



AND
Your
College's
Responsibilities

TITLE IX
AND
SEXUAL ASSAULT



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students active for ending rape

WHAT IS TITLE IX?

Title IX of the Education Amendments of 1972 is a federal civil rights law that prohibits discrimination on the basis of sex in any education program or activity that receives federal funding.

Under Title IX, discrimination on the basis of sex can include sexual harassment, rape, and sexual assault. A college or university that receives federal funds may be held legally responsible when it *knows about* and *ignores* sexual harassment or assault in its programs or activities. The school can be held responsible in court whether the harassment is committed by a faculty member, staff, or a student. In some cases, the school must pay the victim money damages.

- Sexual harassment can qualify as discrimination under Title IX if it is “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.”¹ Courts have generally found that even a single instance of rape or sexual assault by another student meets this standard.

- To be held responsible, the college or university must have authority over the harasser and over the environment in which the harassment takes place.²

- According to the Supreme Court, a school becomes legally responsible when the school’s response to harassment “is clearly unreasonable in light of the known circumstances.”⁴

- The Supreme Court has ruled that a college or university receiving federal funding may have to pay damages to the victim of student-on-student sexual harassment or assault if the victim can show that the college acted with “*deliberate indifference* to known acts of harassment in its programs or activities.”⁵

TITLE IX STATES:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”³

HOW HAS TITLE IX BEEN APPLIED IN CAMPUS SEXUAL ASSAULT CASES?

In the past few years, survivors of sexual assault have successfully sued universities in both federal and state courts for indifference to known situations of harassment:

- In 2007 a federal appeals court ruled against the University of Georgia for recruiting, admitting, and neglecting to supervise a student athlete who later raped a fellow student. University administrators knew the athlete had harassed women at other colleges and had been removed from those schools.⁶ As part of the settlement in the case, the university paid the victim substantial damages, established an Office for Violence Prevention, and created a new Relationship and Sexual Violence policy.⁷

¹ *Davis v. Monroe County Bd. of Educ.*, 526 U.S. 633 (1999).

² *Davis*, 526 U.S. at 645.

³ 20 U.S.C. § 1681(a).

⁴ *Davis*, 526 U.S. at 648.

⁵ *Davis*, 526 U.S. at 629, 633.

⁶ The case is *Williams v. Board of Regents of University System of Georgia*, 477 F.3d 1282 (11th Cir. 2007).

⁷ Policy available at <http://www.uga.edu/ovp/policies.html>.

- A federal appeals court ruled in 2007 that the University of Colorado at Boulder (CU) could be sued under Title IX for rapes that took place in the context of its football recruiting program. The court held that the evidence in the case could indicate that the risk of rape during recruiting visits was so obvious that CU violated Title IX by ignoring this risk.⁸ CU settled the case for \$2.85 million in damages to the victims, hired new staff for the Office of Victim Assistance, and appointed an independent Title IX adviser.⁹
- At the University of North Carolina at Chapel Hill, two students received combined payments of \$455,000 after a federal appeals court ruled in 2007 that a coach's alleged harassment of female athletes could constitute a Title IX violation.¹⁰ Similarly, in 2008 a state appeals court found that the University of Washington could be liable under Title IX for a single instance of peer-on-peer sexual assault by a member of the football team.¹¹

Some states have laws that go farther than Title IX in protecting victims of assault:

- In 2007 the New Jersey Supreme Court, applying the New Jersey Law Against Discrimination, ruled that a school will be liable when it “knew or should have known” about student sexual harassment, but “failed to take action reasonably calculated to end the harassment.”¹²
- Other states have similar laws, including the Florida Education Equity Act, the Rhode Island Civil Rights Act of 1990, the Maine Human Rights Act, the Minnesota Human Rights Act, and the Washington Law Against Discrimination.

HOW CAN CAMPUS ACTIVISTS AGAINST SEXUAL ASSAULT USE TITLE IX?

In response to an incident of sexual harassment or assault:

- Insist that the administration respond to victims' needs and take action to protect students. Urge the college administration to respond appropriately so it can avoid the “deliberate indifference” that could render the school liable under Title IX.
- A college that already has deliberately ignored known harassment or assault on campus may be liable under Title IX. Consult an attorney with Title IX experience.

