On April 29, 2014, the Office for Civil Rights of the Department of Education issued “Questions and Answers on Title IX and Sexual Violence,” a 46-page document offering clarification about the requirements in the April 4, 2011 Dear Colleague Letter and the 2001 Revised Sexual Harassment Guidance. The summary below boils down the main point of each Q&A. The topic titles and numbers correspond to OCR’s document.

A. **Obligation to respond to sexual violence**

1. Sexual violence refers to acts perpetrated against a person’s will. It can be committed by anyone against anyone (students, employees, third-parties), and includes rape, sexual assault, sexual battery, etc.

2. If alleged conduct is sufficiently serious to limit or deny a student’s ability to participate in or benefit from an educational program (creates a hostile environment), and the school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and as appropriate, remedy its effects, then the school violates the student’s rights under Title IX.

3. OCR considers a lot of factors to determine whether a hostile environment exists—a single extreme incident or a repetitive series of incidents may constitute a hostile environment.

4. OCR considers that a school has notice of peer sexual violence if a reasonable employee knew, or in the exercise of reasonable care should have known about the incident. Notice can come from others besides victims, and may even come indirectly from the media or elsewhere. Pervasive, well-known sexual violence may lead OCR to determine the institution “should have known.”

5. A school’s basic responsibilities to address peer sexual violence are to take immediate and appropriate steps to investigate, and if a hostile environment is discovered, take prompt and effective steps to end the sexual violence, eliminate the hostile environment, prevents its recurrence, and remedy effects. This includes interim measures before any final outcome and notifying complainants of all available resources. A school’s inaction or delay in response to allegations may be the cause of a student’s hostile environment.

6. Although the DCL focuses on peer sexual violence, Title IX protects students from sexual harassment by employees.

B. **Students Protected by Title IX**

1. Title IX protects all students from sexual violence, regardless of race, national origin, disability, part-time/full-time status, sexual orientation, gender identity.
2. Complaints in which the complainant and accused are the same sex should be handled with the same procedures and standards as complaints where the parties are of the opposite sex.

3. Consider unique issues that may arise with respect to students with disabilities who experience sexual violence, including the accessibility of reporting forms, information, and training, as well as any additional services and support that may be required.

4. Title IX protects all students, including international students and undocumented students. Consider the accessibility of forms, information, and training to English language learners. Institutions are encouraged to notify victims about the [U and T nonimmigrant statuses](https://www.ice.gov/), which are available to nonimmigrant victims of certain crimes. Be mindful of any changes in course load that affect student visa status.

5. When an alleged perpetrator is not affiliated with a school, an institution must take steps to provide appropriate and available remedies and resources to complainants. Action against the perpetrator may be limited, but the institution should report the incident to the accused individual’s school and encourage that school to take action. If the accused is a member of a team or organization that visits campus, the institution may determine that this person is not welcome back. The complainant should be notified of options to participate in the process at the accused individual’s institution and the option to file with local law enforcement.

C. **Title IX Procedural Requirements**

1. You must have a notice of nondiscrimination that you disseminate broadly. You must have at least one employee to coordinate Title IX compliance efforts and responsibilities. You must adopt and publish grievance procedures to promptly and equitably resolve student and employee complaints of sex discrimination.

2. The nondiscrimination notice must affirmatively state that in accordance with Title IX the school does not discriminate on the basis of sex in its education programs and activities. The notice must reference the Title IX Coordinator and OCR as places for questions, and notify all members of the community of the Title IX coordinator’s name or title, office address, telephone number, and email address. SUNY has provided sample compliant notices consistent with the [System statement](https://www.suny.edu/about/suny-system-statement/).

3. The Title IX Coordinator’s responsibilities are overseeing the response to Title IX reports and complaints and identifying and addressing patterns or systemic problems. This person must be trained and up to date on Title IX and campus policies and procedures, and must be informed about any Title IX complaints on campus reported to responsible employees. The Coordinator might also have additional responsibilities for which s/he should receive training, such as providing educational programs/training, conducting investigations, determining sanctions, etc.

4. There are no rules about who can and cannot be the Title IX coordinator. Avoid conflicts of interest.

5. There are specific elements that should be included in grievance procedures. The items listed in this guidance are very similar to those listed in recent resolution agreements, including the [SUNY resolution agreement](https://www.suny.edu/about/suny-system-statement/).
6. Institutions are not required to use separate grievance procedures for sexual violence. So long as the procedures used for sexual violence complaints meet Title IX requirements, it is permitted to use existing student disciplinary procedures or general discrimination complaint procedures.

