

Notice-and-Comment Data Guide

Please use the following data to help write your comment. Remember, the Department of Education is looking for comments that use data and evidence to back up your points.

- [Prevalence of Sexual Violence and Sex Discrimination](#)
- [Mental Health and Educational Impacts of Sexual Violence](#)
- [Economic Effects of Sexual Violence](#)
- [Reporting](#)
- [Fair Process in Campus Discipline](#)
- [Efficacy of Criminal Responses](#)
- [Resources about the Title IX Process:](#)
 - [Off-Campus](#)
 - [Cross-Examination During Investigation Process](#)
 - [Definition of Sexual Harassment](#)

Prevalence of Sexual Violence and Sex Discrimination

- 1 in every 5 women will be sexually assaulted in college ([Henry J Kaiser Family Foundation & The Washington Post, 2015](#)).
- 16% of men were sexually assaulted by the age of 18 ([Centers for Disease Control and Prevention, 2005](#)). (*Important note: these statistics are likely to be higher in reality. Men who have had such experiences are less likely to disclose than women*)
- 7 out of 10 rapes are committed by someone known to the victim ([DoJ, 2015](#)).¹
- Immigrant girls and young women are almost twice as likely as their non-immigrant peers to have experienced incidents of sexual assault ([Mindlin et al., 2015](#)). (*These numbers are likely significantly low due to a fear of deportation. Immigrants, especially among undocumented folks cannot report their assaults to law enforcement.*)
- 44% of lesbians and 61% of bisexual women experience rape, physical violence, or stalking by an intimate partner, compared to 35% of heterosexual women ([Centers for Disease Control and Prevention, 2010](#)).
- 26% of gay men and 37% of bisexual men experience rape, physical violence, or stalking by an intimate partner, compared to 29% of heterosexual men ([CDC, 2010](#)).
- Nearly 1 in 4 transgender, genderqueer, gender non-conforming, or questioning students experience sexual violence during their four years of undergrad ([Cantor et al., 2017](#))
- One in two transgender individuals are sexually abused or assaulted at some point in their lives ([Forge, 2005](#)).
- 78% of transgender or gender non-conforming youth are sexually harassed during grades K-12 ([Grant, 2011](#)).
- 32.3% of women who identify as multiracial are sexually assaulted ([Breiding et al., 2011](#)).
- 56.1% of American Indian and Alaska Native women have experienced sexual violence ([Rosay, 2010](#)).
- Among Black women, 21.2% are survivors of sexual assault and 13.6% among Hispanic women ([Breiding, 2011](#)).
- 37.9% of Asians reported being sexually harassed. (*Important to acknowledge, due to systemic and cultural barriers, the rate of sexual assault among Asian and Pacific Islanders is probably much higher in reality.*) ([Cantor, 2015](#)).
- Of Asian Pacific Islander women, 23% experienced sexual violence ([Smith, 2017](#)).
- Of Asian Pacific Islander men, 9% experienced sexual violence, and 9% had non-contact unwanted sexual experiences during their lifetime ([Smith, 2017](#)).
- About 1 in 3 Latinas (34.4%) will experience interpersonal violence during her lifetime and 1 in 12 Latinas (8.6%) has experienced IPV in the previous 12 months ([Smith, 2017](#)).

Mental Health and Educational Impacts of Sexual Violence

- 34.1% of students who have experienced sexual assault dropout of college, higher than the overall dropout rate for college students (Mengo & Black, 2015).

¹ Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, National Crime Victimization Survey, 2010-2014 (2015).

- Women who are sexually assaulted or abused are over twice as likely to have PTSD, depression, and chronic pain following the violence as non abused women (Woods et al., 2005).²
- An estimated 40% of rape victims suffer from severe emotional distress (requiring mental health treatment) ([Miller, Cohen, & Rossman, 1993](#)).
- More than 40% of college students who were sexually victimized also reported experiences of institutional betrayal ([Freyd, 2018](#))

Economic Effects of Sexual Violence

- A single rape costs victims between \$87,000 to \$240,776 ([Miller, Cohen, & Wiersema, 1996](#)).
- More than one-fifth of intimate partner rape survivors lose an average of 8 days of paid work per assault ([NCIPC, 2003](#)).
- The average cost of being a rape victim is estimated at \$110,000. This compares with victim costs of \$16,000 for robbery, and \$36,000 for drunk driving ([Children's Safety Network Economic and Insurance Resource Center](#)).

Reporting

- Survivors rarely report cases of sexual violence to their schools– largely because they don't know how to report or who to report to on their campus (Holland & Cortina, 2017).³
- Survivors often don't report their sexual assaults because of fear of being disbelieved or their assault not taken seriously (Holland & Cortina, 2017).
- Only 2%-10% of reported cases of sexual assault are false (Lisak et al., 2010).⁴
- 69% of survivors reported police officers discouraged them from filing a report. One-third of survivors had police refuse to take their reports ([Campbell, 2005](#)).
- 20% were asked specifically if they had responded sexually to the assault (i.e., if they had an orgasm) ([Campbell, 2005](#)).

