

# THE CHALLENGE OF TITLE IX RESPONSES TO CAMPUS RELATIONSHIP AND INTIMATE PARTNER VIOLENCE

THE 2015 WHITEPAPER  
Published by ATIXA

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## ACKNOWLEDGMENTS

ATIXA thanks Nikki Finnestead, the violence prevention and Green Dot coordinator at Washington State University, and Tammi Slovinsky, the assistant director for sexual assault and intimate partner violence and stalking advocacy services at Virginia Commonwealth University’s Wellness Resource Center, for their comments and suggestions on this document.

## INTRODUCTION

In 1997 and again in 2001, the Office for Civil Rights (OCR) issued a Guidance Document,<sup>1</sup> which established a recommended response protocol a school or college should follow in compliance with Title IX<sup>2</sup>. The most fundamental elements of this response protocol included: engaging in action to stop sex/gender-based harassment; act to prevent the recurrence of the harassment; and take steps to restore victims of sexual harassment to their pre-deprivation status.<sup>3</sup> In the OCR Guidance, the term “sexual harassment” was defined broadly to encompass not only hostile environment, quid pro quo and retaliation, but also sexually violent and assaultive behavior.

### KEY MOMENTS:

- 1997**  
*OCR issues Guidance Document.*
- 2001**  
*Second Guidance Document released.*
- 2011**  
*Dept. of Education issues Dear Colleague Letter.*
- 2013**  
*Violence Against Women Act Reauthorization passed.*
- 2014**  
*White House and OCR release guidance and clarification on sexual assault and mandated response.*
- Dept. of Education publishes Final Regulations implementing VAWA.*

A decade later, a national press conference by the Vice President of the United States and the Secretary of the U.S. Department of Education, and accompanying publication of a Dear Colleague Letter<sup>4</sup> by the Department of Education set educational entities on a “fast track” to revision of policies, protocols and responses in compliance with Title IX. The April 4<sup>th</sup>, 2011 Dear Colleague Letter was followed by passage of the Violence Against Women Act Reauthorization, incorporating many of the provisions of the Campus Sexual Violence Elimination Act (SaVE Act) on March 7<sup>th</sup>, 2013. Now known as VAWA Section 304, this law brings more than 70 new mandates for institutions to address not only sexual assaults, but also dating and domestic violence and stalking. The Spring of 2014 ushered in additional guidance from the White House Task Force on Sexual Assault and additional clarification of mandated responses by the OCR<sup>5</sup>. Finally, in October 2014, the Department of Education clarified the application of the legal mandates of VAWA Section 304 with the publication of the Final Regulations<sup>6</sup> implementing the act, with enforcement set to begin on July 1, 2015.

In a sincere effort to comply with the original 2001 Guidance from the OCR and the subsequent law, regulations, and recommendations from various federal entities (and some state-based legislation as well), institutions created response protocols to meet the “prompt and effective” response requirement of Title IX. Between 2011 and 2014, Institutions were further challenged by an unprecedented number (more than 97) of sexual discrimination investigations by the OCR based on complaints filed with the OCR by survivors, and subsequently lawsuits filed by accused students (approximately 50 at this writing). As a result, institutions sharpened their tools and reexamined best practices in an effort to be timely and responsive to stopping the harassing behavior. Greater use of interim suspensions, no-contact orders, and prompt investigations resulted. Unfortunately, in circumstances involving domestic/dating/relationship violence (referred to hereinafter as intimate partner violence or IPV), these good-faith actions exposed the recipient of psychological abuse, physical control or relationship violence to the potential for greater harm.

This whitepaper sets forth an in-depth exploration of the unique issues posed in addressing intimate partner violence on college campuses, including facts and statistics; the importance of understanding and implementing an initial risk assessment; and the need to develop

1 United States Department of Education, Office for Civil Rights. (2001). *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties*. Washington, DC.

2 *Id.*

3 *Id.* See e.g.: p. 10.

4 United States Department of Education, Office for Civil Rights. (2011). April 4, 2011 “Dear Colleague Letter”. Assistant Secretary for Education, Russlyn Ali, Washington, DC.

5 White House Task Force to Protect Students From Sexual Assault (2014). *Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault*, Washington, DC.

6 34 CFR 688 (2014).

a personalized safety plan for each person exposed to the risk of interpersonal violence. ATIXA is pleased to add a recognized victim's rights expert, Juliette Grimmett, as a co-author to this whitepaper, whose insights have helped us to deepen our understanding of this issue and its complexities.

As we delve into the topic, we think it is important to explicitly recognize that IPV impacts people of all races and cultures, ethnicities, nationalities, religions, ages, abilities, sexual identities, gender identities, gender expressions, and socioeconomics. All people can experience IPV, whether gay, lesbian, bisexual, or heterosexual. Cisgender (someone who identifies as the gender and/or sex they were assigned at birth), transitioning and transgender individuals are also impacted. We should not assume that everyone's experience of IPV is the same, and we must take account of the context of IPV to best understand it and frame our efforts at prevention and response. Finally, this whitepaper uses the term "victim" as a convention, and all such uses should presume the reference is to both victims/survivors, without any intention to omit either.

