

## Confidential Reporting: Understanding and Implementing Your Campus Response Process

by Lindy Aldrich, Esq.  
Victim Rights Law Center

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## WHO IS THE VRLC?

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**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. In addition, the VRLC cannot determine whether your college or university is in compliance with Title IX or any other federal law. The Office for Civil Rights division of the Department of Education is the only agency that is able to determine whether or not your college or university is compliant.**

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## Presentation Blueprint

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graph LR; A[Understand Why Victims Come Forward] --> B[Reporting Structure]; B --> C[Safety Risk Analysis]
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## Mary

Mary is an 18 year old student who was raped by Kevin, a 19 year old student, in her dorm after a party where both had been drinking. Mary did not know Kevin prior to the party, but was introduced by another girl. When Mary was 15, she was sexually assaulted by a family member and diagnosed with PTSD and anxiety disorders. The rape has exacerbated those conditions and she has begun cutting and having suicidal thoughts.

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## Understanding Why Victims Report

<p><u>Disclosure</u></p> <ul style="list-style-type: none"> <li>- Information</li> <li>- Support</li> <li>- Services</li> <li>- Accommodations</li> <li>- Safety</li> </ul>	<p><u>Reporting</u></p> <ul style="list-style-type: none"> <li>- Information</li> <li>- Disciplinary Action</li> <li>- Criminal Complaint</li> <li>- Support</li> <li>- Services</li> <li>- Accommodations</li> <li>- Safety</li> <li>- Interim measures</li> </ul>
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## MASLOW'S Hierarchy of Needs

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## Timeline of Victim Needs

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## Reporting Structure

Responsible Employees

Persons with Statutory Privilege

Persons with Confidentiality

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## Employees with Privilege

- Persons with statutory privilege are **NOT** required to report any information regarding a disclosure of sexual violence for Title IX purposes.
  - Determined by state law
  - Must be acting in that capacity at time of disclosure
  - Does not prevent a formal report

Depending on your state laws, positions could include:

- campus mental-health counselors,
- pastoral counselors,
- social workers,
- psychologists,
- health center employees,
- or any other person with a professional license requiring confidentiality, or who is supervised by such a person

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## Practically Speaking...

*Should the privileged employee explain their role to a victim?*

Yes. Privileged employees should explain that:

- “Must promptly investigate” has not been triggered through them without victim consent to disclose
- Not going to report any (identifying) information
- If victim wants specific action against the accused, will likely need to speak with Responsible Employee or Title IX Coord.

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### Mary tells Licensed Counselor

Persons with Statutory Privilege

What is required by Title IX to be reported?  
Not Required to Provide Any Information

What does Counselor tell Mary?  
One Sheeter – services, accommodations, ability to report to school and LE

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### Reporting Structure

Responsible Employees

Persons with Statutory Privilege

Persons with Confidentiality

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### Persons with Confidentiality

**\*\*Non-licensed persons are *STRONGLY ENCOURAGED*, but not required, to be designated as individuals who are exempt from responsible employee reporting duties. \*\***

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## Persons with Confidentiality

- “People who provide assistance to students who experience sexual violence and are not professional or pastoral counselors”
  - “all individuals who work or volunteer in on-campus sexual assault centers,
  - victim advocacy offices,
  - women’s centers,
  - health centers,
  - including front desk staff and students.”

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## Persons with Confidentiality: Reporting Requirements

- Provide non-identifying, aggregated data to the Title IX Coordinator

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## Mary Tells Receptionist at Counseling Center

Persons with Confidentiality

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What is required by Title IX to be reported?  
 Aggregated Data

What does Receptionist tell Mary?  
 One Sheeter – services, accommodations, ability to report to school and LE

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### Practically Speaking...

*How can an employee with privilege/confidentiality help a victim/student with accommodations without triggering a Responsible Employee report?*

Will likely require that employee with privilege/confidentiality will need to reach out on behalf of the victim. Campuses will need to assess their current systems to determine the best way to alert other administrators, staff and faculty about the safety, academic or housing accommodations needs of the victim.

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### Reporting Structure

Responsible Employees

Persons with Statutory Privilege

Persons with Confidentiality

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### Responsible Employees

**One**  
An Employee who has the authority to take action to redress the harassment or

**Two**  
An employee who has the duty to report to the appropriate school officials sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee

**Three**  
An individual who a student could reasonably believe has this authority or duty

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### Responsible Employee: Reporting to Title IX Coordinator

**"A responsible employee must report to the school's Title IX coordinator, or other appropriate school designee, all relevant details about the alleged sexual violence that the student or another person has shared and that the school will need to determine what occurred and to resolve the situation. This includes":**

- "the names of the alleged perpetrator (if known),"
- "the student who experienced the alleged sexual violence,"
- "other students involved in the alleged sexual violence,"
- "as well as relevant facts, including the date, time, and location."

