

## Implementation in Secondary Schools

**O**ne in three adolescents in the United States is a victim of physical, sexual, emotional, or verbal abuse from a dating partner. Minors under the age of 18 who are victims of abusive behavior may have less access to legal remedies and services than adults, and often rely on adults to create and enforce safe environments. When dating abuse or sexual assault occurs amongst students, a student's ability to learn and focus may be disrupted, and a school is responsible for maintaining a safe and healthy environment that fosters growth and learning.

Title IX of the Education Amendments of 1972 ("Title IX") is a Federal civil rights law prohibiting discrimination on the basis of sex in any federally funded education program or activity. Traditionally, this law has been interpreted to apply to women's sports teams and equal treatment in other educational programs. However, the law also is imperative when addressing sex-based harassment or violence at all federally funded educational institutions, including elementary, secondary and higher ed.<sup>1</sup> There are specific factors related to compliance depending on the public school setting where sexual harassment or sexual violence occurred. While public focus lately has been placed on better implementing Title IX at colleges and universities, very little has been dedicated to how the law should work in secondary schools.

### The Challenges

Secondary schools face specific challenges to implementing Title IX. In middle and high school, most students are minors and confidentiality or consent requirements play a role in student disclosure, discipline, accommodations, and mandatory reporting of child abuse. Also, secondary schools often exist in smaller communities – the average school size is significantly smaller compared to a college or university, and staff may also be community or family members of students. This size and permeability make insuring confidentiality more challenging, and may discourage disclosures of abuse. Additionally, the 'hostile environment' created by sexual violence that the school is liable for may be more likely to be the result of abuse perpetrated off campus than in the case of residential colleges and universities. This raises challenges of jurisdiction for a

Title IX investigator at secondary schools, much less than in higher education institutions.

Whereas secondary schools face difficult challenges to implementing Title IX, they must work to overcome to ensure not only compliance, but also to provide students with a welcoming and nondiscriminatory experience. Schools must respond and accommodate students who have been victims of dating abuse, and do so promptly.

Accommodations, which are required to be readily available and listed for students, can be arduous in secondary school settings because of the small amount of space and the connection students have on and off campus. The disciplinary action of expulsion, though not unreasonable for cases of sexual assault in secondary school, requires a higher threshold of school district approval because of a minor's right to education, and is less likely in secondary schools compared to colleges and universities. Complementing the challenge of providing accommodations in the smaller settings of secondary schools is the dual challenge of safety planning in these environments.

### Background

In 2011, the Office for Civil Rights in the Department of Education issued a Dear Colleague Letter (DCL) about student-on-student sexual harassment and sexual violence. The DCL explained the school's responsibility to respond to issues of sexual harassment and sexual violence against students in accordance with Title IX requirements<sup>2</sup>.

The OCR require that to prevent and resolve complaints of sexual violence, each school must:

1. Distribute a notice of nondiscrimination to all students, parents, employees, applicants for admission and employment, and anyone else affiliated with the school district.
2. Designate at least one employee to coordinate the school's efforts to comply with Title IX. The school should notify all those who receive the notice of nondiscrimination the name and contact info of the Title IX coordinator.
3. Adopt and publish grievance procedures, and provide it to all those who receive the notice of nondiscrimination. The coordinator must ensure that the grievances are in line with Title IX and the notice of nondiscrimination of the school.



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The notice of nondiscrimination must explain that the school does not discriminate on the basis of sex in its programs and activities, and that it is governed by Title IX.

The designated Title IX coordinator’s main responsibilities include managing the school’s responses to Title IX reports and complaints, as well as identifying new patterns or systemic problems that are revealed through investigations. Coordinators should be readily available to talk to a student experiencing dating abuse and harassment and let them know what their options are when reporting or not reporting incidents. Also, they should inform students of their options related to local law enforcement and that they do have the option to move forward with the police if they choose. A Title IX coordinator will likely be a mandated reporter at a secondary school and, if so, is obliged to report any cases of abuse against a minor.

A school’s grievance procedures must provide prompt and equitable resolution of student and employee complaints of sexual discrimination, including sexual violence<sup>3</sup>. Sexual violence and harassment can take different forms and it is imperative that the students understand not only how to ask for help, but also what will happen when they do. If an act of sexual violence has occurred against a student, the grievance should never involve mediation and OCR recommends that all grievance procedures expressly outline that an abused student will not be asked to attend mediation with their abuser.