## OVERVIEW OF DATING/DOMESTIC VIOLENCE IN THE CAMPUS SETTING

IPV and the related harm of stalking occur at alarming rates on the nation's college campuses. We offer statistics below from a number of reputable studies to offer context, rather than to touch off a debate on prevalence. Whether the studies are correct or not, one act of IPV or stalking on a college campus is one too many, and worth our efforts. How many actually occur really only impacts how hard we need to work to reduce that number. There are unique situations on college campuses that complicate the issues surrounding IPV and stalking. These include:

### Accessibility/Proximity

- The victims may continue to live in fear after an assault when their abuser may live in the same residence hall or attend the same classes.
- Students' predictable routines (i.e., class schedule, extracurricular activities, on-campus job, housing, and parking) may make it easier for their stalker to predict and/or track their movements.

### Social Environment

- Students may have a small or limited social network on campus once they leave home. This can be especially impactful in "closed communities" such as Greek life, ROTC, athletics, Student Government Association, etc.
- Students may feel trapped by the social networks and/or the closed environment of many campuses. This can be especially impactful in campuses with first-year (or longer) live-on requirements, rural/urban campuses with high residential percentages, etc.
- Social networking sites can provide easy access for abusers to attempt to (even anonymously) intimidate or control their partners/targets.

### Family/Home

- Students may feel isolated from their personal support networks and unable to access help because they are away from home. This is especially true if students are also from a different state or country.<sup>7</sup>
- Students might fear their parents may find out and take them out of school. They may be less likely to report as a result.
- Students and their families may not be able to afford supportive services.

### Training/Knowledge

- Administrators may not fully understand the scope of the problem and/or may not react appropriately (e.g., if professors and/or teachers are notified about IPV or stalking between two students).
- Students may not define their experience as abusive, particularly with verbal and emotional abuse that does not rise to physical violence.
- Support services and/or prevention and awareness programming may be lacking.

### FACTS/STATS

A historically silent problem, IPV is now being identified on college campuses at rates similar to community incidence, as highlighted by the following data:<sup>8</sup>

- Forty-three percent of dating college women report experiencing some violent and

<sup>7</sup> Knowledge Networks for Liz Claiborne Inc. (2011). *College Dating Violence and Abuse Poll*. Break the Cycle.

<sup>8</sup> Carr, J. (2005). *American College Health Association Campus Violence White Paper*. [Journal of American College Health Association](#).

*‘Threats of violence can be seen as a stone hitting an otherwise calm pond of water, the ripple effects reaching far beyond the initial disruptive action.’*

- abusive dating behaviors including physical, sexual, tech, verbal or controlling abuse.<sup>9</sup>
- One in five college women (22%) report actual physical abuse, sexual abuse, or threats of physical violence.<sup>10</sup>
- The same study revealed that more than half of college students surveyed (57%) said that it’s difficult to identify dating abuse, and 58% said that they don’t know what to do to help someone who is a victim of dating abuse.
- Twenty-one percent of students have experienced dating violence by a current partner while in college, and 32% have experienced such violence by a previous partner.<sup>11</sup>
- Among college students who were sexually assaulted, 35% of attempted rapes, 22% of threatened rapes, and 12% of completed rapes occurred on dates.<sup>12</sup>
- College women experienced the highest rates of stalking, compared to other groups of women, at 13% in one study, and of those stalked, 42% were stalked by a boyfriend or ex-boyfriend.<sup>13</sup>
- According to the Department of Justice, college-age women experience the highest rate<sup>14</sup> of nonfatal intimate partner violence, compared to other groups.
- More than 40% of LGBTQ+ (lesbian, gay, bisexual, transgender, queer, questioning and other non-binary, non-heterosexual identities) college students report that they have experienced intimate partner violence in their current relationships, a rate that generally aligns with the rate of violence among heterosexual couples.<sup>15</sup>
- Nearly one-third of college students reported having physically assaulted a dating partner in the previous 12 months.<sup>16</sup>

### ISSUES/RISKS POSED

There are a wide range of challenges to understanding the issues and risks posed by IPV on college campuses. At the heart of understanding these risks is the destructive nature any form of violence has on the stability and safety of the community itself. Threats of violence can be seen as a stone hitting an otherwise calm pond of water, the ripple effects reaching far beyond the initial disruptive action.

Working outward from the center of the initial incident of IPV, we can see the harm caused to the victims of such attacks. This harm often manifests in multi-faceted obstacles and difficulties, including:

- Physical (cuts, bruises, sexual trauma and intoxicants);
- Emotional (feeling overwhelmed, fearful, confused, angry, guilty and shameful);
- Psychological (depression, anxiety and post-traumatic stress symptoms);
- Financial (loss of work, loss of home, inability to find employment, medical costs, and loss of financial aid);
- Social (isolation, arguments and accusations);
- Academic (missed classes, lack of ability to complete assignments, failed classes, and social anxiety in the classroom).

9 Knowledge Networks, 2011.

10 Knowledge Networks, 2011.

11 Sellers, C., 1996.

12 Fisher, B. Cullen, T., Turner, M. (2000). *The Sexual Victimization of College Women*. U.S. Department of Justice.

13 Id.

14 U.S. Department of Justice, Bureau of Justice Statistics. Intimate partner violence [online]. [cited Jan. 7, 2011]. Available from <http://www.bjs.gov/content/pub/pdf/fvv.pdf>.

15 Edwards, K. and Sylaska, K. (2014). Intimate Partner Violence Among LGBTQ+ College Students. *The Carsey Institute at the Scholar’s Repository*.

