Title IX Recommendations
Areas of Discretion in the New Title IX Rule

Transparency

Recommendation: Communicate Changes to School Community as Soon as Possible

- It is particularly important this year that schools make it clear to students, faculty, and parents that there have been significant changes to Title IX.
- This could include a school-wide e-mail, a disclaimer on the school's website coverage of the Title IX rules, and a notice in the school's orientation materials, communicating the following:
  - Encouragement of students and faculty to pay careful attention to the school's updated Title IX procedures
  - Notice that there have been changes to the school's procedures and where and what the changes are
  - Information about what conduct and which locations are not covered by Title IX
  - Indications as to where there have been changes in the school's procedures and where in the school's own code of conduct they address instances of sexual misconduct not covered by Title IX
- Institutions run by a religious organization should inform students, faculty, and parents if they intend to claim an exemption from all or part of Title IX before receiving a Title IX complaint.

Address All Types of Harassment

Use School's Conduct Code

Definition of sexual harassment under new Title IX Regulation (§ 106.30):

1 All citations, unless otherwise stated, are in reference to the Department of Education's final regulations implementing Title IX of the Education Amendments of 1972, “Title IX Regulations Addressing Sexual Harassment (Unofficial Copy),” including the preamble to the rule, as published on the Department’s website on May 19, 2020: www2.ed.gov/about/offices/list/ocr/docs/titleix-regps-unofficial.pdf.
Harassment on the basis of sex is defined as follows:

- Quid pro quo harassment
- Sexual assault, dating violence, domestic violence, and stalking as defined by the Clery Act
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity

Rule explicitly permitting schools to address sexual misconduct not covered by Title IX (§ 106.45(b)(3)(i)):

- “If the conduct alleged by the complainant would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient’s education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the recipient’s code of conduct.”

Preamble excerpt: the new regulations cannot tell schools how to handle non–Title IX conduct.

- “The Department notes that nothing in these final regulations infringes on a recipient’s ability to enforce its own codes of conduct with respect to conduct other than Title IX sexual harassment.” (1155)

**Recommendation 1: Investigate and Resolve All Complaints of Sexual Misconduct**

- If a school is required to dismiss a case under Title IX because the conduct does not satisfy the new rule’s narrow definition of sexual harassment, or the conduct did not occur against a person in the United States or in the school’s education program or activity, a school must investigate the case under a non–Title IX code of conduct.

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2 “Recipient” refers to schools that receive federal financial assistance covered by Title IX and both “recipient” and “schools” are used interchangeably throughout the new Title IX Guidance.
Survivors should not have to endure repeated and escalating levels of harassment before schools step in. In order to keep the school’s community safe, schools must commit to investigating and resolving all complaints of sexual misconduct and harassment, regardless if it is not covered by Title IX. This should include the following:

- Harassment that meets the former Title IX guidances’ definition of “unwelcome conduct of a sexual nature”
- Harassment that meets the standard of severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services
- Harassment that occurred off-campus or abroad
- Harassment based on sexual orientation and/or gender identity or expression (see the 2016 Guidance)
- Stalking that does not constitute sexual harassment because it is not “on the basis of sex”
- “Fondling” done without the intent for sexual gratification
- Online harassment

Recommendation 2: Establish a Separate Grievance Process to Address Non–Title IX Sexual Misconduct

- In order to address all instances of sexual misconduct, schools must establish a separate grievance process to address sexual misconduct that falls outside the new rule’s limited scope.
- The complaint filed by the Commonwealth of Massachusetts and 17 other states to prevent implementation of the new Title IX regulations effectively articulates why this is necessary:
  - “Where a Plaintiff State’s law and other federal laws, such as the Clery Act and VAWA, provide greater protections than the Rule, schools subject to these laws will need to create parallel code of conduct provisions and enforcement mechanisms—one addressing ‘Title IX sexual harassment’ and

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3 We use the term “survivor” throughout this document to refer to the “complainant” as used in the new regulations and defined in § 106.30 as “an individual who is alleged to be the victim of conduct that could constitute sexual harassment.”

