



**NASPA**<sup>®</sup>

Student Affairs Administrators  
in Higher Education

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## NASPA Position on Campus Responsibilities for Sexual Violence Prevention & Response

Student affairs professionals, and the institutions that employ them, recognize the importance of addressing sexual harassment accusations to ensure supportive and productive educational environments for all students. Essential to ensuring such environments are campus adjudication procedures that uphold student civil rights while allowing for sensitivity to the level of ambiguity inherent in sexual harassment and assault incidents. NASPA supports fair and balanced implementation of Title IX, a provision in the Education Amendments of 1972 prohibiting sex discrimination in schools supported by federal dollars. NASPA also supports prevention requirements included in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) and the Violence Against Women Act (VAWA). Further, we believe the role of the federal government should be to establish a minimum standard to which states and institutions will be held accountable by the Department of Education (ED), but upon which states and institutions may build additional protections as appropriate for their communities.

We urge policymakers to take advantage of opportunities to engage the expertise of campus-based professionals to create clear recommendations for the continuation of existing and implementation of new, evidence-based strategies for campus sexual assault prevention and response.

NASPA priorities for campus responsibilities related to sexual assault prevention, response, and campus adjudication processes include:

- **Regulations should provide clear direction for institutions.** Both interim guidance released by ED in September 2017 and the proposed rule on Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance<sup>1</sup> (Title IX) released in late 2018 not only removed guidance on the investigatory process and its appropriate timeline, they introduced new options for campus adjudication proceedings without sufficient detail to allow campuses to move forward with confidence.
  - **Guidance on the appropriate standard of evidence for campus adjudication of sexual violence incidents should be determined.** In alignment with NASPA's core values, the recommendations of the Association for Student Conduct Administration (ASCA), and the standards for civil rights court cases we feel it is appropriate that the preponderance of evidence standard be required for all Title IX campus proceedings. Rather than leveling the field for complainants and respondents, setting a standard higher than preponderance of the evidence tilts proceedings to unfairly benefit respondents.
  - **Guidance on expectations for communication with parties on the status and progress of investigations.** The removal of the 60-day adjudication timeline requirement provides needed flexibility to campuses working to balance investigative thoroughness with prompt resolution. However, the absence of any guidance relative to an appropriate timeline for adjudication of cases, or of communication expectations to the parties in a case creates unnecessary uncertainty for campuses as well as respondents and complainants involved in these processes. We believe a 90-day suggested time frame, to allow for two 10-day

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<sup>1</sup> U.S. Department of Education. (n.d.) Title 34, Subtitle B, Chapter I, Part 106 Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: <https://www2.ed.gov/policy/rights/reg/ocr/edlite-34cfr106.html>

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- mandatory review periods included in ED's recently proposed rule, with provisions for reasonable delays provided in writing to both parties, is a reasonable standard.
- [Guidance on the nature of informal resolution processes campuses may use](#). While the benefits of informal resolutions processes, such as restorative justice, may be in the best interests of all involved parties, clarity on informal resolution processes is necessary to ensure parties are not unnecessarily pressured into pursuing informal resolution. Guidance in federal legislation or from ED on by whom and how informal resolution processes can be initiated, appropriate ethical procedures to ensure someone is not pressured into informal resolution against their will, minimum expected training for professionals engaged in informal resolution processes, and acceptable approaches and processes to informal resolution processes will enable campuses to implement this option with more confidence.
  - [Alignment of institutional responsibilities under Title IX and the Clery Act](#). An alignment of Title IX with the Clery Act would serve to address the dual processes on campus that are currently used to investigate sexual harassment claims separate from dating/domestic violence and stalking cases, which can reduce confusion among student survivors about the need for different processes for power-based misconduct violations. NASPA would advocate in favor of aligning the definitions and responsibilities for campuses in responding to incidents of sexual harassment, intimate partner violence, and stalking under Title IX.
  - [Make evidence-based decisions about policies and protocols, including those related to mandatory or compelled disclosure](#). A study by Holland, Cortina and Freyd (2018)<sup>2</sup>, argues that mandatory reporting policies, or compelled disclosure policies as they term them, are not evidence-based and would result in fewer disclosures of sexual violence by survivors. Compelled disclosure policies are opposed by national medical associations such as the American Medical Association<sup>3</sup>, the World Health Organization<sup>4</sup> and victims' rights groups<sup>5</sup> alike because mandatory reporting takes the choice about reporting away from an adult whose very recovery depends on being able to regain control over their own lives. Instead, Holland et al. outline several survivor-centered reforms, including policies that respect survivors' wishes, creating restricted reporting options for survivors while they decide what they ultimately wish to do, and providing confidential advocates on campus with whom survivors can discuss their options while accessing accommodations.

## About NASPA

NASPA – Student Affairs Administrators in Higher Education is the leading association for the advancement, health, and sustainability of the student affairs profession. Student affairs is a critical component of the higher education experience, collaborating with colleagues across institutions of higher education to offer students valuable learning opportunities, meaningful social engagements, and safe and inclusive environments. NASPA's Public Policy Agenda is grounded in a commitment to ensuring opportunity for all institutional members' students and a belief that higher education is a great benefit to both individuals and society.

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<sup>2</sup> Holland, K. J., Cortina, L. M., and Freyd, J. J. (2018). Compelled Disclosure of College Sexual Assault: <http://dynamic.uoregon.edu/jif/articles/hcfaccepted2017.pdf>

<sup>3</sup> Sachs, C. J. (2007). Mandatory reporting of injuries inflicted by intimate partner violence. *AMA Journal of Ethics*, 9(12), 842-845.

<sup>4</sup> World Health Organization (2013). Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines. Retrieved (1/19/2017) from <http://www.who.int/reproductivehealth/publications/violence/9789241548595/en/>

<sup>5</sup> National Alliance to End Sexual Assault (2015, March 10). NAESV opposes mandatory referral legislation. Retrieved from <http://endsexualviolence.org/files/NAESVMandatoryReferralPositionStatement.pdf>