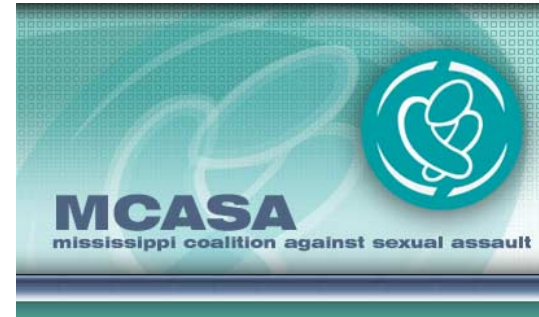


**WELCOME,
THIS WEB CONFERENCE
WILL BEGIN SOON**

**TITLE IX AND MANDATORY REPORTING:
INTERPRETING “MUST PROMPTLY
INVESTIGATE”**



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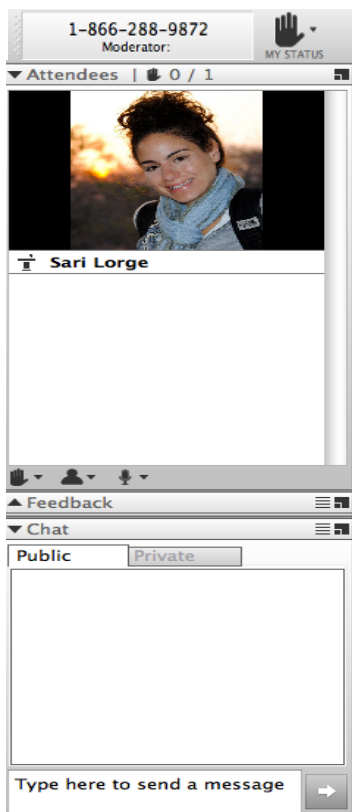
YouTube: www.youtube.com/CalCASAVideo

Email: info@calcasa.org



C A L C A S A
CALIFORNIA COALITION
AGAINST SEXUAL ASSAULT

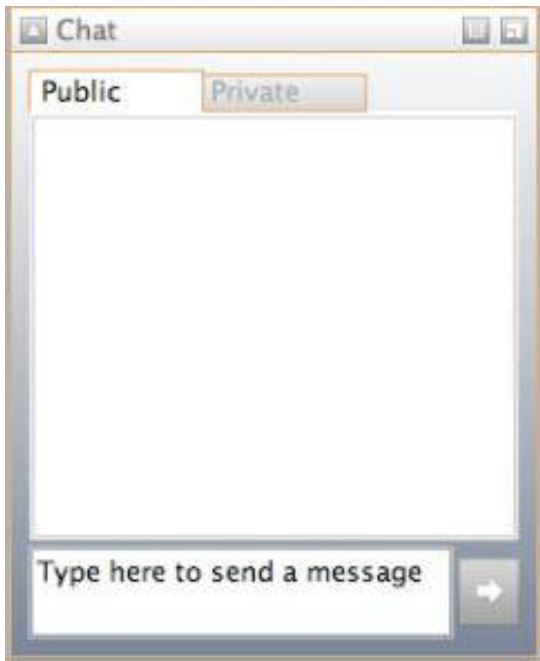
How to use this technology



- Raise hand
- Text chat
- PowerPoint slides
- Phone

Please send a private chat message for help.

Call iLinc Technical Support at 800.799.4510.



What position do you hold at your university?



Title IX and Mandatory Reporting: Interpreting “Must Promptly Investigate”

**Lindy Aldrich, Esq., Deputy Director
Victim Rights Law Center
August 13, 2012**

Agenda

- Overview of Relevant Language in the Dear Colleague Letter
- How to Address Confidentiality: 4 Hypos
- Maintaining Privacy within a Multidisciplinary Group
- Questions



WHO IS THE VRLC?