16 Knowledge Networks, 2011.

Many of these layered and multi-faceted issues are well understood and researched pertaining to the primary impact of IPV. While it is necessary to start with the victims and provide services directly following IPV, it is essential to understand that the issues and risks posed to the campus community reach far beyond the victims.

*Secondary Impact — friends, classmates, teammates, professors, staff and others who may have witnessed or heard about the IPV.*

Secondary effects create another impact circle. Such effects are equally multi-faceted and also raise concerns for the campus community. Without drawing away from the centrality of the experience of the victims, it is important to also move outward from the primary impact to address secondary impact. Indeed, it is common for friends, classmates, teammates, professors, staff and others who have witnessed or heard about instances of IPV to struggle with how to respond. These secondary effects are equally multi-faceted. Those trying to assist the victims of IPV may encounter reluctance on the victims' part to seek help, make changes, make an on-campus Title IX report, or file off-campus criminal charges. Those assisting may have their own personal experiences with IPV and may experience triggering from their own trauma. They may be conflicted about how to help and may, at times, feel helpless in cases where the victims are either unwilling or unable to take steps to keep themselves safe. Many victims choose to stay, in spite of the abuse, and details as to why can be found in the Emerging Best Practices section below.

*Tertiary Impact — first responders, advocates, counselors, resident advisors, campus police, Title IX staff, conduct officers, health services personnel, and student affairs administrators.*

While the central focus must be on victims, another circle of impact involves those who are directly involved in responding to these cases on campuses. While secondary or even tertiary in focus, there can be an emotional and mental toll on those called to be first responders (e.g., advocates, resident advisors and campus police); to investigate (e.g., Title IX staff, conduct officers, and the Deans of Students); and to offer support to victims (e.g., counselors, advocates, and health services personnel). Campuses would be wise to encourage self-care and facilitate opportunities for first responders to process their own interactions. Further, administrators balance the safety concerns for victims and the greater student body, along with the fear of future lawsuits that may impact their careers and livelihoods. While not approaching the difficulty faced by victims, school officials also must juggle the various public affairs impacts and the associated scrutiny in the aftermath of these events.

## TITLE IX RESPONSE: CONFLICTS BETWEEN OCR STANDARDS AND VAWA SECTION 304

As administrators strain to balance the myriad competing needs and interests, they also must balance the guidance from the Department of Education, Congress, and the courts, which do not speak with one voice. Indeed, the nature of IPV is, at times, seemingly in conflict with direct guidance from OCR and recent amendments to the Clery Act.

Title IX requires institutions to take prompt and effective action to stop the harassment, remedy its effects and prevent its recurrence. Title IX also relies on a notice-based standard, meaning that institutions have an obligation to address sex or gender discrimination of which they becomes aware (or, in some cases, could or should have been aware). While victims/

*‘While victims/survivors have a voice in whether their institution proceeds with an investigation, OCR has clearly indicated that in cases where there is threat of further harm or violence or where there is imminent community danger, the institution may have an obligation to proceed with the investigative and disciplinary process regardless of victims’ wishes.’*

survivors have a voice in whether their institution proceeds with an investigation, OCR has clearly indicated that in cases where there is threat of further harm or violence or where there is imminent community danger, the institution may have an obligation to proceed with the investigative and disciplinary process regardless of a victims’ wishes.<sup>17</sup> Additionally, the VAWA Section 304 Amendments to the Clery Act indicate that Campus Security Authorities must report all incidents of dating and domestic violence that occur within an institution’s Clery geography in the Annual Security Report. At times, the institution may also have to issue a Clery Act Timely Warning

to the campus if there is a serious ongoing threat to the safety of a member or members of its community. It would therefore seem that in many cases of IPV, an institution with jurisdiction over the matter has an obligation to proceed with an investigation and a disciplinary process, which can pose a significant problem given the nature of many IPV situations.

IPV is often both cyclical in nature and prone to spiraling. The vast majority of perpetrators of IPV engage in the behaviors over and over again and the severity of their actions tends to increase over time. Additionally, unlike most victims of sexual violence, IPV victims are often placed in harm’s way if they report the matter to law enforcement or campus authorities; indeed, upon learning of the report or of the fact that police or authorities are involved, abusers may blame and try to punish their victims through additional violence. The abusers may view their victims’ attempts to seek help as threatening, and as a result of feeling cornered, may act desperately. Accordingly, institutional administrators should approach incidents of IPV differently than they approach other forms of sex and gender harassment or discrimination, and differently than they would approach some forms of stalking as well.

In most cases, administrators should proceed with notifying abusers of an IPV situation only once a comprehensive risk assessment has been conducted, and a solid safety plan and other support mechanisms such as counseling have been put into place for the victims. This creates a space where the victims can begin to heal, knowing that their institution is taking action to keep them and the greater campus community safe. In cases where a formal institutional response (adjudicatory or investigatory) may be necessarily delayed, the institution’s remedial action plan is typically implemented as soon as possible.

<sup>17</sup> U.S. Dept. of Education: Office for Civil Rights (2014). *Questions and Answers on Title IX and Sexual Violence*, pp.18-20. Washington, DC.

