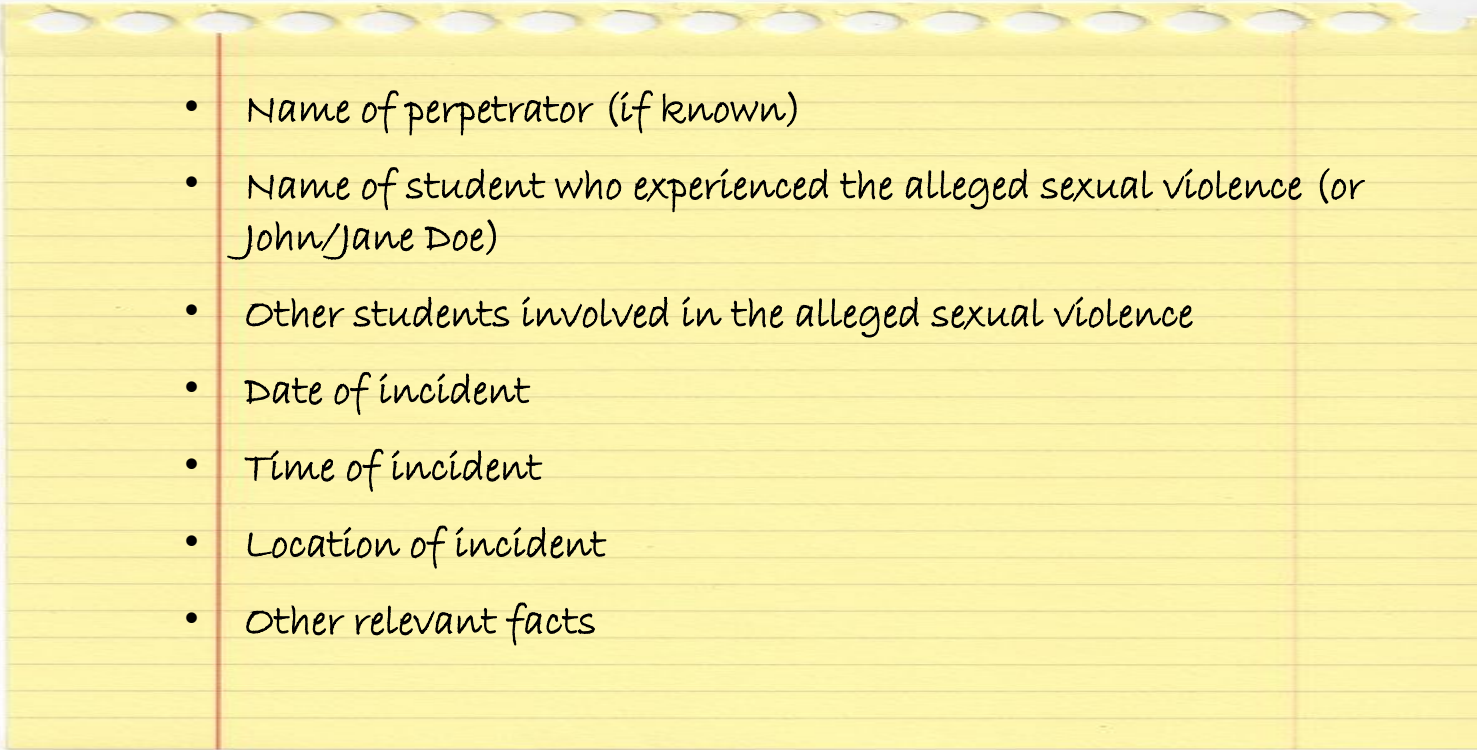
RESPONSIBLE EMPLOYEE EXEMPTIONS

- Campus mental-health counselors
- Pastoral counselors
- Social workers
- Psychologists
- Health center employees
- Any other person with a professional license requiring confidentiality, or who is supervised by such a person, to report, without the student's consent, incidents of sexual violence to the school in a way that identifies the student

SOURCE: April 29, 2014 Dear Colleague Letter, Dep't of Educ. Office of Civil Rights.

What Information is the Responsible Employee Obligated to Report?

- All relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and to resolve the situation, including:

- 
- Name of perpetrator (if known)
 - Name of student who experienced the alleged sexual violence (or John/Jane Doe)
 - Other students involved in the alleged sexual violence
 - Date of incident
 - Time of incident
 - Location of incident
 - Other relevant facts

SOURCE: April 29, 2014 Dear Colleague Letter, Dep't of Educ. Office of Civil Rights.

What should a responsible employee tell a student who discloses an incident of sexual violence?