D. **Responsible Employees and Reporting**
1. Responsible employees are required to report incidents of sexual violence to the Title IX coordinator. Campuses are obligated to respond to reports about which a responsible employee knew or should have known.

2. A responsible employee includes any employee who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents to the Title IX coordinator or designee; or whom a student could reasonably believe has this authority or duty. Campuses must make clear to the campus community which staff members are responsible employees.

3. Responsible employees must report all known relevant details about the alleged sexual violence to the Title IX coordinator or designee, including names of anyone involved or present, date, time, and location. Train responsible employees on the campus sexual violence policies and procedures.

4. Responsible employees should tell students who disclose an incident of sexual violence about (1) the employee’s obligation to report to the Title IX coordinator, (2) confidentiality requests, and (3) confidential resources available.

5. Institutions must individually make the determination about whether resident assistant/advisors are responsible employees under Title IX, because the duties and responsibilities vary among schools. Consider whether students reasonably believe RAs have the duty and authority to redress misconduct or report it to school officials, or whether students have been informed that RAs do not have that responsibility and are available for confidential discussions. Also consider whether RA’s are required to report other student policy violations, such as drug and alcohol violations. RA’s who cannot keep confidentiality should explain that at the outset to students, and also make them aware of the remedies and resources available to them whether or not they file a complaint.

E. **Confidentiality**
1. OCR strongly supports a student’s interest in confidentiality in sexual violence cases. Confidentiality requests will only be overridden to meet Title IX obligations, and in that case shared with a limited number of necessary, “responsible employees.” All information will be kept securely. Even if a student does not ask for confidentiality, these matters are private and should only be shared with individuals responsible for handling the institution’s response.
   a. If a student asks that his or her name not be revealed to the accused, or that the campus not investigate, the campus should inform the student that honoring the request may limit its ability to respond fully to the incident. Inform the complainant that retaliation is prohibited.
   b. If a student still insists the name is not disclosed or the campus not investigate, determine whether that request can be honored while still providing a safe and nondiscriminatory environment for all students, including the complainant. The Title IX Coordinator or designee may be best situated to evaluate these requests. Campuses should identify in policies who is responsible for evaluating confidentiality requests.
c. If the campus can respect the confidentiality request, still take all reasonable steps to respond how you can—offering reasonable and available interim remedies (including academic support, medical and mental health services, etc); increased monitoring, supervision or security; training and education programs; conducting climate surveys; publicizing relevant policies to the campus community. Campuses may be able to counsel the accused individual without revealing the complainant’s identity.

2. When evaluating a request for confidentiality, consider whether there is a continuing threat to the campus community – is the accused individual a repeat offender, or a person with a criminal past? Was a weapon used? Is there other available evidence, such as camera surveillance?
   a. If the campus determines it must investigate and pursue discipline against the victim’s wishes, the campus should inform the student before disclosing his or her identity to the accused individual. Campuses should respect a student’s request that the campus notify the accused individual that it is the campus, not the victim, who wants to move forward with an investigation and discipline.
   b. If the balance of factors compels the campus to respect the confidentiality request (no weapon, no history of sexual violence or threats to repeat, etc), then the campus should still take all reasonable steps to respond consistent with that request, including interim measures, training, etc.
   c. Students who initially request confidentiality might later change their minds.

3. Anyone with a professional license requiring confidentiality who is acting in that capacity or who is supervised by such a person is not required to report to the Title IX Coordinator. OCR refers to advocates or counselors who do not have a professional license mandating confidentiality as “non-professional counselors.” Non-professional counselors or advocates (in health centers, women’s centers, victim advocate offices, on-campus sexual assault centers, peer counseling) are also not required to report a victim’s name and information to the Title IX Coordinator. All individuals supporting or counseling students should inform them of available rights, remedies, and resources, and notify them that retaliation is prohibited.
   a. In order to identify patterns or systemic problems, non-professional counselors or advocates should report aggregate data about sexual violence incidents, reporting only general information, such as nature, date, time, and general location of an incident—not personally identifiable information. Consult with students about what information should be withheld to protect their identities.

4. Campuses are not required to investigate information shared by survivors during public awareness events such as Take Back the Night. Provide information at these events on Title IX, campus policies and procedures, remedies, resources, and reporting options. Respond to any disclosures by reviewing policies, creating educational programs, and conducting climate surveys.