This approach may slow an institution's investigative process and may create some discomfort for those who feel the institution is exposed by not investigating immediately, failing to implement no-contact orders, interim suspensions, or going to the police. But ensuring that victims are safe and have means and opportunity to remain safe is consonant with the intent and spirit of Title IX and the Clery Act, even if it does not fit OCR's traditional view of notice triggering a prompt investigation in cases where threats or the risk of further harm are in play.

To be clear, OCR would not want a campus to apply frameworks developed for responding to sexual violence when a safe response to IPV or stalking requires a different approach. OCR's guidance to date has been specific to sexual violence, not IPV. To behave otherwise is to place the institution's fear of possible regulatory enforcement over the legitimate safety of members of its community. Are there instances of IPV where an institution may need to proceed immediately or issue a timely warning under the Clery Act? Yes. But such instances should be more rare than with the other forms of harassment and discrimination covered under Title IX and crimes under the Clery Act. One of the key areas of distinction is that OCR's seeming preference for remedial no-contact directives in sexual violence cases needs to be fundamentally challenged in IPV contexts.

## CHALLENGES WITH “NO-CONTACT” AND SIMILAR RESTRICTIVE ORDERS

In IPV situations, college and university administrators will want to be particularly thoughtful and cautious about how and when they choose to use no-contact orders (NCOs).

### WHAT IS AN NCO?

Colleges and universities have the authority to issue campus-based directives to members of the campus community to have no contact with one or more persons. NCOs are often compared with civil restraining orders, which are often called Protection from Abuse orders (PFAs) when issued by magistrates and municipal authorities, though NCOs do not have the force of law. Civil restraining orders are often issued on request, though some jurisdictions mandate some showing of proof that a PFA is necessary. Campus NCOs are usually offered to victims, typically without more than an assertion of need, and are enforced, in the case of students, by the campus conduct process.

*While ‘there is no reason to see them as a panacea,’*

*NCOs can:*

- ✓ *Defuse conflict.*
- ✓ *Create distance between a victim and aggressor.*
- ✓ *Limit interactions.*
- ✓ *Inhibit the recurrence of violence.*
- ✓ *Carve out safe space.*

They are remedial tools for defusing conflict, creating distance, and inhibiting the recurrence of violence. They can limit proximity, distance, interaction and/or the nature of contact. They can carve out safe space, but are not guarantees. To be effective, NCOs rely on voluntary compliance by the parties on whom they are imposed. They are enforced after the fact, for the most part, so should not be seen as preventive, though they may have deterrent value. Some critics worry that NCOs can make victims feel safer while doing little in reality to make them factually safer. Research on the efficacy of NCOs is sparse at this time, so while they are common, there is no reason to see them as a panacea. They are a tool among many remedial options, not a default or an automatic choice, and should be employed only when appropriate.

### OCR’S POSITION ON NCOS

OCR seems to favor NCOs in sexual violence cases, but has cautioned that unduly restricting victims could create a retaliatory effect, and/or could result in the victims being deprived of access to campus programs and facilities, thus compounding the discriminatory effects of the underlying violence. OCR has not made public pronouncements regarding the application of NCOs to IPV situations, so we don’t really know the government’s views on their remedial value in this venue. IPV situations can include elements of sexual violence, emotional abuse, stalking, bullying and harassment, but an NCO that may be effective in a sexual violence situation may be quite dangerous in an IPV case, or interfere with an investigation in a situation involving a stalking allegation. We should, therefore, not assume their applicability translates across all issues covered by Title IX.

### THE ATIXA POSITION ON NCOS FOR IPV CASES

Our general advice about these orders is to decide on their value and scope on a case-by-case basis. We are reluctant to see campuses use generic or templated NCO’s, and hesitant to implement mutual NCO’s unless a victim specifically wishes to be restricted. Our concerns exist on several levels. If a campus imposes restrictions on victims, it has to be willing to sanction them for violating the terms of the NCO. Not only are campuses hesitant to sanction victims, but we fear that doing so will often be seen to be — or in fact will be — retaliatory. Additionally, generic or templated NCOs may not speak to the risks or needs of particular situations.

For the NCO to be of optimal effectiveness, it needs to be custom-crafted to suit the situation, even if that is more work. It also critical to ensure that the victims fully understand all

aspects of the NCOs and/or the reasons for not issuing the NCOs. We also have to be willing to modify the terms as circumstances change and modifications are warranted. Custom-crafting allows us to consider whether the NCO is to be unilateral or mutual. If mutual, is it to impose equal restrictions or skewed restrictions? For example, if the responding party cannot contact the reporting party, can the reporting party contact the responding party? If so, under what circumstances? If the reporting party does contact the responding party, can the responding party reply to that contact?

## KEY STEPS

- ✓ *Develop criteria for determining when NCO is appropriate.*
- ✓ *Consider potential risks to victim of instituting NCO.*
- ✓ *Implement safety plan prior to NCO.*
- ✓ *Avoid forcing separation through use of NCO.*
- ✓ *Take protective steps if victim is not ready to leave abusive environment.*
- ✓ *Inform appropriate officials of protective orders and banned individuals.*

As we custom-craft NCOs, we can determine if we will limit contact, proximity, distance and/or interaction, or some combination. Perhaps restrictions on interaction are appropriate for class-based provisions of the NCO, and proximity restrictions are more appropriate for out-of-class or social interactions. Will the NCO apply on campus or off, or both? How long will the NCO endure? Should it be modified after an investigation? Should it be durable, so that it applies after sanctions have been satisfied, or should it end once sanctions are complete? Who should be notified about the NCO? Faculty? Campus police? RAs? Enforcement terms and consequences should also be made clear.