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### Responsible Employee: What to Tell a Student

**"Before a student reveals information that he or she may wish to keep confidential, a responsible employee should make every effort to ensure that the student understands" the following:**

1. The employee's obligation to report relevant details to the Title IX Coordinator or other appropriate school officials,
2. The student's option to request that the school maintain his or her confidentiality, which the school (e.g., Title IX coordinator) will consider, and,
3. The student's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services

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### Practically Speaking...

*Is it realistic that the employee can stop a disclosure without hearing that it's sexual violence first?*

- It depends. Some students may give an initial clue before the entire disclosure.
- Employees who may not have worked with SA victims in the past would likely benefit from some sample scripts.
- Faculty can also explain their status and its responsibilities within their syllabus or at the first class.

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## Communication Practices We've Seen

- Sticker campaign
- Syllabus Warnings
- PSA campaign on campus about confidential practices
- One Sheet for Employees

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## Boston College Faculty One Sheeter

- Communicates clearly steps
- Lists available services/options
- Title IX Coordinator and other community partners on back

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## Mary Tells A Professor

Responsible Employees

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What is required by Title IX to be reported?

All relevant details

What does Professor tell Mary?

1. Warning before disclosure
2. Ability to request confidentiality
3. Must turn over details to Title IX Coordinator
4. One Sheeter

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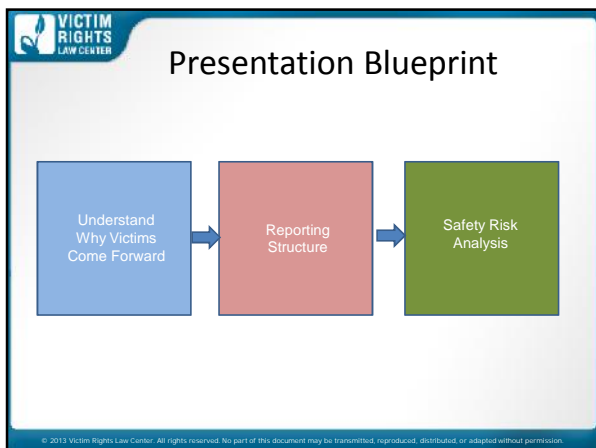
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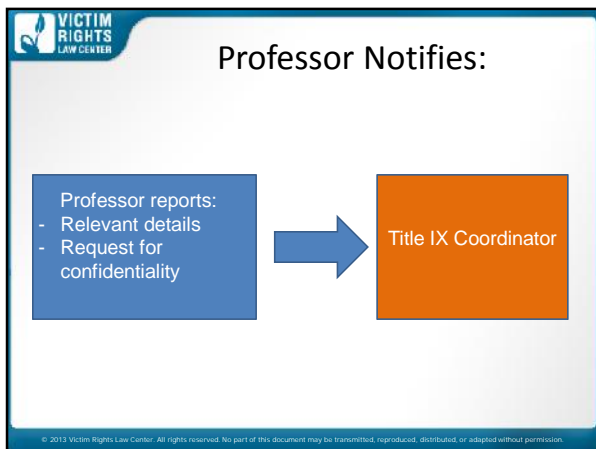
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### Who Considers Request for Confidentiality

- "Title IX Coordinator is generally in the best position to evaluate confidentiality requests."
- "...schools may vary widely in size and administrative structure...a school may reasonably determine that an employee other than the Title IX Coordinator is better suited..."
  - "...such as Sexual Assault Response Coordinator, dean or other official"
  - "...requires expertise and attention...school must assign...to employees with the capability and training to fulfill them."

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## Safety Risk Analysis

- Balancing Test
  - “When **weighing** a student’s request for confidentiality **that could preclude a meaningful investigation** or potential discipline of the alleged perpetrator, a school **should consider a range of factors.**”

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## Safety Risk Factors

- Whether there have been other sexual violence complaints about the same alleged perpetrator
- Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence
- Whether the alleged perpetrator threatened further sexual violence or other violence against the student or others
- Whether the sexual violence was committed by multiple perpetrators
- Increased risk of future acts of sexual violence under similar circumstances (i.e. pattern of perpetration – use illicit drugs/alcohol at a given location or by a particular group)
- Whether the sexual violence was perpetrated with a weapon
- The age of the student subjected to the sexual violence
- Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence)

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## Practically Speaking...

*How often should schools **not** honor a request for confidentiality?*

- “Instances will be limited” – OCR FAQ pg 19
- Nearly all requests for confidentiality will preclude a meaningful investigation. Few investigations will be productive or result in a sanction without a cooperation of the victim.