F. Investigations and Hearings
1. A Title IX investigation will vary depending on a lot of factors, including the size and structure of the institution and nature of the allegation. “Investigation” means the process used to resolve complaints, including fact-finding, hearing and decision-making processes to determine (1) whether or not the conduct occurred and (2) what steps the campus will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence.
a. Investigations must be adequate, reliable, impartial, and prompt. Both parties must have the opportunity to present witnesses and other evidence. Hearings aren’t required. Any trained and experienced individual may conduct an investigation; it need not be the Title IX Coordinator.

b. Coordinate with any other ongoing internal or external investigations, if possible. Consider whether information can be shared to eliminate witnesses giving multiple statements to different offices.

c. An investigation may include conducting interviews and reviewing relevant documents from law enforcement and applicable student and personnel files.

d. The guidance here lists requirements from the DCL that we are well familiar with, including equal opportunities for the parties, including access to advisors, presenting evidence and witnesses, and appeals. Parties must be notified in writing about the outcome. Use the preponderance of the evidence standard (more likely than not) in these cases.

2. Criminal investigations are different from campus Title IX investigations in a lot of ways. Title IX investigations are not discretionary the way that criminal ones are—schools have an obligation to promptly resolve complaints. Campuses are not required to report alleged incidents to law enforcement, but should notify complainants of their right to file a criminal complaint.

3. Campuses cannot delay their own process until a criminal proceeding’s final outcome. There may be a temporary delay in fact-finding while police are gathering evidence, but the campus must take interim measures to protect the complainant. Proactively work with your campus police, local law enforcement, and prosecutor’s office to learn about when the evidence gathering stage of the criminal investigation is complete.

4. Campuses must process all complaints of sexual violence, even those that occur off-campus. Campuses must consider the effects of the off-campus misconduct when evaluating whether there is a hostile environment on campus or in an off-campus education program or activity. Campuses must protect the community the same way it would had the sexual violence occurred on campus.

5. OCR does not require a campus to allow a complainant to be present for the entire hearing, if it holds a hearing. But if one party can be present for the entirety, both must be allowed to be present for the entirety. Campuses must make reasonable alternative arrangements available if requested.

6. OCR does not require cross-examination, but any opportunity afforded to cross-examine witnesses must be available to both parties. OCR strongly discourages allowing parties to personally question each other in cases of alleged sexual violence. Instead, OCR suggests screening the parties’ questions through a third party such as the hearing panel.

7. Questions about the complainant’s sexual history with anyone other than the accused should not be permitted. Past consent between two parties does not imply present or future consent.

8. OCR’s 60-day timeframe for typical cases referenced in the DCL includes everything from conducting fact-finding investigations to determining actions such as sanctions and remedies for the complainant. The timeframe does not include appeals, but that process should not be
unreasonably long. OCR understands that each case is unique in complexity and severity, and 60 days is not a hard rule. It’s important to give the parties periodic status updates throughout the process if the campus departs from the timeframes designated in the grievance procedures.

G. **Interim Measures**

1. Reasonable and available interim measures should be offered and implemented before the final outcome of an investigation (that’s what makes them “interim”). Some interim measures are appropriate and must be taken even when a campus is respecting a confidentiality request, including offering academic support, medical and mental health services, changing housing arrangements, and providing increased security where the misconduct occurred.

2. Interim measures will vary based on the facts and circumstances of the situation. Campuses should minimize the burden on the complainant while respecting the accused individual’s rights. Communicating with both parties about academic or housing changes will help ensure balance and fairness in those determinations.

3. Counseling is not considered an interim measure provided by the campus if it requires a fee.

H. **Remedies and Notice of Outcome**

1. Remedies in cases of peer sexual violence can vary based on facts and circumstances. The guidance lists examples of remedies for complainants, including disciplinary action against the accused, providing services (medical, counseling, and academic support) to the complainant, and changing living arrangements or course registration to keep the parties apart. Examples of remedies for the broader student population include training, campus climate assessments, disseminating materials on sexual violence, and issuing policy statements prohibiting sexual violence.

2. If the accused is found responsible and the parties share the same major, with limited course offerings, they may be difficult to keep apart; campuses should consider alternative arrangements that minimize the burden on the complainant, such as allowing the accused individual to take courses online or through independent study.

