



Sexual Harassment-Helpful Information

Schools receiving federal funding have an obligation under Title IX to prevent and address harassment against students, regardless of whether the harassment is perpetrated by peers, teachers, or other school officials. Below are some things that school districts should review to ensure they have adequate policies and procedures in place.

- **Does your district have a policy that covers sexual assault?** Key components of any policy should include:
 - **Scope** – The policy should apply to conduct that occurs on school grounds or at a school sponsored function. It should also apply to conduct off school grounds that interferes with a student’s education.
 - **Reporting Options** – The policy should identify multiple individuals at the school who can receive reports of sexual assault. It should require that individuals who receive reports pass on the information to someone at the school who coordinates responses to sexual assaults.
 - **Mandated Reporting** – The State of Wisconsin requires individuals who work in certain professions to report child abuse and neglect. See Wis. Stat. sec 48.981(2)(a). The following link provides information as to WHO must report and WHAT is reportable, as well as certain EXCEPTIONS. <https://dcf.wisconsin.gov/cps/reportabuse>
 - **Confidentiality Requests** – Some students will ask that their report be kept confidential. Schools should first check whether a mandatory reporting law requires that the school report information about sexual assault of a minor to a child protection agency or the judicial system.
 - **Non-Retaliation** – The school should prohibit retaliation against anyone who makes an allegation in good faith, even if the school later determines that there is not sufficient evidence to support the allegation. In addition, witnesses who support a student alleging assault should be protected from retaliation.
 - **Interim Measures** – A school should state that it may take interim measures while an investigation is pending to protect the accuser. These may include a no-contact order between students or adjustments of their schedules.
 - **Adopt the “preponderance of the evidence” standard** – Schools have a duty to investigate and interview witnesses. Determine whether assault occurred using **Preponderance of Evidence** standard – meaning that it is more likely than not that an assault occurred. This is a much lower standard than the **Beyond A Reasonable Doubt** standard that is used in criminal cases.
- **Be prepared to conduct investigations**
 - Some districts may need to consider outsourcing to skilled investigators
 - Experienced in interviewing witnesses
 - Experienced in making credibility determinations
- **Provide Training for Students**
 - Where to report sexual assault
 - Confidential reporting options
 - Definitions of consent
 - How bystanders can intervene if they see a situation developing that may lead to an assault
 - The common role of alcohol or drugs in student sexual assaults
 - Protection from retaliation
 - Use of alcohol or drugs does not make a sexual assault victim at fault

- **Provide Training for Employees**
 - **Appropriate responses to a report** – employees only need to obtain basic information such as the date of the assault, where it occurred and the student involved. Employees should not attempt to determine truthfulness of the report or “investigate” the incident. Instead, they should comfort the student and explain how they will pass on the information to appropriate school officials.
 - **Handling confidentially requests** – Under Title IX, clergy and counselors who receive reports may promise confidentiality. Other employees are obligated to tell the student before any information is disclosed that they cannot promise confidentiality and have a duty to pass on that information. The Office for Civil Rights at the U.S. Department of Education’s (OCR) Title IX guidance requires them to advise the student that they should go to clergy or counselors if they want information about the assault to remain confidential. Employees should know the school rules on handling confidentiality requests.
 - **Impact of trauma on victims** – Many victims of sexual assault suffer from trauma or post-traumatic stress disorder that jumble their recollections. As a result, they may have difficulty coherently explaining what occurred, particularly if the trauma was recent. Individuals who receive reports need to be patient and not interrupt. They need to give the victim time to collect his or her thoughts and not be judgmental about a story that may sound inconsistent at first. In addition, victims of trauma often report in an unemotional tone. Finally, it is common of victims of sexual assault to freeze while the assault occurs. Lack of resistance should not be taken as a sign of consent. Employees need to be aware of these effects of trauma so they can comfort the student and avoid improper judgments about the report.
- **Move promptly to resolution** – OCR expects cases to be resolved within 60 days absent unusual circumstances such as a parallel police investigation or school holidays that slow down the investigation. While independent schools not subject to Title IX do not have to meet this time frame, they should still strive to move promptly and fairly.

The following links provide additional information and resources which may be helpful:

http://www.wisconsinjournal.com/news/student-on-student-sex-assault-widespread-but-hidden/article_6921e012-46ee-11e7-b211-278c9c5e65be.html

<http://www.pbs.org/newshour/bb/student-student-sexual-assault-common-thought/>

<https://www.ue.org/about-ue/education-matters/sexual-misconduct-prevention-and-response/>

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I would like to emphasize that the discussion set forth above is only an insurance/risk management perspective and is NOT legal advice. We do not provide legal advice, as we are not qualified to do so. I highly recommend that you seek the advice of legal counsel in order to become fully apprised of the legal implications related to these issues.