4 www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-ix-transgender.pdf (2016 Guidance)

5 www.the74million.org/wp-content/uploads/2020/06/TitleIX-Complaint-Filed.pdf
one addressing ‘non-Title IX sexual harassment.’ So too will schools that wish to continue providing protections for students beyond the Rule out of concern for campus safety and student well-being, to ensure the nondiscriminatory educational experience promised by Title IX, or both.” (70-1).

- This separate grievance process should do the following:
  - Utilize the preponderance of the evidence standard
  - Prohibit cross-examination
  - Allow for limitations on the parties’ ability to discuss the allegations under investigation to prevent the creation or extension of a hostile environment
  - Treat the allegation and denial neutrally and avoid favoring the respondent’s denial over the survivor’s allegation by not requiring a presumption that the respondent is “not responsible.”

Recommendation 3: Clearly Identify Conduct That is Not Covered by Title IX

- Schools should make it clear to students and faculty which conduct does and does not fall under Title IX and which conduct will be penalized under the school’s own code of conduct.

Off-Campus and Study Abroad

Relevant rule under new Title IX Regulation: § 106.44(a)

- A recipient’s Title IX obligations extend to sexual harassment incidents that occur off campus if any of three conditions are met:
  - If the off-campus incident occurs as part of the recipient’s “operations”
  - If the recipient exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus
  - If a sexual harassment incident occurs at an off-campus building that is either of the following:
    - Owned or controlled by a student organization
    - Officially recognized by a postsecondary institution

Clery Act requires schools to address off-campus conduct:

- “Your statement must address your institution’s programs to prevent dating violence, domestic violence, sexual assault and stalking, and the procedures your
institution will follow when one of these crimes is reported to your institution, whether the offense occurred on or off campus.” (The Handbook for Campus Safety and Security Reporting, 8-2, 8-3; italics added).

- “You must follow the procedures described in your statement regardless of where the alleged case of dating violence, domestic violence, sexual assault or stalking occurred (i.e., on or off your institution’s Clery Act geography).” (Handbook, 8-16; italics added).

**Recommendation 1: Officially Recognize All Student Organizations with Off-Campus Buildings**

- Schools should attempt to bring off-campus student organization buildings (e.g., fraternities and sororities) under Title IX by officially recognizing the organizations as well as the buildings housing them.
  - By officially recognizing these student organizations, the organizations that own or control the off-campus buildings housing them will definitively fall under Title IX.
  - Although the rules are less clear with regard to off-campus buildings not owned or controlled by officially recognized student organizations, by officially recognizing them, schools increase the likelihood that these buildings are covered by Title IX.
    - Where “sexual harassment occurs in an off campus location not owned or controlled by [a] student organization yet involving members of the officially recognized student organization, the recipient’s Title IX obligations will depend on whether the recipient exercised substantial control over the respondent and the context of the harassment, or whether the circumstances may otherwise be determined to have been part of the ‘operations of’ the recipient.” (626).

**Recommendation 2: Clearly Identify Off-Campus Student Organization Buildings Not Covered by Title IX**

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• Schools should clearly indicate and publicize to the community which off-campus student organization buildings are not covered by Title IX and those that the school is unsure are covered by Title IX, so the school community is aware.

Recommendation 3: Include All Off-Campus Student Organizations and Their Buildings in Non–Title IX Code of Conduct
• Schools should include all off-campus students organizations and their buildings in their own code of conduct in order to address sexual misconduct that occurs at these locations that may not be covered by Title IX.
  ○ Including these organizations and their buildings in the school's code of conduct will aid in keeping students safe and enable schools to support all survivors in its community.