## EMERGING BEST PRACTICES

Campuses would be wise to develop criteria delineating when an NCO is appropriate. Certainly, there is a need to think critically about what kind of restriction(s) we want to deploy, and it is smart to consult the victims for their input as we define the terms and scope of the NCO. We should also keep the feasibility and enforceability of the NCO in mind. For example, use of an NCO can be problematic when the students involved in an IPV case are co-habiting.

In IPV cases, leaving the relationship is the most unsafe time for victims. Many victims try multiple times to leave before successfully doing so. Additional barriers to leaving include financial dependence, and fear for the safety of relatives, loved ones or children. Further, the abusers often threaten suicide if the victims leave the relationship. In the campus environment, the potential for returning to abusive partners could call into question whether an NCO is the right tool for that situation, or what the campus would do if NCOs were violated by the victims. Co-habiting partners are unlikely to abide by an NCO, and we must also consider the well-documented risks that PFAs are known to provoke violent and potentially deadly attacks from abusive partners when learned of by the abusers. The same can be true for campus-based NCOs.

Similar to the work of domestic violence shelters and agencies, campuses would be wise to impose NCOs only when viable safety plans are already in effect and demonstrably working. Have we addressed the reporting parties' financial dependence issues, need for shelter, need to access personal property, or safeguard possessions or children? Are there visa or citizenship concerns for international students? If so, and if the victims are sincerely ready and able to cut ties, we can help to relocate the reporting parties from abusive co-habitation environments, whether on- or off-campus. But, it is not advisable to force separation with an NCO or inform abusers of their victims' intentions to leave until we can reasonably assure that it is safe for the victims to do so.

It is common to suspend violent students or restrict those students from campus housing, but we cannot do so at the risk of imperiling the victims. Timing is critical, and the campus Title IX Coordinator can be a very powerful ally for abuse victims who are ready to leave and need campus resources to make a safety plan work. Swiftly taking action to restrict abusers from

campus as we act to extricate the victims from those individuals' grasp needs to be a carefully orchestrated maneuver, coupled with the risk assessment that follows in this paper.

At the same time, campus administrators often don't feel they can ethically allow victims to return to known abusive living environments on campus if the victims are not ready to leave (or if a safety plan is still being implemented), and may need to enhance security patrols and oversight by campus residential life staff when partners either co-habitate on campus or both live on-campus, even if they reside in separate spaces.

Similar concerns apply to stalking situations, many of which arise when former intimate partners will not release their abusive fixations on their victims. Where stalkers are not intimate partners, NCOs can be of some utility, but other tools should be considered and perhaps prioritized over the NCO. As mentioned above, there is also value in considering whether an NCO would tip stalkers off about investigations, and thereby jeopardize the ability of the campus to apply a more effective long-term solution than an NCO can afford.

Finally, when barring abusers from campus, extra precautions should be taken beyond the common campus practice of implementing a trespass order or persona non grata (PNG) status. Abusers may not heed such restrictions, creating a false sense of security for the reporting parties. When and if abusers are barred from campus, appropriate officials and administrators must be informed of such bans and given physical descriptions of the abusers and details of those individuals' vehicles or other salient identifiers that can give campus authorities an early alert to their unauthorized presence. If the victims live on campus, it is recommended to supply the front desk of their residence halls with photos of the abusers. The campus must be willing to seek prosecution of the trespassers swiftly and effectively if the abusers are unwilling to adhere to the restrictions that have been imposed.

## RECATANTION

While not a common occurrence, campus administrators should be aware of the risks related to recantation of allegations of IPV. Once victims are brave enough to come forward, some quickly regret doing so. They often experience mixed feelings about reporting the abuse of an intimate partner. They can experience betrayal by family or friends who don't support them. More worrying, they can be pressured to recant by their abusers once the abusers find out that their partners have told authorities about the abuse.

Recanting allegations of IPV is not an automatic signal to campus administrators to wind down an investigation or to declare it a "false complaint." Instead, it is incumbent upon administrators to try to find out from the reporting parties why they may have recanted, and to doubt whether a recantation in fact means that the individuals are not being abused.

*'It is incumbent upon administrators to try to find out from the reporting party why she/he may have recanted, and to doubt whether the recantation in fact means that the individual is not being abused.'*

Often, the victims become inaccessible or unresponsive to campus administrators because they are being threatened, intimidated, and/or told not to communicate with officials. If that is occurring, campus officials need to redouble efforts to contact the victims, coordinating with victim advocates if possible to make certain additional efforts will not result in an escalation of violence. They should document additional contacts and any information indicating that further contact could result in violence escalation (e.g., statements from advocates or members of your threat assessment team). Administrators should also ask students for the safest ways to contact them, recognizing that email is not a secure form of communication.

It's also wise to patrol in the vicinity of the victims, provide outreach, and keep a close eye on abusers who may be becoming more protective, abusive, and cloistered as they feel that officials are closing in on them or preparing to take action on the abuse reports. Finally, administrators should let students know that even if they opt to recant their complaints, they can seek out future assistance and resources.

