



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, DC 20202

April 28, 2015

Honorable Barbara Boxer
United States Senate
Washington, DC 20510

Dear Senator Boxer:

Thank you for your February 20, 2015, letter to Secretary Duncan requesting information regarding the U.S. Department of Education's (Department) efforts to prevent sexual violence on college campuses. We appreciate your leadership on this issue and share your belief that all students have the right to attend institutions¹ that are free from sexual violence. We are pleased to provide this response on behalf of the Secretary.

The Department's Office for Civil Rights (OCR) enforces Title IX of the Education Amendments Act of 1972 (Title IX), and the Federal Student Aid office (FSA) enforces the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 (Clery Act). Our offices work closely together to share information and, when appropriate, coordinate aspects of our investigations. We also contribute significantly to the White House Task Force to Protect Students from Sexual Assault, including its 2014 report to the President, NotAlone.gov (a resource hub for students, parents, and stakeholders on prevention strategies and survivor resources), and a summary of guidance on sexual harassment and violence. The Department has also increased transparency of its civil rights enforcement activities by posting resolution agreements online so that educational institutions and the public may follow the progress of and learn from our work in order to prevent discrimination, harassment, and violence in their own communities or on their campuses. Also, OCR now provides, upon request, a list of postsecondary institutions under Title IX sexual assault related review.

OFFICE FOR CIVIL RIGHTS

From FY 2009 (October 2008) through April 8, 2015, 385 sexual violence complaints, at both the elementary and secondary and postsecondary education levels, were filed with OCR. The breakdown by fiscal year and type of educational institution is as follows:

¹ Throughout this document, the terms "institution(s)" and "school(s)" refer to recipients of federal financial assistance that operate educational programs or activities. For Title IX purposes, at the elementary and secondary school level, the recipient generally is the school district; and at the postsecondary level, the recipient is the individual institution of higher education.

	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015 (April 8, 2015)	TOTAL
TOTAL SEXUAL VIOLENCE COMPLAINTS	20	35	42	33	64	123	68	385
Elementary and Secondary Education (ESE)	11	24	23	16	31	20	17	142
Postsecondary Education (PSE)	9	11	19	17	32	102	51	241
Other	0	0	0	0	1	1	0	2

OCR opened investigations in response to 250 of the 385 sexual violence complaints received between FY 2009 and April 8, 2015, and is currently investigating 146 (ESE: 34; PSE: 112) out of the 250 Title IX sexual violence complaints (filed as of April 8, 2015)². Also, from FY 2009 through April 8, 2015, OCR initiated 25 proactive investigations under Title IX involving the issue of sexual violence.³

The length of OCR's investigations generally varies with the complexity of the issues. While OCR's goal is to resolve all complaints within 180 days, sexual violence investigations tend to be complex and may involve systemic, campus- and institution-wide issues, in addition to issues pertaining to specific students. As such, Title IX sexual violence investigations, on average, take longer to complete than those across other jurisdictions. For example, when OCR investigates a case involving allegations of sexual violence on a college or university campus, it comprehensively examines the campus culture with respect to sexual violence, reviews the institution's response to complaints of sexual violence over a period of years, interviews students who filed sexual violence complaints, interviews school officials involved in responding to sexual violence reports and complaints, and meets with individual students and student groups. This process also encompasses a review of the school's Title IX sexual violence policies and procedures as well as the school's training protocol on sexual violence issues for its campus community. For all of OCR's investigations, including those involving issues of sexual violence under Title IX, OCR follows the procedures and processes provided in its Case Processing Manual (CPM). See <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

Below is the average duration, in days, of investigations for cases across all jurisdictions, including sexual violence, enforced by OCR that resulted in a substantive case closure. These

² A complaint may not be investigated because it was not timely filed, was incomplete, or raised issues not covered by federal law.

³ OCR is required to conduct periodic compliance reviews of recipients of federal financial assistance from the Department to ensure their compliance with the civil laws enforced by OCR.

cases resulted in findings of no violation or insufficient evidence, an early complaint resolution, and/or change without a resolution agreement, and/or change with a resolution agreement:

Year Closed	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015
ESE	206	192	213	217	207	215	229
PSE	211	209	210	215	236	206	236

By comparison, the average duration of Title IX sexual violence investigations that resulted in substantive closures is longer, as illustrated below:

Year Closed	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015
ESE	291	229	214	263	231	558	796
PSE	379	368	291	308	478	1,469	940

In fiscal years 2014 and 2015, OCR has closed some of its longest running sexual violence investigations, while also managing the substantial increase in sexual violence complaints noted above. This explains in part why the average duration of Title IX sexual violence investigations has been higher in recent years. OCR expects that these averages will decrease as the agency closes out its oldest sexual violence cases and if, as we hope, Congress increases OCR's appropriation to allow OCR to manage its current and projected caseload.