- **Before** a student reports information that he or she wants to keep confidential, a responsible employee should ensure that the student understands:

1	2	3
The employee's obligation to submit his or her report to the Title IX coordinator or other appropriate school officials.	The student's option to request that the school maintain his or her confidentiality throughout the investigation.	The student's ability to share the information confidentially with counseling, advocacy, health, mental health or sexual-assault-related services.

SOURCE: April 29, 2014 Dear Colleague Letter, Dep't of Educ. Office of Civil Rights.

CONFIDENTIALITY

TITLE IX REPORTING: Confidentiality Considerations

CONFIDENTIAL



TITLE IX REPORTING: Confidentiality Considerations

What should a Title IX coordinator or other authorized official respond to a victim's request that his or name not be disclosed to the alleged perpetrator?

“The school should inform the student that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator ... ”



SOURCE: April 29, 2014 Dear Colleague Letter, Dep't of Educ. Office of Civil Rights.

TITLE IX REPORTING: Evaluating Requests for Confidentiality

**Increased Risk of
Additional Acts of Sexual
Violence by the Alleged
Perpetrator**

**Weapon-Involved
Incident**

Physical Evidence



Security Cameras

Age of Victim

**Increased Risk of Future
Acts of Sexual Violence
Under Similar
Circumstances**

**Evidence of Past
Sexual Misconduct**

TITLE IX REPORTING: Confidentiality & FERPA



How would an institution balance the alleged victim's right to confidentiality against the alleged perpetrator's right under FERPA to request to inspect and review information about the allegations asserted against him or her when the information is maintained by the school as an education record?

34 CFR § 99.12. What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.

TITLE IX GRIEVANCE PROCEDURES

TITLE IX GRIEVANCE PROCEDURES:

Purpose & General Requirements

PURPOSE: To provide an institution with a mechanism for discovering incidents of discrimination or harassment as early as possible and for effectively correcting individual and systemic problems.

- Must be applicable to complaints filed by students or on their behalf alleging sexual violence carried out by employees, other students or third parties.
- Existence of procedures must be communicated to students, parents of elementary and secondary students, and employees, including where the complaints can be filed.
- Must provide for adequate, reliable and impartial investigation of complaints, including the opportunity for both the complainant and alleged perpetrator to present witnesses and evidence.
- Must be interpreted consistently with any federally guaranteed due process rights; however, a school should ensure that steps to accord any due process rights do not restrict or unnecessarily delay the protections provided by Title IX to the complainant.
- Need not be separate from general student discipline proceedings that meet the Title IX requirement of affording a complainant a prompt and equitable resolution, including applying the preponderance of the evidence standard of review.
- May vary depending on the nature of the allegation; the age of the student or students involved; the size and administrative structure of the school, state or local legal requirements; and what it has learned from past experiences.

TITLE IX GRIEVANCE PROCEDURES: Coordinating Compliance

1st

- The Title IX coordinator should work with the recipient to help make sure that the grievance procedures are written in language appropriate for the age of the audience (such as elementary, middle school, high school or postsecondary students), and that they are easily understood and widely disseminated.

2nd

- The Title IX coordinator should review the grievance procedures to help determine whether they incorporate all of the elements required for the prompt and equitable resolution of student and employee complaints under Title IX, consistent with the Title IX regulatory requirement and OCR guidance.

3rd

- The Title IX coordinator should communicate with students, parents or guardians, and school employees to help them understand the recipient's grievance procedures; train employees and students about how Title IX protects against sex discrimination; and provide consultation and information regarding Title IX requirements to potential complainants.

4th

- The Title IX coordinator is responsible for coordinating the grievance process and making certain that individual complaints are handled properly. This coordination responsibility may include informing all parties regarding the process, notifying all parties regarding grievance decisions and of the right to and procedures for appeal, if any; monitoring compliance with all of the requirements and timelines specified in the grievance procedures; and maintaining grievance and compliance records and files.

5th

- The Title IX coordinator should work with the recipient to help ensure that its grievance procedures are accessible to English language learners and students with disabilities.

SOURCE: April 24, 2015 Dear Colleague Letter, Dep't of Educ. Office of Civil Rights.

TITLE IX GRIEVANCE PROCEDURES:

Key Elements

- ✓ A statement of the school's jurisdiction over Title IX complaints
- ✓ Adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment
- ✓ Reporting policies and protocols, including provisions for confidential reporting
- ✓ Identification of the employee or employees responsible for evaluating requests for confidentiality
- ✓ Notice that Title IX prohibits retaliation
- ✓ Notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously
- ✓ Notice of available interim measures that may be taken to protect the student in the educational setting
- ✓ The evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint
- ✓ Notice of potential remedies for students
- ✓ Notice of potential sanctions against perpetrators
- ✓ Sources of counseling, advocacy and support

SOURCE: April 29, 2014 Dear Colleague Letter, Dep't of Educ. Office of Civil Rights.

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