At the time of printing, the Civil Rights Act of 2008 is pending in Congress. This legislation would hold schools responsible if they “knew or should have known” of student harassment and did not exercise “reasonable care to prevent and promptly correct” it. If passed, this legislation would raise the standard for every school that receives federal funding.

In general:

- Urge school officials to adopt policies to prevent sexual assault on campus and to ensure that the school will be prepared to respond appropriately should an assault occur. Explain to administrators that adopting and vigorously implementing a comprehensive sexual assault policy can help the school comply with its legal obligations under Title IX.
- A strong sexual assault policy should include meaningful efforts at educating students about the dynamics of sexual assault, the effect it has on survivors, and the many factors that allow it to continue. A good policy should include student input, be available and understandable to students, be fair to victims and the accused, and provide crisis intervention assistance and prevention programs.¹³

⁸ The case is *Simpson v. University of Colorado Boulder*, 500 F.3d 1170 (10th Cir. 2007).

⁹ Information about the position of Title IX adviser available at <http://www.colorado.edu/news/r/3175d70014ab5cac1fd63f906fde98f4.html>.

¹⁰ The case is *Jennings v. University of North Carolina*, 482 F.3d 686 (4th Cir. 2007).

¹¹ The case is *S.S. v. Alexander*, 177 P.3d 724 (Wash. App. Div. 1 2008).

¹² *L.W. ex rel. L.G. v. Toms River Regional Sch. Bd. of Educ.*, 915 A.2d 535, 550 (N.J. 2007).

¹³ See Students Active for Ending Rape (SAFER), *What Makes a Good Sexual Assault Policy?* Available at <http://www.safercampus.org/goodpolicy.php>. See also *The Policies Database Project*, available at <http://www.safercampus.org/policies.php>.

FOR MORE INFORMATION ON TITLE IX AND SAFE SCHOOLS:

- Students Active for Ending Rape (SAFER), *Change Happens: A Guide to Reforming Your Campus Sexual Assault Policy* (2007). Information to obtain manual available at <http://safercampus.org/students.php>.
- Legal Momentum, *Legal Resource Kit: Sexual Harassment in the Schools* (2008), available at <http://www.legalmomentum.org/site/DocServer/sexualharassmentinschools2008.pdf?docID=1101>.
- American Constitution Society for Law and Policy, *Restoring Effective Protections for Students Against Sexual Harassment in Schools: Moving Beyond the Gebser and Davis Standards* (Jan 28, 2008), available at <http://www.acslaw.org/node/6068>.
- United States Department of Education, Office of Civil Rights, *OCR Case Processing Manual* (May 2008), available at <http://www.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.
- American Civil Liberties Union Women’s Rights Project, *Title IX—Gender Equity in Education*, <http://www.aclu.org/titleix>.
- Contact:

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As an alternative to enforcing their Title IX rights in court, students can also ask the Department of Education’s Office for Civil Rights (OCR) to investigate harassment and enforce Title IX.

- OCR, which is the federal agency responsible for enforcing Title IX, has issued a Sexual Harassment Guidance covering harassment of students by school employees, other students, and third parties. OCR mandates that schools take “prompt and effective action to end harassment and prevent its recurrence.”¹⁴ Similarly, federal regulations require schools that discriminate on the basis of sex—including ignoring sexual harassment—to “take remedial action” to correct the effects of that discrimination.
- Students may file a complaint with OCR about harassment. OCR may facilitate a *meeting* between the students and administration to reach a resolution; it may *investigate* the claim and issue a letter finding *for or against* the school; or it may *dismiss* the complaint.¹⁵
- If OCR finds against the school, it may facilitate a session to reach a resolution and may monitor the school’s compliance with its commitments under the agreement. Victims cannot win money through the OCR complaint process. In theory, OCR can strip a school of its federal funding, although no school has ever lost its federal funding as a result of ignoring sexual harassment.

¹⁴ 34 C.F.R. § 106.3.

¹⁵ Students can contact OCR to report sexual harassment by writing a letter or filing a complaint form, available at <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.