OCR has institutionalized the practice of determining in every sexual violence investigation whether schools should provide immediate and appropriate interim relief to survivors of sexual violence prior to the conclusion of its investigation or the signing of a resolution agreement.⁴ As soon as a college or university is aware of an allegation of sexual violence, it must take steps to ensure the complainant has equal access to education programs and activities and to protect the complainant as necessary. The institution should ensure that the complainant is aware of his or her Title IX rights and any available resources, including academic and counseling services and other measures, to ensure the complainant's safety and ability to continue his or her education. Supports and services for sexual assault survivors may also be included as ongoing (not just interim) remedies, along with compensatory and other individual remedies as appropriate, in resolution agreements reached with institutions.

For cases in which OCR obtains a resolution agreement, the resolution agreement must remedy the allegations and issues investigated and address OCR's compliance concerns. Remedies are fact- and case-specific and, upon implementation, are determined to ensure compliance with the law. Colleges and universities addressing violations of Title IX with respect to sexual assault or violence have committed, for example, to the following:

- the designation of one or more Title IX Coordinators, as required by law;

⁴ See 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>.

- the widespread distribution of Title IX Coordinator contact information to staff and students, as required by law;
- significant revisions to an institution's discrimination complaint policies and procedures;
- the designation and comprehensive training of Title IX Coordinators, resident assistants, and others to facilitate greater compliance with Title IX;
- annual training for staff and students regarding Title IX rights, obligations, and on-campus and off-campus resources of support;
- information-sharing among campuses and offices and among the schools and local law enforcement to promote effective coordination of ongoing efforts;
- the appointment of an advisory committee of faculty, students, and staff to assist the institution with following through on stated commitments and facilitating ongoing improvement; and
- the development, distribution, and analysis of annual climate surveys to gauge the college or university community's progress in creating a safe educational environment free of sexual hostility and violence.

Under any of its jurisdictions, OCR may reach a resolution with an institution before or after making a finding of non-compliance. After reaching a resolution agreement with a school, OCR will monitor that institution's implementation of the agreement and its ongoing compliance with the law. Monitoring activities generally include the review of reports submitted by the educational institution and site visits. OCR will not close its monitoring activities until it determines that the institution has fulfilled the terms of the agreement and is in compliance with the law.

If an institution fails to remedy a violation or fails to implement the changes as mandated in its resolution agreement, OCR will first bring these failures to the institution's attention and afford it the opportunity to take corrective action. If the institution persists in not agreeing to a resolution or failing to implement the provisions of the agreement, OCR may refer the case to the U.S. Department of Justice for possible litigation, including litigation to enforce the specific terms and obligations of the agreement, or OCR may initiate administrative enforcement against non-compliant institutions by seeking the discontinuation of federal funding at that institution. A particular program may itself be administered in a discriminatory manner, or be so affected by discriminatory practices elsewhere in the overall operation of the institution that it thereby becomes discriminatory.⁵ Accordingly, OCR could pursue, through an administrative enforcement process, the discontinuation of federal funds for such programs. The extent of such discontinuation would be dependent upon the degree to which discrimination is pervasive throughout the institution. Congress required that, prior to any enforcement actions, OCR make a determination that compliance cannot be achieved by voluntary means. With these enforcement options available to OCR, we have experienced positive results.

⁵ 42 U.S.C. § 2000d-1; 20 U.S.C. § 1682. See also DOJ's Title IX Legal Manual, Section VII.C.2.

FEDERAL STUDENT AID – CLERY ACT ENFORCEMENT

Under the Clery Act, institutions of higher education participating in the Higher Education Act’s Title IV federal student financial assistance programs must report crime statistics to the Department annually and make those statistics available to their students, employees, and potential students and employees. The Department also makes institutions’ crime statistics available to the public through the Campus Safety and Security Data Analysis Cutting Tool (CSSDACT) and the College Navigator website.

The following chart shows the number of Forcible Sex Offenses (FSO) and Non-Forcible Sex Offenses (NFSO) that were reported to the Department in the annual crime statistics reports from institutions over the last five calendar years.⁶ The number of reported offenses in these categories has steadily increased. We believe this increase is the result of the increase in federal enforcement efforts, as well as the growing public attention paid to the issue of campus sexual assault.