Recommendation 4: Extend Jurisdiction Over Off-Campus Incidents of Sexual Violence Involving Students
• Just as schools exercise jurisdiction over physical altercations, hazing, or drug or alcohol use involving students that occur off-campus, school's should also exercise jurisdiction over incidents of sexual violence involving a student that occurs off campus outside of an education program or activity.
  ○ “[A] school should protect the school community in the same way it would had the sexual violence occurred on campus [...] For example, if a school, under its code of conduct, exercises jurisdiction over physical altercations between students that occur off campus outside of an education program or activity, it should also exercise jurisdiction over incidents of student-on-student sexual violence that occur off campus outside of an education program or activity.” (2014 Guidance, 29).

Continue Grievance Process after Respondent Leaves School and Investigate Complaints Launched by Survivors Who Have Left School

Relevant rule under new Title IX Regulation: § 106.45(b)(3)(ii)
• “The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing […] the respondent is no longer enrolled or employed by the recipient.”
Relevant portion of “formal complaint” definition (§ 106.3):

- “At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.”

**Recommendation 1: Continue Investigation and Grievance Process after Respondent Leaves School**

- Schools should continue grievance processes and investigations into complaints of sexual misconduct even if the respondent is no longer enrolled or employed by the school.
  - This is necessary in order for schools to ensure they are remedying its effect and the hostile educational environment faced by the survivors and possibly the broader school community.

**Recommendation 2: Investigate and Resolve Complaints of Sexual Misconduct by Survivors Who Have Left the School**

- Schools must investigate and resolve complaints from survivors (either under the school’s own code of conduct or under Title IX) who have graduated, who are on leaves of absence, and who have left the school because of sexual harassment.
- Schools are likely required to investigate these complaints in many instances per the Title IX Preamble, as complainants are entitled to launch formal complaints under these circumstances because they may still be “attempting to participate” in the school’s education program or activity:
  - “A complainant who has graduated may still be ‘attempting to participate’ in the recipient’s education program or activity; for example, where the complainant has graduated from one program but intends to apply to a different program, or where the graduated complainant intends to remain involved with a recipient’s alumni programs and activities.”
  - “Similarly, a complainant who is on a leave of absence may be ‘participating or attempting to participate’ in the recipient’s education program or activity; for example, such a complainant may still be enrolled as a student even while on leave of absence, or may intend to re-apply after a leave of absence and thus is still ‘attempting to participate’ even while on a leave of absence.”
  - “By way of further example, a complainant who has left school because of sexual harassment, but expresses a desire to re-enroll if the recipient
appropriately responds to the sexual harassment, is ‘attempting to participate’ in the recipient’s education program or activity.’ (411).

- Even if a survivor is no longer participating or attempting to participate in the school’s education program or activity, schools must still investigate and resolve these complaints under their own code of conduct or workplace discrimination grievance policy.

General Response to Sexual Harassment

Relevant rule under new Title IX Regulation: § 106.44(a)

- “A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.”

Definition of “actual knowledge” (§ 106.30):

- “Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.” (italics added for emphasis)

Preamble excerpt: schools are authorized to train non-mandatory reporters on how to respond and report sexual harassment

- “A recipient may choose to train employees and other individuals, such as parents or alumni volunteers, on how to report or respond to sexual harassment, even if these employees and individuals do not have the authority to take corrective measures on the recipient’s behalf. The Department will not penalize recipients for such training by declaring that having trained people results in notice to those people charging the recipient with actual knowledge.” (320; italics added)

Preamble excerpt: schools may give officials authority to institute corrective measures

- “A recipient (including a postsecondary institution recipient) may give authority to as many officials as it wishes to institute corrective measures on behalf of the recipient,
and notice to such officials with authority will trigger the recipient’s response obligations." (320; italics added)

**Recommendation 1: Prompt and Effective Response Standard**

- State that the school’s policy is to respond at a level higher than the “deliberate indifference” standard established in the new regulations.
- Specifically retain the standard set forth in the 2001, 2011, and 2014 Title IX guidances by responding to sexual harassment (under Title IX or the school’s own procedures) by:
  - Taking **prompt and effective steps** reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and remedy its effects.
- Schools must continue to respond promptly to instances of sexual violence during the current COVID-19 pandemic. The new regulations clearly allow for Title IX processes to continue remotely.