## HARM WITH NO CLEAR COMPLAINANT

We are seeing a trend of cases where abuse between the parties in an intimate relationship goes both ways, regardless of gender. It's occurring in heterosexual and same-sex relationships. We are also seeing an increase in violence committed by female students. This may be a result of increased reporting, increased incidence, or both, as the trend is merely anecdotal. Assumptions that the male partners in relationships are the abusers are not always borne out by investigation.

To be clear, mutual abuse is not commonplace, or even mutual. Men are the primary abusers, of both men and women. But, abuse by female students is becoming more common anecdotally than the more dated literature would indicate. The abuse happens for different reasons, which is why “mutual” can be a harmful way to look at it. Instead, we have seen a rise of BDSM relationships, as students re-enact their favorite scenes from *Fifty Shades of Grey*. There is more abuse, controlling and domination occurring as an adjunct to sexual activity, and while in the BDSM world there is strong emphasis on mutuality and pre-agreed terms and boundaries, students are not always sure what they want and whether they like what happened once it happens. Once the relationship ends, charges fly in both directions that the BDSM was not consensual and that they “abused each other.”

Further, we are seeing an increase in self-harm. That has given rise to a string of cases where boyfriends have alleged that their girlfriends harmed them in various ways (e.g., cigarette burns), only to have the girlfriends respond that their boyfriends wanted to be burned and asked them to do it. But when they break up, it can become less clear who consented to what, and administrators are being asked to navigate to clear outcomes in an environment where nothing is really clear.

The resolution of conflicts cannot simply be a matter of determining which students make it to university officials first. Investigations can reveal that the victims are also abusers and the abusers are also victims. We are also seeing cases where abusers allege being victims to cover up abuse those individuals are in fact perpetrating. As with other Title IX cases, if students come forward to report abuse, we initiate investigations.

In conducting a thorough interview with both parties individually, a predominant aggressor may be more clearly identified. For example, one party may express more fear and detail more controlling actions above and beyond physical abuse, including emotional abuse, jealousy, isolation and economic control. It may also become apparent that one party used physical actions in an attempt to stop abuse (i.e., as a form of self-defense). If a predominant aggressor cannot be identified, campuses need to address and remedy all instances of IPV. It is not a matter of who started it, who exacerbated it, or whose abuse was worse. Parties in conflict often try to influence us to think that these considerations are important, but they don't excuse abuse, and two-way abuse doesn't cancel out the misconduct of either partner. Campuses will want to approach the abuse of each responding party as a distinct potential policy violation.

If Mark and Steve are abusive to each other in their relationship, and Mark alleges that Steve has burned him with cigarettes, Steve should be investigated and charged with that abuse as a violation of the code of conduct. If Steve responds that Mark has hit and pushed him, Mark should be investigated and those allegations that he has violated policy should

### KEY POINT

*In cases where both parties in a relationship are engaging in abuse of the other, investigate and address all allegations, rather than just those brought to your attention first or those that seem most severe.*

be resolved separately, possibly in their own individual proceedings<sup>18</sup>. At the same time, we have to address the concerns raised above about continuing conflict and abuse between them. Sometimes, reports of abuse are made once a relationship ends, and other times we learn of the abuse while the relationship is continuing in some form.

Finally, we must address self-defense in abuse cases, and encourage campuses to do so with carefully crafted policies. Victims often have a need and a right to defend themselves during attacks. Without unnecessarily escalating the violence, victims should be permitted by campus policy to engage in some reasonable level of self-defense without fear of being charged with violent acts themselves.

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<sup>18</sup> In some instances, the investigations and adjudicatory proceedings may be joined as well as concurrent. This should only be done with advice and consent of the Title IX Coordinator.

## CONDUCTING RISK ASSESSMENTS

The core element of any risk assessment is approaching each incident or system with a structured approach that allows the person or group assessing the risk to minimize or remove subjectivity and bias from the process.

Structured Professional Judgment<sup>19</sup> is one approach to systematically and objectively assess risk. Hart's work focuses on better understanding the factors that could increase risk, as well as identifying and implementing the inhibiting factors that can reduce risk. The process can be outlined in seven steps:

1. Gather information,
2. Determine the presence of risk factors,
3. Determine the relevance of risk factors,
4. Develop a good formulation of violence risk,
5. Develop scenarios of violence,
6. Develop a case management plan based on those scenarios, and
7. Develop opinions about violence risk.

### KEY POINTS

- Remove subjectivity and bias from process.
- Better understand factors that could increase risk.
- Identify and implement factors that can reduce risk.

Expanding on these:

1. Gathering information might seem obvious, but there is no more important step in risk assessment. We are limited in our risk assessment by the information we have at hand. This process involves a full and complete survey of the individuals and systems involved. This could include climate surveys, on-line portals for incident reports, linkages to the campus BIT, going beyond victims' self-reported accounts, and better training for front-line staff and faculty, etc.
2. Determining risk factors involves identifying the potential risk factors present within the system. This may involve focusing analysis on known environmental, cultural or cohort-based higher risk areas such as: first-year students, Greek life, athletics, ROTC, band, certain departments, or international students. In terms of IPV, risk factors for abusers may include a lack of empathy, a misogynistic attitude, past experience with IPV in the family system, poor communication, a pattern of escalating threatening behaviors, using or abusing alcohol or other drugs, and unemployment or other life events that cause stress<sup>20</sup>. Surveys, research, and/or analysis of past incidents may also contribute to campuses having a better understanding of the risk factors specific to certain populations.
3. Determining the relevance of risk factors is the process of assessing how the identified risk factors apply to the situation at hand. When the risk factors have been identified and understood, the next step is to sort through those that are germane. A risk factor may be present, but it may not be relevant to the current situation. For example, while there is statistical evidence to suggest that IPV and sexual assault may be more prevalent with first-year students, this may not be the case at a particular institution. Students sometimes minimize choking when it is potentially deadly strangulation. Access to previous use of a weapon, a recently ended relationship, the introduction of a new partner, stalking behaviors, and abuse of animals and/or other family members can point to real danger.