VRLC Boston Office

115 Broad Street, 3rd Floor

Boston, MA 02110

Email: TA@victimrights.org

(617) 399-6720

877-758-8132

VRLC Portland Office

520 SW Yamhill, Suite 200

Portland, OR 97204

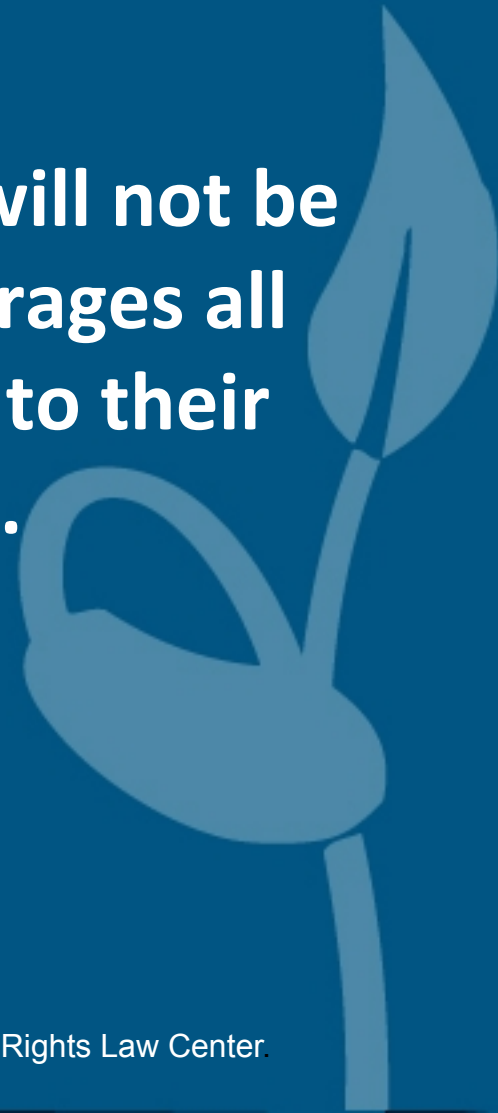
(503) 274-5477

Email: TA@victimrights.org

Web: www.victimrights.org



The VRLC as a conference trainer will not be providing legal advice and encourages all schools to direct legal questions to their institution's legal counsel.



Highlights of the April 2011 “Dear Colleague Letter”

- “...a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.”
 - DCL Page 4

What Else Does It Say?

- “Investigation will vary depending on the nature of the allegations, the age of the student..., the size and administrative structure of the school, and other factors.” (DCL Pg 5)
- “Schools should inform and obtain consent from the complainant...before beginning an investigation.” (DCL Pg 5)
- “If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation.” (DCL Pg 5)

Campus Safety Risk

- “If the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment to all students. Thus, the school may weigh the request for confidentiality against the following factors:”
 - Seriousness of the alleged harassment
 - Complainant’s age
 - Whether there have been other harassment complaints about the same individual
 - Harasser’s right to receive information about the allegations if the information is maintained ...as an “education record”

**When a victim
requests
confidentiality...
and beyond**



**Hypo #1:
Victim in crisis
Victim tells confidential reporter
Victim withholds her/his name
No assailant name provided**

Alert Title IX Coordinator → *...But, response may be limited due to request for confidentiality*

- **Support options on campus**
 - **Medical**
 - **Legal Emotional/
Counseling**
 - **Academic**
- **Acknowledgement of rights**
 - **Title IX**
 - **Retaliation prohibited**
 - **Clery Act Rights-
Campus Bill of Rights**

Title IX:
There are steps a campus can take to limit the effects of the harassment and prevent its recurrence without initiating a formal action against the accused or revealing the identity of the complainant

Hypo #2:
Victim requests confidentiality
Assailant's name provided

Alert Title IX Coordinator  ***Can Title IX Coordinator act?***

Title IX: Maintain confidentiality...unless campus safety risk

Hypo 1 



Title IX:

- **Multiple factors to consider upon request for confidentiality**
- **Must take steps to limit the effect of the harassment and its recurrence**
- **An accused can be counseled without revealing, even indirectly, the identity of the student who notified the school**



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Hypo #3:
Victim's name provided
Assailant's name provided
No disciplinary complaint
No law enforcement complaint

Alert Title IX Coordinator



*With name of assailant,
Title IX Coordinator should identify and
address systemic patterns on campus*