Year	Forcible Sex Offenses	Non-Forcible Sex Offenses
2013	6,016	57
2012	4,949	73
2011	4,198	66
2010	3,613	69
2009	3,264	93

The Department’s Clery Act Compliance Team (Clery Team) in FSA’s Program Compliance office has implemented a robust monitoring and enforcement program to assess compliance with the Clery Act requirements. The Clery Team conducts in-depth campus crime program reviews to identify violations of the Clery Act and the Department’s regulations. FSA requires schools to take specific actions to correct violations and to ensure future compliance. FSA may conduct a review after receiving a complaint filed by a crime victim, advocates, or even institutional officials. The Department also proactively conducts non-complaint-based reviews. Some of these latter reviews are conducted in partnership with the Federal Bureau of Investigation (FBI) under a Memorandum of Understanding between FSA and the audit unit of the FBI’s Criminal Justice Information Service.

In addition, every general assessment program review conducted by FSA Program Compliance’s regional teams includes a Clery Act compliance check. All findings of violation from those general reviews are examined by the Clery Team to ensure consistent application of the statute and regulations. The Clery Team also monitors media coverage of campus crime activity and may conduct a preliminary assessment of major campus crimes in response to media reports.

⁶ The Violence Against Women Reauthorization Act of 2013 (VAWA) changed the crime definitions used for Clery Act purposes. When the new regulations go into effect on July 1, 2015, the Department will no longer use the terms “forcible and non-forcible” to define sexual assaults under the Clery Act.

These assessments evaluate the institution's compliance with the Clery Act and determine if any additional investigation is needed. The Clery Team has also developed a strategic plan that will increase the use of crime analytics and other technology to more effectively monitor crime trends and identify possible compliance failures.

All institutions with a police or security presence are required to maintain an easy-to-understand daily crime log. All campus crime program reviews include a detailed evaluation of the accuracy and completeness of the institution's log. This is accomplished by identifying a sample of incidents from the initial call into the police or security department and tracking it through the school's records management systems and, finally, to the crime log. As part of expanded testing, the Clery Team may elect to pull additional reports of all calls for service, all incidents of crime, and all Clery-reportable offenses. In addition, the Clery Team always requests an "audit trail" or a listing of the specific incidents to support or substantiate the institution's crime statistics published in its Annual Security Report provided to the Department.

FSA may propose fines against an institution for a violation of one or more Clery Act requirements. An institution may request a reconsideration of a proposed fine or file an appeal. Enclosed is a list of the 32 institutions against which the Department has initiated a fine action for violations of the Clery Act. The spreadsheet includes the initial amount of the proposed fine as well as information about the resolution of any appeal.

The Clery Act requires institutions to submit crime statistics for the three most recently completed calendar years to the Department for inclusion in the CSSDACT. Statistics are collected via an annual survey. The survey is typically conducted during the August to October timeframe, and statistics are usually made available to the public before the end of the calendar year. The Department's website (<http://ope.ed.gov/security/>) is typically updated by mid-November and never later than the end of the calendar year. The Department also maintains data files containing all survey responses for record-retention and research purposes. Even after the statistics are made public, institutions can make corrections with assistance from the Help Desk. Institutions are often required to make changes based on the findings of a program review conducted by the Clery Team. In October 2014, the Department published regulations reflecting changes made to the Clery Act by VAWA that make changes to the annual reporting requirements for schools. Starting this year, schools will begin reporting data regarding dating violence, domestic violence, sexual assault, and stalking. In addition, the 2015 survey will also collect information about each institution's Title IX Coordinator, and that information will be shared with OCR upon request.

You also asked about the Department's reports to Congress relating to the Clery Act. The Department is not required to submit such an annual report. However, the Higher Education Amendments of 1998 included a requirement that the Department submit a report to Congress. The Department met this requirement with a report dated January 18, 2001.

Thank you again for your ongoing leadership and engagement with the Department on issues surrounding sexual violence on college and university campuses. If you have further questions,

please contact Lloyd Horwich, Principal Deputy Assistant Secretary, delegated the authority of the Assistant Secretary, in the Office of Legislation and Congressional Affairs at 202-401-0020.