19 Hart, S., & Logan, C. (2011). *Formulation of violence risk used evidence-based assessment: The structured professional judgment approach*. In P. Sturmey & M. McMurrin (Eds.), *Forensic case formulation* (pp. 83–106). Chichester, England: Wiley-Blackwell.

20 Department of Justice, 2011; Max W, et al. (2004). *The economic toll of intimate partner violence against women in the United States*. *Violence and Victims* 19(3): pp. 259–72.; Black MC, et al. (2011). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention; 2011.

4. Developing a good formulation of risk involves asking the questions, “Why might this behavior occur? What is the cause and/or motivation behind it?” This process involves assessing the driving forces behind an individual’s or system’s behaviors in an attempt to understand the progression and better establish a process to prevent violence. For example, a group of students may be driven by their shared past sexually addictive behaviors. This shared experience becomes a running contest among members and drives negative behavior.
5. Developing scenarios of violence requires the assessor to create a descriptive list of potential negative situations that might develop in the future. This imaginative process involves developing multiple scenarios of future IPV that might occur. This might involve aggressors focusing on new relationships that could be at risk or escalating threats or ultimatums in existing relationships, especially based on the victims’ desire to seek help or having done so already.
6. Creating mitigation plans based on the scenarios developed are developed to reduce the risk. These plans are designed to address the risk and involve multi-disciplinary teams that include counseling, conduct, Title IX staff, behavioral intervention, and law enforcement/security working collaboratively.
7. Developing opinions about violence risk involves creating an overall estimation of how IPV occurred and moving a plan forward to address the risk of reoccurrence. This should happen at the individual level as well as on the systems level. It is especially critical in the closed communities that have been identified as having higher risk levels.

## DEVELOPMENT OF A SAFETY PLAN

A safety plan, informed by a risk assessment like the Structured Professional Judgment described earlier is a practical guide that helps lower victims' risk of being hurt by their abusers. It includes information specific to the victims' lives that will help keep the victims safe. A good safety plan helps the victims think through lifestyle changes that will help keep those individuals as safe as possible on campus, in the residence hall, in the workplace, and other places the victims go to on a regular basis.

Institutions should work with individual victims to customize a safety plan that will address daily movements, commitments, and support systems. It should reflect, to the extent possible, risk management strategies related to the reported behavior patterns, and the abusers' work or school locations. In order for this safety plan to work, victims will need to fill in personalized answers, so that they can use the information when it will be most needed. The victims should be instructed to keep their safety plans in accessible but secure locations and should consider giving a copy of their safety plans to trusted individuals.<sup>21</sup> Nothing in this or any safety plan is meant to imply that it is the job of victims to keep themselves safe, or that they are to blame if they do not. Abusers are responsible for abuse, and the failure of a safety plan is not an opportunity for victim-blaming.

### KEY POINTS

- *Safety plans must be customized to fit individuals' specific circumstances.*
- *Work with victims to gather the information needed to create a safety plan that works for them.*

### EXAMPLE OF A SAFETY PLAN

Staying Safe on Campus:

- The safest way for me to get to class/work is: \_\_\_\_\_.
- When leaving campus, I will drive the following route to my apartment:
- If the abuser follows me from campus, I will plan to do the following:
- These are places on campus where I often run into the abuser: \_\_\_\_\_, \_\_\_\_\_.  
I will try to avoid those places as much as possible or try to go when the abuser won't be there.
- There may be places on campus where it is impossible to avoid the abuser. If I need to go to one of those places, I can make sure a friend can go with me. I will ask \_\_\_\_\_, and/or \_\_\_\_\_. Or, I will contact a campus escort to accompany me.
- If I feel threatened or unsafe when I am on campus, I can go to these public areas where I feel safe (dining hall, quad, etc.): \_\_\_\_\_ and/or \_\_\_\_\_.
- I could talk to the following people if I need to rearrange my schedule or transfer residence halls in order to avoid the abuser; or if I need help staying safe on campus:  
\_\_\_\_\_.
- If I feel confused, depressed or scared, I can call the following friends, family members or professional support resources:  
Name: \_\_\_\_\_ Phone #: \_\_\_\_\_  
Name: \_\_\_\_\_ Phone #: \_\_\_\_\_

If I am living with my abuser I will engage in the following plan:

- If I decide to leave, the safest way to do so in an emergency is: (Retreat plan: Doors? Windows? Stairwells?).
- I will keep money, car keys, extra cell phone and charger, copy of drivers license, copy of birth certificate, change of clothes, medication, hidden but ready and put them: \_\_\_\_\_, or I will leave extra copies of these with: \_\_\_\_\_.
- I will create the following code word and share it with my family and friends in case I need help: \_\_\_\_\_. They will know this means to find me at: \_\_\_\_\_.

