

Identifying and Remediating Hostile Environments at Colleges & Universities

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Training Goals

- Participants will learn **to identify if and when a hostile environment exists** on their campus.
- Participants will know and **understand their legal obligations under Title IX** when they have identified a hostile environment.
- Participants will **learn best practices to remedy a hostile environment.**

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Obligations under Title IX

“If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.”¹

1 April 2011, Dear Colleague letter, pg. 2, available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

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Identifying Whether a Hostile Environment Exists


“If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment...”

A hostile environment exists if:

- (1) a student is sexually harassed and
- (2) the harassing conduct is sufficiently serious to deny or limit the student’s ability to participate in or benefit from the program.²


2 April 2011, Dear Colleague letter, pg. 3

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STEP 1:
DETERMINE WHETHER THE STUDENT WAS SEXUALLY HARASSED

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Identifying Whether a Hostile Environment Exists

SEXUAL HARASSMENT includes:

- “unwelcome conduct of a sexual nature”³
 - Includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.⁴


3,4 April 2011, Dear Colleague letter, pp. 3

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STEP 2:
DETERMINE WHETHER THE SEXUAL HARASSMENT IS SUFFICIENTLY SERIOUS THAT IT INTERFERES WITH OR LIMITS THE STUDENT’S ABILITY TO PARTICIPATE IN OR BENEFIT FROM THE SCHOOL’S PROGRAM

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Identifying Whether a Hostile Environment Exists

"WHICH IS SUFFICIENTLY SERIOUS THAT IT INTERFERES WITH OR LIMITS A STUDENT'S ABILITY TO PARTICIPATE IN OR BENEFIT FROM THE SCHOOL'S PROGRAM."

- Severe OR Pervasive⁵
 - Factors: Type & frequency, relationship between parties, setting in which the harassment occurred, whether other similar incidents have occurred, etc.⁶
 - "The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment..."⁷
- "A single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe... For instance, **a single instance of rape is sufficiently severe to create a hostile environment.**"⁸
- "Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus"⁹

5,6 University of Montana Resolution Findings Letter May 9, 2013, pg. 5, available at: <http://www.justice.gov/opa/documents/um-br-findings.pdf>
 7,8 April 2011, Dear Colleague letter, pg. 3
 9 April 2011, Dear Colleague letter, pg. 4

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Identifying Whether a Hostile Environment Exists

"OCR's standards require that the conduct be evaluated from the perspective of a reasonable person in the alleged victim's position, considering all the circumstances"¹⁰

PRACTICE TIP: The standard is both objective and subjective, so be sure to recognize that when applying it.

10 April 29, 2014 Q and As on Title IX and Sexual Violence available at: <http://www2.ed.gov/about/offices/list/ocr/doc/q-a-201404-title-ix.pdf>

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Case Examples:

What does a hostile environment look like?

- Male students pledging a fraternity repeated a sexually aggressive chant—"No means yes, yes means anal."—outside Women's Center. The incident was recorded, posted to YouTube, and circulated among students.
- Complaint alleges school did not adequately discipline students found guilty of sexual misconduct, created a hostile climate for sexual assault victims and violated federal mandates under Title IX, a non-discrimination law. In one instance, a student found guilty of sexual misconduct was only required to write a book report.

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Exercise:

What does a hostile environment look like?

Female student groped after class by a football player in a classroom in October. The course is necessary for the victim to graduate. Victim reported the assault to the university. Upon being notified of the complaint, the football player immediately withdraws from the university.

➔ **Does a hostile environment exist?**

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Exercise:

What does a hostile environment look like?

- Step 1: Determine whether the student was sexually harassed
 - » Yes
- Step 2: Was the assault sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program, therefore creating a hostile environment?
 - » Maybe

TAKEAWAY:
AN ACCUSED STUDENT'S WITHDRAWAL OR DISMISSAL DOES NOT NECESSARILY REMEDY A HOSTILE ENVIRONMENT.

- Factors to consider: (Montana resolution)
 - Severity of the assault
 - Location where the assault occurred
 - Relationship between the parties

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Exercise:

What does a hostile environment look like?

Female student groped after class by a football player in a classroom in October. The course is necessary for the victim to graduate. Victim reported the assault to the university. The football player immediately withdraws. The victim is unable to use the dining hall and the gym because she runs into other members of the football team and feels uncomfortable.

➔ **Does a hostile environment exist?**

» **Probably.**

TAKEAWAY:
PEOPLE OTHER THAN THE ASSAILANT CAN CREATE OR CONTRIBUTE TO A HOSTILE ENVIRONMENT.

- Factors to consider:
 - The gym and dining hall are part of the school's program.
 - Discussion: Does the mere presence of the football players create a hostile environment?

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Exercise:

What does a hostile environment look like?

Female student groped after class by a football player in a classroom in October. The course is necessary for the victim to graduate. Victim reported the assault to the university. The football player immediately withdraws. The victim is unable to use the dining hall and the gym because she runs into other members of the football team, who make harassing comments and gestures. Additionally, she is having difficulty entering the classroom where the assault occurred and as a result, is failing the course. The professor refused to make any accommodations.

➔ **Does a hostile environment exist?**

» **Yes!**

TAKEAWAY:
A SINGLE RAPE OR SEXUAL ASSAULT MAY BE SUFFICIENT TO CREATE A HOSTILE ENVIRONMENT

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Training Goals

- ✓ Participants will learn **to identify if and when a hostile environment exists** on their campus.
- Participants will know and **understand their legal obligations under Title IX** when they have identified a hostile environment.
- Participants will **learn best practices to remedy a hostile environment**.