Sincerely,



Catherine E. Lhamon
Assistant Secretary for Civil Rights



for: James W. Runcie
Chief Operating Officer
Federal Student Aid

Enclosure

Fine Actions for Violations of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act

Note: Gray = Open

Updated: 4/10/15

School	OPE-ID	Type	Title IV Funds	Date FFRD/EDL	Fine Initiated or Planned	Date Fine Initiated	Fine Imposed/ Settled	Date Fine Imposed/Settled
Mount St. Clare (Ashford U.)	00188100	Non-Profit	\$3 Million	03/24/00	\$25,000	04/28/00	\$15,000	10/17/00
Salem International University	00382000	Proprietary	\$2.4 Million	04/14/04	\$250,000	05/19/04	\$200,000	04/07/05
Miami University of Ohio	00307700	Public	\$67 Million	05/24/05	\$27,500	09/13/05	\$27,500	10/24/05
Pittsburgh Technical Institute	00743700	Proprietary	\$22 Million	12/29/05	\$110,000	N/A	\$55,000	09/18/07
La Salle University	00328700	Non-Profit	\$36.3 Million	09/19/06	\$110,000	10/25/07	\$87,500	07/08/08
Eastern Michigan University	00225900	Public	\$108.5 Million	11/14/07	\$357,500	12/14/07	\$350,000	06/05/08
Schreiner University	00361000	Non-Profit	\$6.7 Million	02/08/09	\$55,000	06/25/09	\$42,000	07/02/10
Tarleton State University	00363100	Public	\$46.4 Million	06/10/09	\$137,500	10/06/09	\$123,500	07/25/12
Paul Smith's College	00279500	Non-Profit	\$8.5 Million	11/07/08	\$260,000	04/09/10	\$195,000	04/14/11
Virginia Tech	00375400	Public	\$120 Million	12/09/10	\$55,000	03/29/11	\$32,500	01/30/14
Notre Dame of Ohio	00308500	Non-Profit	\$12.9 Million	03/12/10	\$165,000	06/17/11	\$89,000	01/04/12
Washington State University	00380000	Public	\$169.5 Million	03/08/11	\$82,500	08/19/11	\$82,500	02/14/13
University of Vermont	00369600	Public	\$110 Million	04/25/11	\$65,000	03/09/12	\$55,000	10/11/12
Wesley College	00143300	Non-Profit	\$21 Million	09/13/06	\$60,000	03/23/12	\$45,000	01/02/13
University of Northern Iowa	00189000	Public	\$90 Million	04/25/11	\$110,000	03/12/13	\$110,000	03/27/13
University of North Dakota	00300500	Public	\$87.5 Million	12/19/11	\$115,000	03/29/13	\$115,000	07/17/13
University of Texas - Arlington	00365600	Public	\$207.6 Million	12/22/11	\$82,500	04/02/13	\$49,500	07/31/13
Liberty University	02053000	Non-Profit	\$576.8 Million	03/23/10	\$165,000	04/03/13	\$120,000	12/18/13
Dominican College of Blauvelt	00271300	Non-Profit	\$20.4 Million	04/03/12	\$262,500	04/09/13	\$200,000	07/19/13
Yale University	00142600	Non-Profit	\$58 Million	05/23/11	\$165,000	04/19/13	\$155,000	07/09/13
Oregon State University	00321000	Public	\$182.5 Million	07/16/10	\$280,000	09/27/13	\$220,500	02/19/14
University of Nebraska-Kearney	00255100	Public	\$35 Million	01/30/14	\$65,000	07/03/14	\$65,000	08/21/14
Delaware State University	00142800	Public	\$47 Million	01/25/12	\$55,000	06/20/14	\$55,000	11/14/14
Midlands Technical College	00399300	Public	\$50 Million	01/29/14	\$47,500	09/23/14	\$37,500	12/09/14
Sterling College	00194500	Non-Profit	\$7 Million	01/29/14	\$165,000	11/07/14	\$165,000	03/11/15
Wards Corner Beauty Academy	02108800	Proprietary	\$2.1 Million	03/12/13	\$15,000	02/13/15	\$15,000	03/18/15
Mid-Atlantic Christian University	02280900	Non-Profit	\$2 Million	01/30/14	\$90,000	11/14/14	\$30,000	03/19/15
Lincoln University	00247900	Public	\$26.4 Million	02/14/10	\$275,000	10/25/13	Appealed 11/14/13	
Mount Mercy University	00188000	Non-Profit	\$15.3 Million	12/17/12	\$55,000	12/12/14	2/5/15 appealed. No hearing request.	
Salina Area Technical College	00549900	Public	\$1.3 Million	08/05/13	\$72,500	12/12/14	12/23/14 appealed. No hearing request	
Cornell College	00185600	Non-Profit	\$10.9 Million	05/14/13	\$55,000	02/13/15	3/9/15 appealed. No hearing request.	
First Institute	02584900	Proprietary	\$1.8 Million	08/21/12	\$42,500	02/13/15	3/4/15 appealed. No hearing request.	