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### Who Makes the Decision?

- Is it one person? Group? Who?
- Does multidisciplinary approach matter?
- What are the risks for widening the scope?
- What are the risks for narrowing the scope?

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### If you honor request for confidentiality

- You should inform the student that honoring the request may limit campus ability to respond fully to the incident, including pursuing disciplinary action against the accused student.
- You should also explain that Title IX includes protections against retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. This includes retaliatory actions taken by the school and school officials.

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### What Accommodations Can You Offer Confidential Victim?

- Academic – schedule changes, additional time, withdrawal from class, medical leave, etc
- Housing – transfer, parking
- Services – medical, counseling

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### Practically Speaking...

*Can you offer a No Contact Order to a Confidential Victim?*

- Probably not. If the victim is requesting that the accused student not be made aware of the report, and that request is honored, it isn't possible to issue a no-contact order without giving clear instructions to the accused of who to avoid contact with.
- Inform the confidential victim that an order would be possible in the event of a formal complaint to the school or law enforcement.

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### What Can You Do For the Campus?

- “There are steps a school can take to limit the effects of the alleged sexual violence and prevent its reoccurrence without initiating a formal action against the alleged perpetrator or revealing the identity of the student complainant.”
  - Providing increased monitoring, supervision or security at locations/activities where misconduct occurred
  - Providing training and education materials for students and employees
  - Changing and publicizing the school’s policies
  - Conducting climate surveys

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### If you choose NOT to honor the request for confidentiality

- Before taking any actions, inform the victim that you are proceeding and offer safety measures
- Victim may not wish to cooperate further
  - If the student requests that the school inform the accused that the student asked the school not to investigate or seek discipline, the school should honor this request and inform the accused that the school made the decision to go forward

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### Mary #1

Mary was introduced to Kevin at an on-campus party by another girl in her class. Initially she really enjoyed hanging out with Kevin and they talked and drank for several hours. Much of Mary's memory about the rape is blurred by alcohol, but she has numerous cuts and bruises on the back of her head and back. She feels that she may have been dragged by the hair at one point. During the conversation that night, Kevin made several joking references to keeping guns in his dorm room, but Mary didn't take him seriously at the time. Mary believes Kevin had no weapons on him at the time of the rape, but she's afraid that he may have told her those stories earlier in the night for a reason.

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### Title IX Coordinator #1

Upon hearing from the professor about Mary's report of sexual assault, the Title IX Coord looked into Kevin's disciplinary history at the university. She learned that Kevin had two prior conduct violations – vandalism of school property as well as Conduct Unbecoming when another freshman girl accused him of forced oral sex last year. The Conduct Board did not find Kevin responsible for sexual misconduct. She found no other history of violence or arrests.

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### Factor Analysis #1

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graph LR; A[Decision Makers] --> B[Factor Review]; B --> C[Next Steps];
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### Safety Risk Factors

- Whether there have been other sexual violence complaints about the same alleged perpetrator
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- Whether the alleged perpetrator threatened further sexual violence or other violence against the student or others
- Whether the sexual violence was committed by multiple perpetrators
- Increased risk of future acts of sexual violence under similar circumstances (i.e. pattern of perpetration – use illicit drugs/alcohol at a given location or by a particular group)
- Whether the sexual violence was perpetrated with a weapon
- The age of the student subjected to the sexual violence
- Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence)

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### Title IX Coordinator #2

Upon hearing from the professor about Mary's report of sexual assault, the Title IX Coord learned that the on-campus party was in the Athletic Residence Hall. While there was no history of any complaints of Kevin, Mary's report was the 3<sup>rd</sup> report of a sexual assault in that Residence Hall in 18 months.

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### Mary #3

Mary was introduced to Kevin at an on-campus party by another girl in her class. Initially she really enjoyed hanging out with Kevin and they talked and drank for several hours. Much of Mary's memory about the rape is blurred by alcohol. She remembers saying "no" repeatedly but she drifted in and out of consciousness until waking up naked in a room she didn't recognize. She grabbed her clothes and fled. Mary has not seen Kevin since the rape but is asking for academic and housing accommodations. She is also being seen by a campus counselor.

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### Title IX Coordinator #3

Upon hearing from the professor about Mary's report of sexual assault, the Title IX Coord determined that there were no disciplinary reports or violations involving Kevin. In addition, no sexual misconduct or other discriminatory behaviors have been reported about the building where Mary fled from or the location/group who held the party.

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### Practically Speaking...

In our experience, students who request confidentiality and are able to obtain accommodations often move forward with other formal complaints.

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