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STEP 3:

REMEDY THE HOSTILE ENVIRONMENT

1. Eliminate the harassment,
2. Prevent its recurrence,
3. Address its effects.

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Remedying a Hostile Environment

Response must be **prompt** and **effective**¹⁰

“If a school delays responding to allegations of sexual violence or responds inappropriately, **the school’s own inaction may subject the student to a hostile environment**. If it does, the school will also be required to remedy the effects of the sexual violence that could reasonably have been prevented had the school responded promptly and appropriately.”¹²

11 University of Montana Resolution Findings Letter May 9, 2013, pg. 5
12 FAQ pg. 12
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Remedying a Hostile Environment

“Title IX requires the school to take **immediate action to eliminate the harassment,...**”

- Ensure complainants are aware of their Title IX rights, any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement.¹¹
- Take interim steps before the final outcome of the investigation¹²

PRACTICE TIP: One page resource sheets are very helpful in “checking this box” and providing a consistent and comprehensive list.

13 April 2011, Dear Colleague letter, pg. 16
14 April 2011, Dear Colleague letter, pg. 15
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Remedying a Hostile Environment

“Interim Steps”

- Purpose: Ensure the victim’s safety and well-being
- DCL Examples:¹³
 - Notify the complainant of his or her options to avoid contact with the alleged perpetrator, No contact orders, Escort between classes, Options to change housing & class schedule

PRACTICE TIP: Ask the Complainant what interim steps could be taken! Students know what will make them feel safe and continue to progress academically.

15 April 2011, Dear Colleague letter, pg. 15-16
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Remedying a Hostile Environment

Best practices: No contact orders

- Put them in writing!
- Be transparent
 - Tricky areas include cyber contact, third-party contact, incidental contact, and off-campus contact. Be clear on how your school views each situation.
- Enforcement is key
 - Is a violation of a no contact order a violation of your school's disciplinary policy?
- Distinguish between a no contact order as a punitive measure following a disciplinary complaint and as an interim safety measure.

PRACTICE TIP:
 If a no contact order is issued as a safety measure, but the victim does not choose to move forward with a disciplinary process, some schools make it a bilateral or mutual order because of due process concerns.

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Remedying a Hostile Environment

Interim Steps

Considerations:

- Minimize burden on Complainant
- Consider the Due Process Rights of the Accused

Example: A student is sexually assaulted in his dorm by his neighbor. Victim reports the assault to student life and says that he feels unsafe in his current living situation.

- Can the school move the victim to a new dorm? Should they?
- Can the school move the assailant to a new dorm? Should they?

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Remedying a Hostile Environment

"...prevent its recurrence."¹⁵

- Publish a notice of nondiscrimination
- Notify the Title IX Coordinator
 - Helps to identify systemic patterns
- Provide education and training programs to ensure that students and employees are able to identify sexual harassment and sexual violence
- Publication and dissemination of grievance procedures to ensure that students and employees understand that the school does not tolerate sexual harassment and violence

16 April 2011, Dear Colleague letter, pg. 4

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Remedying a Hostile Environment

*"...address its effects."*¹⁶

- Provide medical & mental health services to the Complainant
- Disciplinary action against the harasser
- Allow complainant to retake a course or withdraw without penalty

17 April 2011, Dear Colleague letter, pg. 15

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Exercise:

Remedying a Hostile Environment

Female student groped after class by a football player in a classroom in October. The course is necessary for the victim to graduate. Victim reported the assault to the university. The football player immediately withdraws. The victim is unable to use the dining hall and the gym because she runs into other members of the football team, who make harassing comments and gestures. Additionally, she is having difficulty entering the classroom where the assault occurred and as a result, is failing the course. The professor has refused to make any accommodations.

➔ **How can this school remedy the hostile environment?**

PRACTICE TIP:
Be Creative! Title IX provides a floor, not a ceiling.

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Exercise:

Remedying a Hostile Environment

ELIMINATE THE HARASSMENT:

- No contact order against football players
- No trespass order against the assailant
- "Safe" dining hall/gym hours
- Campus escort

PREVENT ITS RECURRENCE:

- Publish a retaliation policy
- Notify the assailant that should he wish to re-enroll, he may need to face disciplinary process
 - Consider victim's wishes
- Provide training to faculty regarding the school's Title IX obligations

ADDRESS ITS EFFECTS:

- Disciplinary action against football players/harassers
- Inform victim of her options for medical and counseling services both on and off campus
- Academic accommodations for the course
 - Ex. Independent study, move course to a new room, etc.

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Remedying a Hostile Environment

Who are your partners?

On Campus:

- Residence Life
- Professors
- Campus Security/Police
- Health Services
- Counseling Center
- Coaches/Athletic Staff
- Student Conduct/Affairs

Community:

- Rape crisis center
- Local law enforcement
- Legal Services
- Local hospitals

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Remedying a Hostile Environment

How are schools getting it right?

- Univ. had one dining hall. Victim afraid to eat there due to harassment by assailant's friends. School transferred her to an upper classmen house with a kitchen and allowed her to cancel her meal plan.
- Professor had a policy that students who missed more than (3) classes could not take the final exam. School allowed victim to take the final after missing (5) classes following a rape by a fellow student.
- School allowed a male sexual assault victim to use a private bathroom before and after basketball practice. Coach was prohibited from holding future team meetings in the locker room.
- University made an exception to its policy prohibiting students from visiting at other schools and transferring in credits so that a student could be off campus while the assailant completed his senior year.


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Resources

January 2001, Office for Civil Rights Guidance, available at:
<http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

April 2011, Dear Colleague letter, available at:
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

May 9, 2013, University of Montana Resolution Findings Letter available at: <http://www.justice.gov/opa/documents/um-ltr-findings.pdf>

April 29, 2014 Questions and Answers on Title IX and Sexual Violence available at: <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

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