<sup>21</sup> RespectisLove.org

- If I need to leave quickly I will arrange with \_\_\_\_\_ to stay with them.

For Emergencies:

- For emergencies: 911
- Campus Law Enforcement station (phone, location).
- Campus Health Center (phone, location).

Additionally, I can call the National Dating Abuse Helpline at 1-866-331-9474 for support and guidance.

Recommendations for ongoing safety considerations:

These are things I can do to help keep myself safe everyday:

- I will remember that the abuse is not my fault. I deserve a safe, healthy relationship.
- I will carry my cell phone and important telephone numbers with me at all times.
- I will ask my friends to keep their cell phones with them while they are with me in case we get separated and I need help.
- I will keep in touch with someone I trust about where I am or what I am doing.
- I will stay out of isolated places and try to never walk around alone.
- If possible, I will alert campus security about abuse in my relationship so that a No-contact, No-trespass Order or other protective factor can be put into place.
- I will avoid places where the abuser or the abuser's friends and family are likely to be. I will keep the doors and windows locked where I live, especially if I am alone.
- I will trust my instincts, and take those actions that will help keep me safe, such as avoiding areas or situations where my options to escape or avoid abusive contact are limited.
- If speaking to the abuser is unavoidable, I will make sure there are people around in case the situation becomes dangerous.
- I will call 911 if I feel my safety is at risk.
- I can look into getting a protective order.

Recommendations for staying safe on-line and with the cell phone:

- Set all online profiles to be as private as they can be.
- Save/keep track of any abusive, threatening or harassing comments, posts, or texts.
- Never give personal passwords to anyone.
- If the abuse and harassment do not stop, change usernames, email addresses, and/or cell phone number.
- Do not answer calls from unknown, blocked or private numbers.
- See if the phone company can block the abuser's phone number.
- Do not communicate with an abuser using any type of technology if unnecessary; any communication can be recorded and possibly used against me in the future.
- I can use a safety app on my smart phone, such as Circle of Six.

## CONCLUSION

While best practices are always hard to identify, especially in an emerging field of study, much of what we have offered here is intended to bring some coherence to disparate bodies of knowledge about IPV on college campuses. We hope that you will use this whitepaper to help inform and design your campus IPV protocols.

## REFERENCES

- Black MC, Basile KC, Breiding MJ, Smith SG, Walters ML, Merrick MT, Chen J, Stevens MR. The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention; 2011.
- Carr, J. (2005). American College Health Association Campus Violence White Paper. *Journal of American College Health Association*.
- Department of Justice, Bureau of Justice Statistics. Intimate partner violence [online]. [cited 2011 Jan. 07]. Available from <http://www.bjs.gov/content/pub/pdf/fvv.pdf>.
- Edwards, K. and Sylaska, K. (2014). Intimate Partner Violence Among LGBTQ+ College Students. *The Carsey Institute at the Scholar's Repository*. Available at: <http://scholars.unh.edu/cgi/viewcontent.cgi?article=1209&context=carsey>.
- Fisher, B. Cullen, T., Turner, M. (2000). *The Sexual Victimization of College Women*. U.S. Department of Justice. Available at: <http://www.ncjrs.gov/pdffiles1/nij/182369.pdf>.
- Hart, S., & Logan, C. (2011). Formulation of violence risk used evidence-based assessment: The structured professional judgment approach. In P. Sturmey & M. McMurrin (Eds.), *Forensic case formulation* (pp. 83–106). Chichester, England: Wiley-Blackwell.
- Knowledge Networks for Liz Claiborne Inc. (2011). College Dating Violence and Abuse Poll. *Break the Cycle*. Available at: <http://www.breakthecycle.org/dating-violence-research/college-dating-violence-and-abuse-poll>.
- Max W, Rice DP, Finkelstein E, Bardwell RA, Leadbetter S. The economic toll of intimate partner violence against women in the United States. *Violence and Victims* 2004;19(3):259–72.
- McFarlane J, Malecha A, Watson K, Gist J, Batten E, Hall I, & Smith S. (2005). Intimate partner sexual assault against women: Frequency, health consequences & treatment outcomes. *Obstetrics and Gynecology*. 105(1):99-108.
- Sellers, C., and Bromley, M. (1996). Violent Behavior in College Student Dating Relationships. *Journal of Contemporary Justice*.
- United States Department of Education, Office for Civil Rights. (2001). *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties*. Washington, DC.
- United States Department of Education, Office for Civil Rights. (2011). April 4, 2011 “Dear Colleague Letter”. Assistant Secretary for Education, Russlyn Ali, Washington, DC.
- U.S. Dept. of Education: Office for Civil Rights (2014). *Questions and Answers on Title IX and Sexual Violence*, pp.18-20. Washington, DC.
- US Department of Justice, Bureau of Justice Statistics. (2006). *Intimate Partner Violence in the United States*.
- Violence Against Women Act. 34 CFR Part 668 (2014).
- White House Task Force to Protect Students From Sexual Assault (2014). *Not Alone: The First Report of the White House Task Force to Protect Students From Sexual Assault*, Washington, DC.

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## THE ASSOCIATION OF TITLE IX ADMINISTRATORS

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