Fair Process in Campus Discipline

- Preponderance of the evidence is the appropriate civil standard to use in campus conduct cases. And the only standard that treats all students with fundamental fairness ([Loschiavo & Waller](#)).⁵

² Woods, A., Page, G., O'Campo, P., Pugh, L., Ford, D., & Campbell, J. (2005). The mediation effect of posttraumatic stress disorder symptoms on the relationship of intimate partner violence and IFN- γ levels. *American Journal of Community Psychology*, 36(1), 159-175. doi:10.1007/s10464-005-6240-7

³ Holland, K. J. & Cortina, L. M. (2017a). "It happens to girls all the time": Examining sexual assault survivors' reasons for not using campus supports. *American Journal of Community Psychology*, 59(1), 50-64. doi: 10.1002/ajcp.12126

⁴ Lisak, D., Gardinier, L., Nicksa, S. C., & Cote, A. M. (2010). False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases. *Violence Against Women*, 16(12), 1318-1334. doi:10.1177/1077801210387747.

⁵ Loschiavo, C. & Waller, J. L. Association for Student Conduct Administration. *The Preponderance of Evidence Standard: Use In Higher Education Campus Conduct Processes*. Retrieved from: <http://www.theasca.org/files/The%20Preponderance%20of%20Evidence%20Standard.pdf>

- Cross-examination of rape complaints often utilize rape myths and victim-blaming language to discredit witnesses (Zydervelt et. al, 2016).⁶

Efficacy of Criminal Responses

- Survivors often experience “secondary victimization” as a result of interacting with community services providers who often partake in “victim-blaming attitudes, behaviors, and practices” ([Campbell, 2005](#)).
- After interacting with law enforcement ([Campbell, 2005](#)):
 - 71% of survivors reported feeling depressed
 - 89% felt violated
 - 91% felt disappointed.
- 80% of survivors reported they were reluctant to seek further help ([Campbell, 2005](#)).

Resources about the Title IX Process:

Off-Campus

- The proposed rule will only assign responsibility to schools to investigate assaults that occur on campus.
 - 87% of college students who live off-campus.
 - In the 2010-11 school year, 36% of girls, 24% of boys, and 30% of all students in grades 7-12 experienced sexual harassment online ([AAUW, 2011](#))
 - i) 18% of them didn’t want to go to school, 13% found it hard to study, 17% had trouble sleeping, 8% stayed home from school ([AAUW, 2011](#)). *(The numbers are higher for combined online + offline harassment).*

Cross-Examination During Investigation Process

- The proposed rule requires cross examination to take place in real time during the hearing.
 - The rule allows the survivor to be in a different room while they are being questioned.
 - The rule does not allow any other accommodations and will set up a scenario where a survivor cannot follow through with completing a Title IX hearing without having their credibility questioned by a lawyer or representative.
 - i) The practice of cross-examination can be retraumatizing to survivors. It is often rooted in gender stereotypes and rape myths that contribute to a “victim-blaming” narrative (Zydervelt, 2016).⁷

⁶ Zydervelt, S., Zajac, R., Kaladelfos, A. and Westera, N. (2016). Lawyers’ Strategies for Cross-Examining Rape Complainants: Have we Moved Beyond the 1950s? *British Journal of Criminology*, 57(3), 551–569.

⁷ Zydervelt, S., Zajac, R., Kaladelfos, A. and Westera, N. (2016). Lawyers’ Strategies for Cross-Examining Rape Complainants: Have we Moved Beyond the 1950s? *British Journal of Criminology*, 57(3), 551–569.

Definition of Sexual Harassment:

- The proposed rule will severely limit the definition of sexual harassment. It may be helpful to you to review how the government has previously discussed sexual harassment and institutions' Title IX responsibilities.
 - [2011 Dear Colleague Letter](#)
 - i) In the 2011 Dear Colleague Letter, the federal government recognizes that education in this country is "the great equalizer." Additionally, the government acknowledges how the "sexual harassment of students, including sexual violence, interferes with a student's right to receive an education free from discrimination"(The United States Department of Education, 2011, p. 1).
 - ii) The 2011 Dear Colleague Letter is devoted to explaining how "the requirements of Title IX pertaining to sexual harassment, also cover sexual violence" and identifies the "specific Title IX requirements applicable to sexual violence" (The United States Department of Education, 2011 p. 1).
 - iii) "As explained in OCR's 2001 Guidance, when a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, 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" (The United States Department of Education, 2011 p. 3).
 - iv) "Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere (The United States Department of Education, 2011 p. 3)."
 - [2010 Dear Colleague Letter](#)
 - i) "Harassing conduct may take many forms, including verbal acts and name-calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school. When such harassment is based on race, color, national origin, sex, or disability, it

violates the civil rights laws that OCR enforces” (The United States Department of Education, 2010 p. 2).

- ii) “When responding to harassment, a school must take immediate and appropriate action to investigate or otherwise determine what occurred...the inquiry should be prompt, thorough, and impartial” (The United States Department of Education, 2010 p. 2)
- iii) The [2010 Dear Colleague Letter](#) includes hypothetical examples of a school’s failure to address issues of harassment, including: race, color, or national origin harassment; sexual harassment; gender-based harassment; and disability harassment. Consider reviewing these examples (on pages four through nine) in light of your own experiences and sharing your conclusions in your comment.