**Recommendation 2: Encourage Early Reporting of Sexual Harassment**

- Schools should **encourage students to report sexual harassment early**, **before such conduct becomes severe or pervasive**, so that it can take steps to prevent the harassment from creating a hostile environment.

**Recommendation 3: Give Authority to Institute Corrective Measures to Officials Who May No Longer Be Mandatory Reporters**

- **Give authority to institute corrective measures** on behalf of the school to individuals who may no longer be mandatory reporters (i.e., individuals who a student could reasonably believe have the duty to report harassment or the authority to take action to redress the harassment, such as coaches, residential life staff, athletic directors) in order to trigger the school’s response obligations.
  - This will increase accountability and reduce the chance of sexual harassment claims being buried because survivors did not report the harassment to the “right” person.

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7 [www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf) (2001 Title IX Guidance)
8 [www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf) (2011 Title IX Guidance)
9 [www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf](http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf) (2014 Title IX Guidance)
Recommendation 4: Require Non-Mandatory Reporters to Offer Assistance to Students in Reporting and Obtaining Supportive Measures

- Require that **individuals who are no longer mandatory reporters** and who the school elected not to give “authority to institute corrective measures” to inform students who disclose sexual violence to them the following:
  - That they are not a mandatory reporter
  - Who the school’s mandatory reporters are (the Title IX Coordinator or an official with "authority to institute corrective measures")
  - How the student can report the harassment and launch a formal complaint
  - How the student can receive supportive measures
  - Information about counseling resources on and off campus, criminal reporting, and protective orders
  - Information and assistance to students who want to access forensic exams or medical treatment
  - That they will assist the student in reporting harassment to the appropriate person and in obtaining supportive measures if the student wishes

- If this requires schools to provide training in addition to that required by the Clery Act, schools should provide this training.

Recommendation 5: Investigation and Hearing Process Should Protect Survivor Safety and Promote Accountability

- In line with the Clery Act, schools must conduct investigations and hearing processes in response to all complaints of sexual harassment (whether or not they are covered by Title IX) that protect the safety of victims and promotes accountability. § 666.46(k)(2)(ii).

Recommendation 6: Require Personnel Explain to Survivors How to Seek Redress for Non–Title IX Sexual Misconduct

- Require personnel such as the Title IX Coordinator, individuals with the authority to institute corrective measures on behalf of the school, and other individuals who

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students may confide in to explain to survivors how to seek redress through the school’s own code of conduct for sexual misconduct not covered by Title IX.

60-Day Investigation Timeline

Relevant rule under new Title IX Regulation: 106.45(b)(1)(v)
- Requires schools to conduct investigations within a “reasonably prompt timeframe,” but allows schools to create a “temporary delay” or “limited extension” of time frames for “good cause,” where “good cause” may be “concurrent law enforcement activity.”

Recommendation 1: Aim to Complete Investigations within 60 Days
- Schools should abide by the 2011 and 2014 Guidances that recommended schools complete investigations within 60 days.
  - Timely resolution of grievance procedures is crucial for complainants who may be re-traumatized as the process drags on without resolution or relief.

Recommendation 2: Do Not Delay Title IX Investigation because of Concurrent Law Enforcement Investigation
- Schools should not delay a Title IX investigation merely because of a concurrent law enforcement investigation.
  - Delaying a Title IX investigation for this reason was prohibited by the 2001 Guidance. Delaying the investigation creates a safety risk both to the survivor who reported the initial incident and to other students who may be victimized by the same respondent during the delay.