Hypo 1



Hypo 2

Title IX:

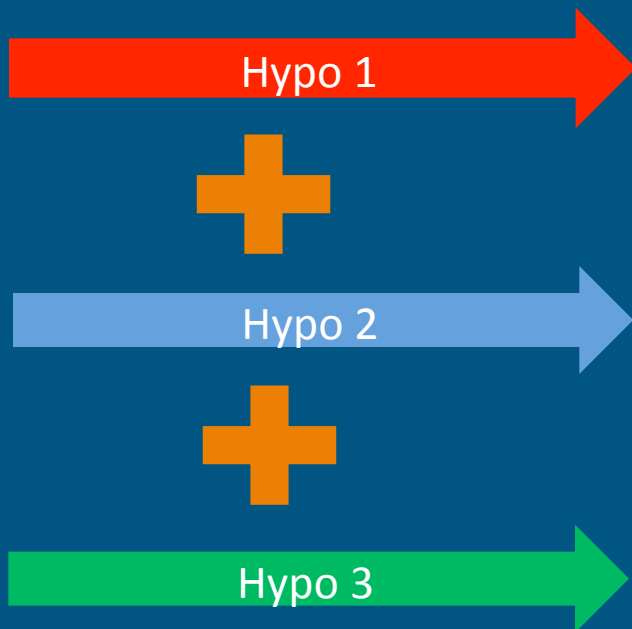
- **Accommodations for Victim**
- **Interim safety measures**
- **Burden NOT on victim to make requests**

Knock and Talk
(victim should be aware b/f)



Hypo #4:
Victim's name provided
Assailant's name provided
Disciplinary complaint filed
Law enforcement complaint filed

Alert Title IX Coordinator



Title IX:

- Do not wait until criminal complaint is resolved
- 3-10 days wait is okay when local law enforcement is investigating
- Multiple reports on same accused
- Severity of violence and safety risk to campus
- Disciplinary action – consider what is appropriate in light of hostile environment*

**Recent OCR
Compliance
Reports**

Notre Dame College

**Eastern Michigan
University**



**Privacy
Obligations of a
Multidisciplinary
Response Team**



Identifying the Privacy Obligations

- What professional limits does each member bring? (i.e. social worker, police officer)
 - Discuss it early
 - Who can discuss what and when?
 - Include language in your MOU's



Know the Laws

- Be sure the group is aware of the various laws governing the members
 - Title IX
 - Clery Act
 - HIPPA
 - Criminal Law
 - State/Tort Law
 - VAWA



Understanding Privilege

- Understand what privilege your state law provides to advocates, counselors, hotline workers, etc.
- Privilege vs. Confidentiality
 - What constitutes waiver?



RESOURCES

- **VRLC:** www.victimrights.org
- **VRLC TA email:** ta@victimrights.org
- **OCR Web Page:**
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>
- **Know Your Rights:**
<http://www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.pdf>
- **Dear Colleague:**
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>
- **Background, Summary and Fast Facts:**
<http://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201104.pdf>
- **Campus SA Policies:**
www.safercampus.org
- **National Center for Higher Education Risk Management:**
www.nchern.org



OTHER RESOURCES

Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f). Student Right-to-Know § 1092(f)(7).

Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99.

Bonnie S. Fisher, et al., The Sexual Victimization of College Women, 10 NIJ Bureau of Justice Statistics (2000).

Nancy Chi Cantalupo, Campus Violence: Understanding the Extraordinary Through the Ordinary, 35 J.C. & U.L. 613-690 (2009).

Educational Rights of Sexual Assault Victims, Sexual Violence Law Center (April 2008).

NPR/Center for Public Integrity (CPI) pieces on SA and Education (there are 7 stories with corresponding interviews).

David Lisak, The Undetected Rapist (“Frank Video”).



THANK YOU!



Acknowledgments

- Webinar Participants
- Victim Rights Law Center
- Mississippi Coalition Against Sexual Assault
- California Coalition Against Sexual Assault
- U.S. Department of Justice Office on Violence Against Women

