

# Title IX and Campus Sexual Assault

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# AGENDA

- The Problem
- Title IX
- Changes made by Trump Administration
- Clery Act
- California Law
- LA Community College District
- 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 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 gender 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

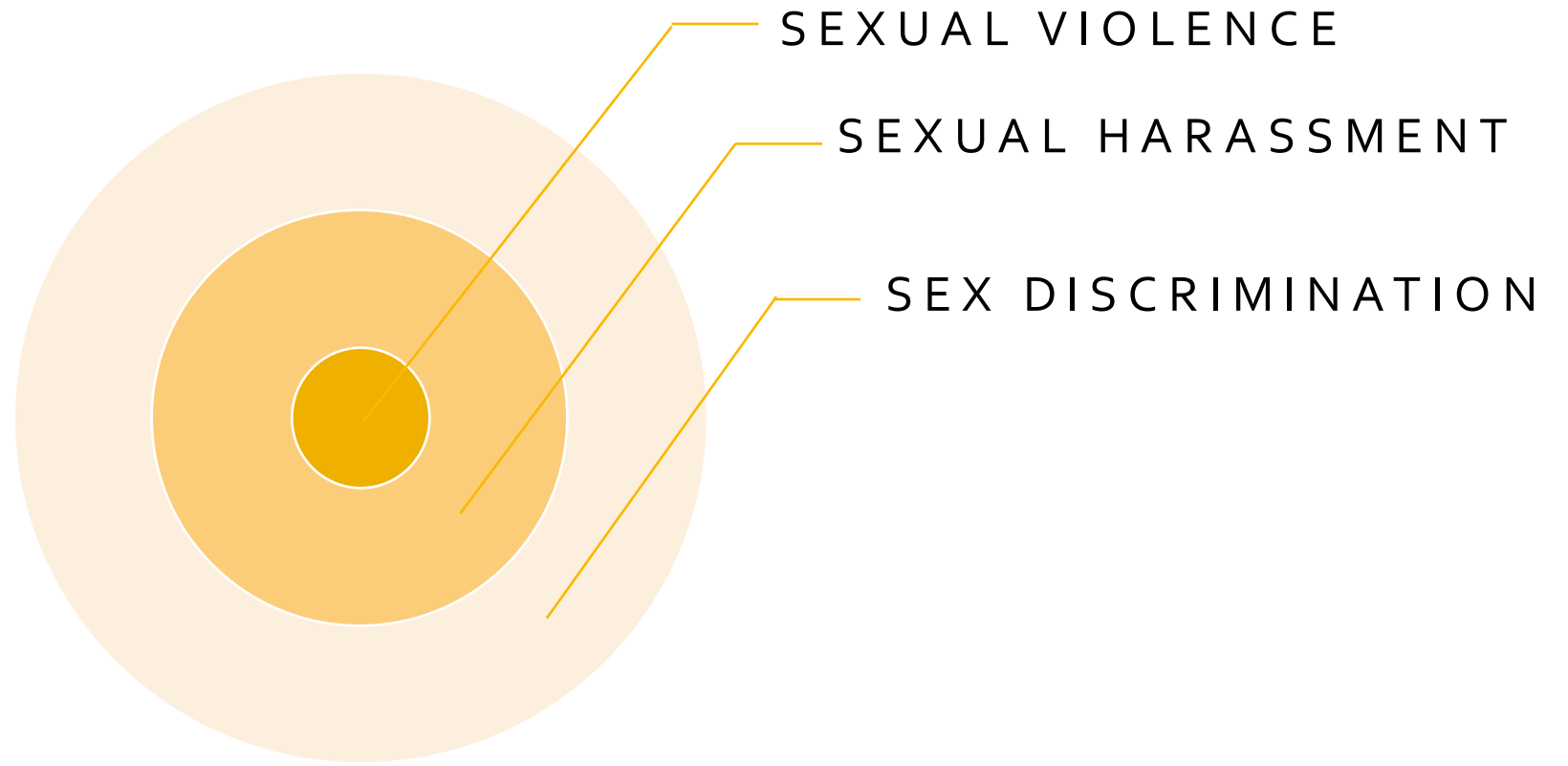
## Requirements for Colleges & Universities under Title IX

- 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>

# Title IX "Post De Vos"

- **Title IX still applies!**
  - New guidance not yet in place
- 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





# LA Community College District's Title IX Policies

# Definitions

- **Sexual Assault:** when one person is forced or coerced into participating in a sexual act to which or he she has not freely consented
- **Domestic Violence:** a pattern of abusive behaviors used to establish power and control over an intimate partner often leading to the threat or use of violence
- **Stalking:** willful, malicious, and repeated following or harassment of another person and credible threats made with the intent to cause that person to reasonably fear for their safety or the safety of their immediate family

# Reporting Sexual Assaults and Violence

## Options:

- Contact the Title IX Coordinator of your community college
- Talk to someone confidentially or online
- File a police report or LACCD report
- LACCD has a system set in place to file and follow-up on reports of sexual violence and misconduct

# Resources on Prevention and Bystander Intervention

- Develop and practice safe habits such as
  - Telling someone where you are going and always have a way to get home
  - Know your limits and observe them when using intoxicants
  - Use a buddy system
  - Walk with others after dark
  - Have your keys ready in-hand before you leave a safe place and as you approach your car
- Studies show that most people are unlikely to help others in certain situations
- Bystanders are less likely to step up to help in certain situations if there are several people present, if the situation is too ambiguous, or they are embarrassed to help out.

# Structure of a Title IX Complaint with LACCD

- Submit complaint
- Notice to both parties
- Investigation (with accommodations while ongoing)
- Report sent to college President
  - Optional: contact both parties who can talk to decision maker
- Make a decision (preponderance of evidence)
- Appeal period
- Discipline
- Timeline: biggest change since federal changes



- QUESTIONS?