Informal Resolutions

Preamble excerpt: schools are not required to offer informal resolution
- The Department “declines to require or allow informal resolution processes to be a ‘default’” and rather, “a recipient may choose to offer the parties an informal process that resolves the formal complaint without completing the investigation and adjudication.” (1366-67).
**Recommendation:** Prohibit the Use of Mediation or Arbitration in Cases of Sexual Violence

- Schools should **prohibit the use of mediation or arbitration** in cases of sexual violence, dating and domestic violence, and stalking.
  - Barring mediation is in line with the 2001 and 2011 Guidances

**Grievance Proceedings**

**Mutual Waiver of Cross-Examination**

Relevant rule under new Title IX Regulation: § 106.45(b)(6)(i)

- “For postsecondary institutions, the recipient’s grievance process must provide for a live hearing. At the live hearing, the decision-maker(s) must **permit** each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions.”

**Recommendation:** Offer Option to Waive Cross-Examination

- Offer the option to both parties to agree to **waive cross-examination** and to **waive limitation on consideration** of their oral and written **statements** and testimony due to lack of cross-examination. Instead, offer alternative options, like submitting questions in writing to the panel or hearing officer.

**Advisors**

Relevant rule under the new Title IX Regulation: § 106.45(b)(6)(i)

- Each party’s advisor must be permitted to ask the other party and any witnesses all relevant questions. Such cross-examination at the live hearing must be by the party’s advisor of choice, notwithstanding the discretion of the recipient under § 106.45(b)(5)(iv) to otherwise restrict the extent to which advisors may participate in the proceedings.
- If a party does not have an advisor present at the live hearing, the recipient must provide an advisor of the recipient’s choice to conduct cross-examination on behalf of that party.
Preamble excerpt: schools may adopt their own rules of decorum

- “A recipient has discretion to adopt rules governing the conduct of hearings.” (1145)
- “A recipient may adopt rules of order or decorum to forbid badgering a witness, and may fairly deem repetition of the same question to be irrelevant.” (812)

**Recommendation 1: Adopt and Apply Rules of Decorum for Advisor-Performed Cross-Examination**

- For parties that choose not to waive cross-examination, schools should establish rules of decorum to govern the conduct of hearings to ensure that parties and advisors, including assigned advisors, conduct cross-examination questioning in a respectful and non-abusive manner. (1149-50)
  - “Thus if a party or advisor 'breaks a recipients' rules' during a hearing the recipient retains authority to respond in accordance with its codes of conduct.” (1155)

- If a party’s advisor of choice refuses to comply with a school’s rules of decorum (for example, by insisting on yelling at the other party), the school may provide that party with an advisor to conduct cross-examination on behalf of that party. (1155)
  - Same for a school-provided advisor: If a provided advisor refuses to comply with a school’s rules of decorum, the recipient may provide that party with a different advisor to conduct cross examination on behalf of that party.

- **Examples of rules of decorum:**
  - During cross-examination, advisors must keep a certain amount of physical distance between themselves and the party they are questioning to prevent intimidation tactics.
  - Require advisors to remain seated during cross-examination.
  - Movement into and out of decision-maker/hearing space must be secure to ensure no encounter with the opposing party, their advisor, or supporters.
  - Prohibit compound questions, repetitive questions, and rapid pace in questioning.
  - Prohibit advisors from intentionally asking questions they know will be deemed irrelevant.
  - Prohibit advisors from yelling or raising their voice at the opposing party.
  - Forbid participants from disturbing the hearing by loudly conferring with each other.
Recommendation 2: Training for School-Appointed Advisors

- Schools should train and assess the competency of any individuals whom the school may desire to appoint as party advisors (regardless of whether this individual is a school employee or someone explicitly hired to function as a school-appointed advisor).
  - School-appointed advisors should receive sexual violence trauma-informed training and should be trained on working with and interviewing persons subjected to sexual violence, the school’s code of conduct and rules of decorum for the hearing process (including cross-examination), questions that are forbidden under rape shield protections, relevance, and any other information the school deems pertinent.

