

**Domestic Violence  
Office for Civil Rights  
U.S. Department of Education  
June 30<sup>th</sup>, 2015**

**Question:** Is dating and domestic violence covered under Title IX?

**Answer:** Each case is fact-specific and each determination is based on the particular set of facts presented. Although we do not give legal advisory opinions, we do provide information on how the civil rights laws that OCR enforces apply generally.

As you are aware, OCR enforces Title IX of the Education Amendments of 1972 and its implementing regulation at 34 C.F.R. Part 106 (Title IX), which require schools receiving federal funding to respond promptly and equitably to allegations of sex discrimination, including sex-based harassment. Sex-based harassment of students by peers, employees, or third parties violates Title IX if it is sufficiently serious that it interferes with or limits the student's ability to participate in or benefit from the school's educational programs or activities (i.e., creates a hostile environment). Sex-based harassment includes sexual harassment and gender-based harassment. Sexual harassment is unwelcome conduct of a sexual nature, such as sexual violence, unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Gender-based harassment is unwelcome conduct of a nonsexual nature based on sex or sex stereotyping, including acts of verbal, nonverbal, physical aggression, intimidation, or hostility. When a school knows or reasonably should know of possible sexual or gender-based harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that sex-based harassment created a hostile environment, the school must then take prompt and effective steps reasonably calculated to end the sex-based harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

Because not all behaviors associated with domestic or dating violence will be considered conduct of a sexual nature (e.g., hitting or pushing), determining whether such an incident triggers a school's obligations under Title IX requires an in-depth review of the facts at hand. Harassing conduct like domestic or dating violence could still be based on sex or gender, even if not sexual in nature, and therefore may still be prohibited by Title IX. An educational institution should analyze the specific conduct associated with an allegation of domestic or dating violence to determine whether it is sexual in nature or is otherwise based on sex or gender, and meets the other requirements for a hostile environment under Title IX. If so, then Title IX requires the educational institution to respond appropriately. For example, if a male student physically assaults his girlfriend, a female student, because he is jealous that she is talking to another male student, and as a result she is afraid to attend the classes she shares with him, his behavior likely would be prohibited by Title IX because it is conduct based on sex that denies or limits her ability to benefit from the school's educational program.

OCR is committed to providing the public with information about the civil rights laws OCR enforces. In responding to correspondence, OCR provides general, publicly available information about a wide variety of civil rights issues in the education context. OCR does not, however, provide legal or other advice or issue advisory opinions to customers concerning specific factual scenarios. Correspondence issued by OCR in response to an inquiry from the public does not constitute a formal statement of OCR policy and should not be



construed as creating or articulating new policy. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

**Question:** Additional clarification:

- 1) Minor DV that does not cause an educational deprivation is not covered by Title IX and need not be subject to a Title IX-based resolution, is that correct?
- 2) DV that is not sexual or sex-based could, under the interpretation you just provided, be subject to a second set of standards different than those addressing Title IX-based DV by most campuses. However, all DV is covered by VAWA Section 304, with its Title IX-like protections. VAWA does not make the distinction about sex-based or sexual conduct. Any advice on addressing victim concerns that some DV is subject to a different set of procedures than other DV? Any thoughts about asking college administrators to make Solomonic judgments about whether DV is sex-based that many of them are not equipped to make?
- 3) If Joe is in a relationship, and he chooses Jen as his girlfriend, and he chooses her for that role based on her gender (and other qualities), and then he hits her, is that gender-based? Your letter seems to suggest no, or maybe, but allow me to explore. He did not hit Jen because she was a woman, he hit her because she was his girlfriend (he does not hit his non-romantic friends or other women), and she is his girlfriend because of her gender. Were she not female, he would not be dating or hitting her. Thus, since the act is directed at his girlfriend, and his relationship is gender-based, why isn't his violence gender-based, at least in part? Isn't much of men's violence toward women inherently gendered, based in power exertion and differentials, on control, and on male superior strength (he knows she will not hit back, or hit back hard enough)? I feel like your answer, for appropriate reasons, is perhaps more legally-based than rooted in the social constructs and sociology of IPV, but I think the best answer for a college has to take both into account, not just the legal underpinnings.

**Answer:** Each case is fact-specific and each determination is based on the particular set of facts presented. Although we do not give legal advisory opinions, we do provide information on how the civil rights laws that OCR enforces apply generally.

You are correct that sex-based harassment must be sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program (i.e., creates a hostile environment) to cause a Title IX violation.

As the Department explained in both the Notice of Proposed Rulemaking and the Final Regulations implementing the changes made to the Clery Act by the Violence Against Women Reauthorization Act of 2013, the Clery regulations address only an institution's responsibilities under the Clery Act, and do not affect or conflict with the requirements under Title IX as interpreted by OCR in its guidance documents. A recipient can comply with both Title IX and the Clery Act. (See, e.g. 79 Fed. Reg. 35445 (June 20, 2014), 79 Fed. Reg. 62772 (October 20, 2014)) It is true that much of the conduct that constitutes domestic or dating violence as defined in the Clery Act regulations at 34 C.F.R. § 668.46(a) would raise Title IX concerns because of the nature of this type of conduct. Nothing would prevent an institution from applying its Title IX procedures to all conduct that constitutes domestic or dating violence under the Clery Act.

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