

Using Title IX As a Legal Tool to Address Campus Sexual Assault: A Brief Primer

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AGENDA

- The Problem
- Title IX
- Changes made by Trump Administration
- Clery Act
- California Law
- Questions

Sexual Violence on College Campuses by the Numbers

- **19% of women** will be sexually assaulted during their time at college, **5-6% of men** will experience sexual assault during college
- College women are **3x more at risk** of being a victim of sexual violence than the average woman
- **84%** of female survivors report being sexually assaulted during their first four semesters on campus (the "red zone")
- **13% of women** report being stalked during their time in college
- **43% of dating college women** experienced violent and abusive dating relationships
- Only **12%** of college student survivors report assault to the police

Breaking Down Title IX

- Title IX is a Federal law that prohibits sex discrimination in any school receiving federal funds (includes a majority of colleges)
 - Has been broadly interpreted to protect student victims of sexual harassment and violence
- Provides students with a civil right against sex discrimination in education
 - Applies to all students regardless of gender identity
- Schools must have established procedures for handling complaints, investigations, and discipline actions relating to sexual discrimination, harassment, and violence

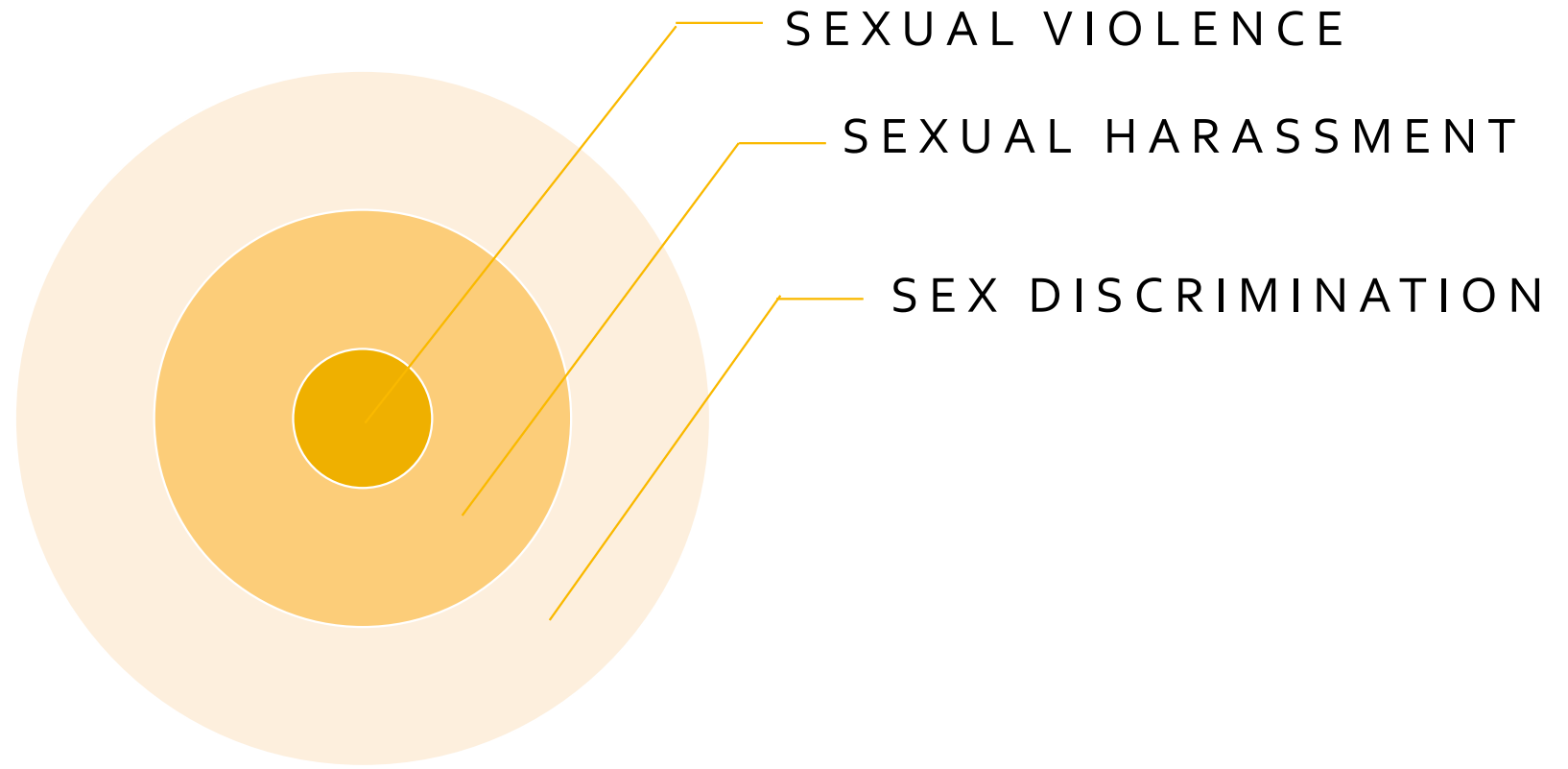
Requirements for Colleges & Universities under Title IX

- Under Title IX, colleges must:
 - **Provide a notice of** non-discrimination
 - **Have a Title IX Coordinator to handle complaints**
 - **Act** to ensure your campus is not a hostile environment
 - Promptly **investigate and respond** to complaints of sexual harassment or violence
 - **Not retaliate** against a student for filing a complaint