Recommendation 3: Orientation for Party-Selected Advisors

- Although a school may not impose training or competency assessments on advisors of choice selected by the respondent or complainant, schools may provide an orientation to said advisors.
  - This orientation can consist of information on working with and interviewing persons subjected to sexual violence, the school’s code of conduct and rules of decorum for the hearing process (including cross-examination), questions that are forbidden under rape shield protections, and any other information the school deems pertinent.
- Offering an orientation will help schools recognize when advisors are using intimidation tactics and purposefully flouting the school’s rules.

Use the Preponderance of the Evidence Standard

Relevant rule under new Title IX Regulation: § 106.45(b)(1)(vii)

- Schools must use either a preponderance of the evidence standard or a clear and convincing standard for its grievance process, must state up front which of the two permissible standards of evidence it uses, and must apply that selected standard to all formal complaints of sexual harassment, including those against employees.

Recommendation: Use the Preponderance of the Evidence Standard
• Use the **preponderance of the evidence standard** for all non-Title IX sexual misconduct and discrimination proceedings.

• Use the **preponderance of the evidence standard** for Title IX proceedings when not prohibited under the new regulations due to collective bargaining agreement standard.

**Supportive Measures**

Relevant portions of “supportive measures” definition (§ 106.3):

• Supportive measures means non-disciplinary, non-punitive individualized services designed to restore or preserve equal access to the recipient’s education program or activity, designed to protect the safety of all parties or the recipient’s educational environment or deter sexual harassment without unreasonably burdening the other party, offered without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

• Some examples include “counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.”

Preamble excerpt: list of supportive measures in new rule not meant to be exhaustive

• “The Department has provided a list to illustrate the range of possible supportive measures, but the list of supportive measures is not intended to be exhaustive. Nothing in § 106.30 precludes recipients from considering and providing supportive measures not listed in the definition.” (580)

Preamble excerpt: complainants must receive supportive measures

• “Complainants **must** receive supportive measures designed to restore or preserve the complainant’s equal educational access, regardless of whether a grievance process is ever initiated. There is no corresponding obligation to offer supportive measures to respondents; rather, recipients may provide supportive measures to respondents and under § 106.45(b)(1)(ix) the recipient’s grievance process must
describe the range of supportive measures available to complainants and respondents.” (880).

Preamble excerpt: supportive measures may burden respondent

- Supportive measures “may be imposed even where such measures burden a respondent, so long as the burden is not unreasonable.” (footnote 1097 at 881).
- “Thus, changing a respondent’s class schedule, or forbidding the respondent from communicating with the complainant, may be an appropriate supportive measure for a complainant if such measures do not ‘unreasonably burden’ the respondent, and such measures do not violate the presumption of non-responsibility.” (880-81; italics added).

**Recommendation 1: Provide Supportive Measures Even When Not Required by Title IX**

- Provide supportive measures to survivors even if:
  - They do not file a formal complaint
  - The harassment they experienced is not covered by Title IX
  - Their complaint has been dismissed (like if the assault occurred during study abroad)
- Survivors are entitled to a nondiscriminatory educational experience, and although a school’s responsibilities to ensure this may look differently under the new regulations, schools are still required to ensure survivors in their community have equal access to educational programs and activities.

**Recommendation 2: Supportive Measures Must Continue**

- If a survivor does file a formal complaint and go through the grievance process, supportive measures must continue for the survivor even if the process results in a finding that the respondent is not responsible.

**Recommendation 3: Supportive Measures Should Minimize the Burden on the Survivor**

- Follow *The Handbook for Campus Safety and Security Reporting* guidance that supportive/protective measures should minimize the burden on the victim. (8-15)
  - “For example, if the complainant and alleged perpetrator share the same class or residence hall, the school should not, as a matter of course, remove the victim from the class or housing while allowing the alleged perpetrator to remain without carefully considering the facts of the case.” (*Handbook*, 8-15).
Recommendation 4: One-Way No-Contact Orders

- Schools should offer survivors one-way no-contact orders forbidding the respondent from communicating with the survivors.
- Mutual no-contact orders are harmful to survivors because they inherently suggest some wrongdoing on the part of the survivor that requires a restriction on the survivor’s conduct.
  - The new rule clearly allows for one-way no contact orders (see above examples of Supportive Measures), specifically stating that its inclusion of “mutual no-contact orders” as a possible supportive measure “does not mean that one-way no-contact orders are never appropriate.” (577; italics added).