To further explain the expectations of schools under Title IX, OCR released “Questions and Answers on Title IX and Sexual Violence,” (QASV) in April 2014. This guidance document provided recipients with information to assist them in meeting obligations and provided members of the public with information about their rights. Regarding sexual violence, a school violates a student’s rights under the following conditions: (1) the school’s conduct is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the reasonably believed to end the violence,

school’s educational program by creating a hostile environment; and (2) the school, upon notice, fails to take prompt and effective steps eliminate the hostile environment, prevent reoccurrence, and remedy its effects.

### Title IX and Dating Abuse

Title IX can be interpreted to include acts of dating abuse against all gender identities. Gender-based violence that includes verbal abuse or bullying of a sexual nature is a violation of Title IX. Due to high rates of bullying against LGBT students based on their sexual orientation, it is necessary that schools know this and take immediate action to end the sexual violence and harassment<sup>4</sup>.

Additionally, the DCL states school districts should be aware of possible retaliation by the abuser, as well as retaliation by peer groups in the close quarters of a secondary school. An entire school could feel the effects of an abusive relationship if appropriate steps are not taken to ensure the safety of the abused individual and their classmates.

### Accommodations

All minors in the United States have the right to public education. Relevantly, if an abusive situation happens at a secondary school between two students, and the abuse does not result in the abusive student’s expulsion, the school must weigh the rights to education of each student involved, as well as the capacity of the student perpetrating the abusive behaviors to create a hostile environment for other students.

The DCL clearly states survivors are not responsible for bearing the burden after abuse occurs, and a school must protect other students from repeated offenses. In 2011, a Missouri high school student and her family filed a lawsuit against her high school’s district officials after they refused to look into her rape allegations against another student. The young woman stated she was raped and the school’s lack of response led to her being raped again by the same student. While the case was ultimately settled, the young woman’s lawyer insisted that not only did the school

deny her claims, but it also made no steps to prevent future violence from happening, thus violating Title IX and her access to a safe and equal education experience<sup>5</sup>. Because of secondary schools student's right to education, it is more difficult for a school to expel an offending student than for a colleges and universities. The consequences of this higher threshold contribute to a secondary school's challenges to create a safe environment and provide adequate accommodations.

Additionally, safety planning in secondary schools is a challenge when buildings are small, or confidentiality about accessing certain offices within the building is nearly impossible. Regardless of what activity, class or school event an abused student might be attending, the school must look out for the well-being of an abused student, no matter what accommodations they have to arrange. The burden should never be on the student and a school should never forbid or prohibit a victim of sexual abuse or harassment from attending or participating in a school-related activity.

### Confidentiality

The complexities of middle and high schools receiving notice of sexual violence can also be heightened by the proximity of students and teachers throughout the day. While college and university students often have a higher degree of autonomy and move through campus, activities, and jobs relatively unsupervised, this is not the case for secondary school students. It is therefore much more likely an employee at a secondary school will overhear a conversation in the halls or after class, and without disclosure or agency of the student who has experienced the abuse, be required to put in motion an investigation. This investigation may compromise the survivor's confidentiality in the community, amongst school staff, and possibly among other students.

Although Title IX is complicated for school districts, students and communities to understand as it pertains to sex-based

discrimination and abuse in schools, it is extremely important in ensuring the safety and security of individual students and their classmates. Addressing the need for efficient Title IX implementation in secondary schools is much different when compared to colleges and universities, but the work and systems established at a younger age to prevent and end sex-based discrimination could contribute to less campus violence in the future.



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<sup>1</sup> Lhamon, Catherine E. *Questions and Answers on Title IX and Sexual Violence*. Washington: United States Department of Education, Apr. 2014. PDF.

<sup>2</sup> United States of America. Department of Education. Office for Civil Rights. Dear Colleague Letter. By Russlynn Ali. Department of Education, 4 Apr. 2011. Web. 18 Sept. 2014.

<sup>3</sup> Lhamon, Catherine E. *Questions and Answers on Title IX and Sexual Violence*. Washington: United States Department of Education, Apr. 2014. PDF.

<sup>4</sup> "Transgender and Gender Non-Conforming Students: Your Rights At School." (2012): 1-4. June 2012. Web. 19 Sept. 2014.

<sup>5</sup> "Republic School District Settles Suit with Former Student." Springfield News-Leader. Gannett, 20 Dec. 2011. Web. 17 Sept. 2014.