3. Notice of outcome to the complainant must include whether or not the decision-maker found that the alleged conduct occurred, any individual remedies offered or provided to him or her, and any sanctions imposed on the accused that directly relate to the complainant, and what other steps the campus has taken to eliminate the hostile environment. Campuses should not notify the accused individual about remedies offered or provided to the complainant. Sanctions that directly relate to the complainant include but are not limited to no-contact orders, suspension, expulsion, and change in accused individual’s housing or courses. **Clery requires (and FERPA allows)** campuses to inform the complainant of the institution’s final determination and any disciplinary sanctions imposed in sexual violence cases—not just those that directly relate to the complainant.

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1 OCR does not mention the due process rights of the accused individual, but public institutions and others that guarantee due process by policy certainly want to consider due process as these decisions are made.
I. **Appeals**
   1. Title IX does not require an appeals process. OCR recommends having an appeals process for procedural errors, the introduction of previously unavailable evidence that could significantly impact the outcome of a case, or where a sanction is substantially disproportionate to the findings. If campuses allow one party to appeal, they must allow both parties to appeal. The design of the appeals process is up to the campus.
   
   2. The grounds for appeals must be the same for both parties—if one party can appeal for a sanction being too severe, the other party can appeal for a sanction being too light.

J. **Title IX Training, Education and Prevention**
   1. Campuses must ensure that employees know how to respond to reports of sexual violence and that responsible employees know their obligation to report. Provide training to all employees likely to witness or receive reports, including faculty, law enforcement, administrators, counselors, attorneys, coaches, health personnel, and resident advisors. Training should include practical information about identifying, preventing, and reporting sexual violence. Train responsible employees to inform students about their reporting obligation, available confidentiality, as well as available rights, remedies, and services. Campuses can determine the frequency, length, and audience of the training.
   
   2. Train responsible employees to report incidents of sexual harassment or sexual violence to the Title IX Coordinator or designee. The employees do not need to determine whether the harassment occurred or whether a hostile environment was created before reporting to the Title IX Coordinator. That is the Coordinator’s job, and his or her training puts the Coordinator in a better position to make that determination and respond.
   
   3. People involved in implementing the grievance procedures must have training or experience in handling sexual violence complaints and using the campus grievance procedures. Training should include how to interview victims, identifying sexual violence, information on consent (including when drugs and alcohol are involved), evaluating evidence impartially, determining credibility, how to conduct an investigation, and cultural awareness. Title IX guidance and campus policies are bound to change, so campuses should provide regular training.
   
   4. Campuses should provide training for students. The guidance lays out a list of topics that OCR recommends campuses cover in student training, including definitions of sexual violence and consent, how the campus analyzes complaints, confidential resources, reporting options, relevant and applicable campus procedures and codes, bystander intervention, the role of alcohol and drugs, and the prohibition of retaliation. Campuses should put an emphasis on student safety and take efforts to ensure that alcohol or drug use do not chill reporting.

K. **Retaliation**
   1. Title IX protects against retaliation by institutions toward a complainant and retaliation by other students against the complainant or any other participant in the complaint process. Campuses should notify parties that retaliation is prohibited and explain how to report it. Complaints of retaliation should be addressed promptly.

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2 OCR does not mention retaliation against other participants in the process, but at SUNY we prohibit retaliation against any participant in the process, including the complainant, accused individual, and witnesses.
L. **First Amendment**
   1. There is a difference between free speech and harassment and bullying. Prohibiting discrimination does not limit First Amendment freedom of speech. Title IX also does not require or prohibit the use of any books or curricular materials.

M. **The Clery Act and the Violence Against Women Reauthorization Act of 2013**
   1. The [Clery Act](#) requires the disclosure of crime statistics and information about campus crime prevention programs and policies. The Clery Act requirements apply to crimes beyond those related to Title IX.

   2. The [Violence Against Women Reauthorization Act](#) has no effect on campuses’ obligations under Title IX or the DCL. The Act does not relieve campuses of Title IX obligations.

N. **Further Federal Guidance**
   1. Anyone with questions about the guidance or Title IX should contact their [OCR regional office](#). If you wish to file a complaint you can use the [online complaint form](#) or send your regional OCR office a letter.

   2. OCR’s policy guidance is available on the [OCR web page](#). The guidance also cites some resources from the Departments of Education and Justice that may be helpful in preventing and responding to sexual violence.