Recommendation 5: Course-Related Adjustments

- Supportive measures involving “course-related adjustments” should include opportunities to retake classes or exams, extending deadlines, and adjusting an academic transcript. (580)
  - Especially if the survivor is receiving aid conditioned on their academic performance, enrollment in certain number of credits, continuous enrollment at the institution, etc.

Sexual Violence Trauma-Informed Trainings and Outsourcing

Relevant rule under new Title IX Regulation: §106.45(b)(1)(iii)

- The new regulations require individuals like the Title IX Coordinator, investigators, decision makers, or facilitators of informal resolution efforts be trained on the definition of sexual harassment in § 106.30, the scope of the recipient’s education program or activity, and issues of relevance of questions and evidence, including when questions and evidence about complainant’s sexual predisposition or prior sexual behavior are not relevant (i.e., rape shield protections).

Recommendation 1: Require Sexual Violence Trauma-Informed Training

- Require sexual violence trauma-informed training for all persons involved in the grievance process (such as investigators, decision makers, the Title IX coordinator, and school-appointed advisors), along with any personnel that may be deemed an
official with “authority to institute corrective measures” and individuals who survivors are likely to disclose to.

- Trainings should center on the emotional, social, cognitive, behavioral, and spiritual impact of sexual violence on a survivor, include discussions on rape culture, and should provide information on responding to disclosures of sexual violence and working with and interviewing people subjected to sexual violence.
  - All officials who are chosen to conduct proceedings to address allegations of sexual misconduct must be trained “on how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability.” (See Handbook, 8-19).

- Connect with local rape crisis centers or domestic violence organizations to request these trainings or to be recommended to other organizations that can provide this training.

**Recommendation 2: Create and Follow a Survivor-Focused Standard of Review When Selecting Title IX Consulting Services**

- Schools may decide to outsource the tasks of revising their sexual misconduct policy to comply with the new Title IX regulations and training their staff on the new regulations. Schools should create a rigorous standard of review to follow when outsourcing this work.
- When considering what organizations to outsource this work to, schools should do the following:
  - Prioritize organizations with experience working with and representing survivors
  - Prioritize organizations that have received sexual violence trauma-informed training
    - Schools should inquire into what kind of trauma-informed training the organization has received and why the organization deems itself “trauma-informed.”
    - Schools should request documentation that training was received, including the source and information about the training to determine whether it was specifically sexual violence trauma-informed, survivor-centered, and inclusive of rape culture.
Prevention and Awareness and Education

The Clery Act requires implementation by institutions and disclosure of prevention and awareness programs:

- The Clery Act requires implementation by institutions and disclosure of comprehensive prevention and awareness programs to prevent dating violence, domestic violence, sexual assault, and stalking, including primary prevention and awareness programs for incoming students and employees and ongoing prevention and awareness campaigns for students and employees. *(Handbook, 1-1)*

**Recommendation: Continue Prevention, Awareness, and Education Efforts**

- **Continue** comprehensive, sustained sexual harassment prevention, awareness, and education programs that were required under the former guidelines and still required under the Clery Act, including, but not limited to, the following:
  - Developing and distributing materials to students on sexual harassment and violence
  - Conducting bystander intervention and sexual violence prevention programs with students
  - Providing training to all employees likely to witness or receive reports of sexual violence, including teachers, professors, school law enforcement unit employees, school administrators, school counselors, general counsels, athletic coaches, health personnel, and resident advisors
  - Informing students of their options to notify proper law enforcement authorities, including school and local police, and the option to be assisted by school employees in notifying those authorities
  - Providing information about, and where to obtain, forensic examinations and medical care
  - Regular “climate checks” to determine if preventative measures have been effective