Title IX Enforcement

- The Department of Education's Office for Civil Rights (OCR) enforces Title IX
 - Regulations
 - Guidance (1997, 2001)
 - Dear Colleague Letter (2011, 2017)
- Filing an OCR Complaint
 - Anyone can file
 - 180 days from last act of discrimination
 - Online at <http://www.ed.gov/about/offices/list/ocr/complaintintro.html> or mail/fax
- OCR Investigation
 - OCR evaluates the complaint
 - OCR investigates the complaint
 - Written resolution
 - Appeal
 - Lawsuit (can also be filed absent an OCR complaint)

Title IX Lawsuit



Two main SCOTUS cases regarding a private right of action:

- Gebser v. Lago Vista Independent School District*
- Davis v. Monroe County Board of Education*

Title IX Lawsuit

- School districts are liable for student-on-student sexual harassment, and accordingly teen dating violence, when:
 - 1) A student has been sexually harassed,
 - 2) The school has actual knowledge of the harassment,
 - 3) The harassment was severe, pervasive, and objectively offensive,
 - 4) The harassment caused the student to be deprived of access to educational opportunities or benefits, and
 - 5) The school is deliberately indifferent to the harassment



Title IX Lawsuit

- School liability for sexual assault is based on the “deliberate indifference” standard, which can be found in two circumstances:
 - 1) If a school district fails to affirmatively act to protect its students
 - 2) If a school district acts in a way that is ineffective or inadequate in protecting its students, even though it knows or reasonably should know that its actions are ineffective or inadequate

Title IX Remedies

- Compensatory damages
 - but not punitive damages
- Attorneys' fees
- Declaratory and injunctive relief
 - Change in policies

"Dear Colleague" Letter and Title IX Q & A

- Obama Administration:
 - In 2011, Dept. of Ed. published a "Dear Colleague Letter" and Q & A (2014) that outlined the requirements related to Title IX and sexual harassment and violence at schools
 - The Obama era policies provided many protections for students accused of sexual assault
- Secretary DeVos withdrew both documents
 - The main reason for the withdrawal is to usher in a policy that raises the standard of proof for sexual violence complaints
 - DeVos also scrapped the 60-day requirement for investigating complaints to a time frame that is "reasonably prompt"
 - Secretary DeVos cited that the Obama Administration's procedures on sexual violence on college campuses were unfair and put "improper pressure" on universities

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-title-ix-201709.pdf>

<https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

Notice of Proposed Rulemaking (NPRM)

- The proposed regulations
 - Severely narrow the definition of sexual harassment
 - Mandate the dismissal of complaints that do not meet the stricter standard
 - Require schools to ignore harassment that occurs off-campus or online
 - Require that colleges and graduate schools conduct a “live hearing” in Title IX adjudications, including cross-examination of parties
 - Allow schools to facilitate informal resolution, like mediation
 - Effectively require that a school use a heightened evidence standard
 - Impose a strict “actual” notice requirement
 - Restrict the grounds on which a complainant may file an appeal if a sanction award when there is a finding of responsibility

Title IX "Post De Vos"

- **Title IX still applies!**
 - New rules not yet finalized
- But colleges can now adopt a higher standard of proof in investigating sexual assault complaints ("clear and convincing evidence")
 - Colleges can also keep the preponderance of the evidence standard should they so choose (most schools thus far have done so)
 - Critics say that this change in the standard of proof will weaken protections for student survivors

Students' Rights under the Clery Act

- The Clery Act requires colleges to report crimes that occur on campuses and school safety policies
 - Also requires colleges to disclose educational programming, campus disciplinary process, and victim rights regarding sexual violence complaints
- Act requires that schools must inform victims of their reporting options
- Colleges receiving federal funding must comply with both Title IX and the Clery Act

<https://www.knowyourix.org/college-resources/title-ix/>
<https://clerycenter.org/policy-resources/the-clery-act/>

The Law in California

- **CA Education Code § 220:** prohibition of gender discrimination in schools that receive or benefit from state financial assistance or enroll students who receive state student financial aid
 - Consistent with Title IX
- **Student Safety and Violence Prevention Act of 2000:** expanded the prohibition of discrimination to include actual or perceived sexual orientation and gender
 - A collection of several CA statutes and regulations

Sex Equity in Education Act

- **CA Education Code §§ 221.5- 231.5**
- Expands rights given to students based on the Title IX requirements and gender equity laws
- Creates new requirements for Title IX Coordinators
- Requires a uniform complaint procedure among California schools in regards to Title IX issues

CA Affirmative Consent Bill

- **SB 967: Consent** (Yes Means Yes)
- Highlights the concept that both parties must agree to sexual conduct, either through clear, verbal communication, or nonverbal cues or gestures
- Requires schools receiving state financial aid to uphold an **affirmative consent standard** in disciplinary hearings
 - Also requires institutions to educate students about the affirmative consent standard
- This affirmative consent legislation was the first of its kind and is stronger than Federal law

SB 493 (Jackson) Education: Sex Equity

- This bill would essentially codify Title IX protections that will be rolled back by the proposed rules
- A version of this bill was previously introduced in the 2017-2018 legislative session, but was vetoed by Governor Brown (SB 169 [Jackson & de León] Education: Sex Equity)
- SB 493 would require postsecondary schools to:
 - Disseminate a notice of nondiscrimination and comply with other notice and posting requirements
 - Designate at least one employee to coordinate efforts to comply with and carry out its responsibilities under the section
 - Adopt rules and procedures to comply both with Title IX and the section, including
 - Prioritizing student safety
 - Taking reasonable steps to respond to sex discrimination, including discrimination that takes place off campus
 - Adopt and publish grievance procedures that provide for prompt and equitable resolution of student sexual harassment complaints

Thank you!

- Any questions?