Beyond Title IX: Defending Civil Rights for Survivors on Campus
OUR MISSION

End Rape on Campus (EROC) works to end campus sexual violence through direct support for survivors and their communities, prevention through education, and policy reform at the campus, local, state, and federal levels.
OUR VISION

We envision a world in which each individual has an educational experience free from violence, and until then, that all survivors are believed, trusted, and supported.
Objectives

1. Understand the current federal landscape around Title IX, the Clery Act, and other civil rights laws that protect sexual assault survivors on college campuses.

2. Envision the way forward in California around protections for survivors, including new laws intended to maintain progress gained under the Obama administration.

3. Gain tools for local rape crisis center professionals, victim advocates, and community members to hold local campuses accountable and provide resources to survivors in a campus environment.
Topics Area

- Title IX
- Clery Act and other Campus Sexual Assault Civil Rights Legislation
- Legislative landscape in California for college survivors
- Accountability tools and tactics for community advocates
Community Agreements

1. All questions are useful.

2. Please take care of yourself in whatever way is healthy for you.

3. Listen with the intent to learn.
Who is in the Room?

1. Community advocates?
2. University administrators?
3. Students?
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”
Where We’ve Come with Title IX

- Title IX was adopted on June 23, 1972 by the Nixon administration.
- Title IX is a follow up to the Civil Rights Act of 1964 which sought to include the ability to bring legal action for discrimination on the basis of sex.
- Title IX has been limited and narrowed in many ways, mostly through legal challenges to the law.
Title IX During the Obama Era

- 2011 Dear Colleague Letter
  - Alexander v. Yale (1977)

- OCR Investigations and Enforcement
2017
Betsy DeVos rescinded Obama-Era guidance and introduces the “Interim Guidelines”

2018
August 29th
EROC + KYIX Start Planning for Hands Off IX

September 13th
ATIXA Leaks Text of Rule

September 27th
Dr. Ford Testifies

November 16th
NPRM is released

November 29th
Comment period Closes

Jan. 30th
Comment Period Opens

February 12th
ED announces Comment Period to Reopen

February 15th
Comment Period Reopens for 24 hrs

NYT Leak of Aspects of the Rule
New Title IX Regulations

- New definition of sexual harassment
- Universities are not responsible for addressing off-campus violences
- Title IX hearings will be required to use cross examination
- Limits reporting options
Sexual Harassment

- Prior to 2017: “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.”
Sexual Harassment

- New Regs: “unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity”
The Effect on Students

- Decrease the number of investigations
- Decrease reporting
- Puts students who live at the intersections of multiple marginalized identities at risk
Off-Campus Investigations

- “a recipient is only responsible for responding to conduct that occurs within its education program or activity.”

- “An “education program or activity” includes “any academic, extracurricular, research, [or] occupational training.”
The Effect on Students

- Increases confusion
- Decreases reporting and trust in one’s institution
- Decreases safety
Cross Examination

- Cross examination is the “greatest legal engine ever invented for the discovery of truth.”
- “Not only does cross-examination allow the accused to identify inconsistencies in the other side’s story, but it also gives the fact-finder an opportunity to assess a witness’s demeanor and determine who can be trusted”
Effect On Students

- Intimidate survivors → decrease reporting
- Increase class inequalities
- Replicate the adversarial nature of the criminal-legal system
New regulations only recognize a university’s responsibility to address an instance of sex discrimination if a **formal complaint** is made to the Title IX coordinator.
California Specific Concerns

- Federal supremacy and preemption
- ‘Reverse sexism’ in training topics AND trainers
Federal Civil Rights Law

Clery and Beyond!!!
Guiding Questions

1. What opportunities do you see for improving survivor and student experiences in your campus community?

2. What opportunities do you see for improving primary prevention?
Requires all colleges and universities who receive federal funding to share information about crime on campus and their efforts to improve campus safety as well as inform the public of crime in or around campus.
THE CLERY ACT

- Publish an annual security report
- Disclose crime statistics for incidents
- Issue timely warnings
- Devise an emergency response, notification, & testing policy

@endrapeoncampus  endrapeoncampus.org
The Clery Act and the Campus Sexual Assault Victims’ Bill of Rights

1. Survivors shall be notified of their options to notify law enforcement.
2. Accuser and accused must have the same opportunity to have others present.
3. Both parties shall be informed of the outcome of any disciplinary proceeding.
4. Survivors shall be notified of counseling services.
5. Survivors shall be notified of options for changing academic and living situations.
Clery and Prevention Training

● Primary prevention programs for new staff and students:
  ○ Institutional prohibition against domestic violence, dating violence, sexual assault, and stalking
  ○ Definitions under state law
  ○ Definition of consent
  ○ Options for bystander intervention
  ○ Information on risk reduction
VAWA

- The Office on Violence Against Women within the Department of Justice administers grants to fund programs to address campus sexual assault

- Sec. 303 in VAWA Reauthorization of 2019: Grants to Combat Violent Crimes on Campus
  - Increasing campus grant amount over time to $500,000
  - Expanding training for all participants in the resolution process, including the Title IX coordinator’s office + student conduct office
  - Adding disclosure training and improving the delivery of primary prevention training and victim assistance on campus
  - Develop + implement an alternative justice response
Other Federal Civil Rights Legislation for Survivors of College Sexual Assault

1. Campus Accountability and Safety Act
2. Hold Accountable and Lend Transparency on Campus Act
3. Title VII
4. Title VI
5. Title II
Campus Accountability and Safety Act (CASA)

- Introduced into Congress
- Establishes new campus resources and support services for student survivors
- Ensures minimum training standards for on-campus personnel
- Creates historic new transparency requirements
- Requires a uniform discipline process
- Ensures coordination with law enforcement
- Establishable Title IX penalties and stiffer penalties for Clery Act violations
Hold Accountable and Lend Transparency on Campus Sexual Violence (HALT) Act

- Introduced by Congress
- Allowed to issue financial penalties for noncompliance with civil rights requirements under Title IX
- Increase penalty for violating Clery Act
- Students to have a private right of action
- Mandate biennial climate surveys
- Require public disclosure of a list of colleges/universities under investigation
- Expand requirements for notifying and publicly posting students’ legal rights and universities’ obligations under Title IX
- Create a Campus Sexual Assault Task Force
Title VII

The Civil Rights Act of 1965

“It shall be an unlawful employment practice for an employer … to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”
“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
The Americans with Disabilities Act

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”
STUDENTS WITH PSYCHIATRIC DISABILITIES HAVE PROTECTIONS UNDER TITLE II

- Post Traumatic Stress Disorder, Depression, Bipolar Disorder, Borderline Personality Disorder, and other mental health conditions are considered protected disabilities under the Americans With Disabilities Act.

- Institutions are required to provide reasonable accommodations for academics, housing, and programs including exam/assignment extensions, medical withdrawals, and residence hall relocation.

- Institutions cannot discriminate against a survivor that has a mental disability, nor can their disability be used against them in a sexual assault investigation or adjudication.
1. What opportunities do you see for improving survivor and student experiences in your campus community?

2. What opportunities do you see for improving primary prevention?
What are other states doing?
New York’s Education Law 129B - “Enough is Enough”

Definition of Affirmative Consent

Policy for Alcohol and/or Drug Use Amnesty in Sexual Violence Cases

Campus Climate Assessment Policy

Student Bill of Rights

Sexual Violence Response Policy

Options for Confidentiality Disclosing Sexual Violence

Student Onboarding and Ongoing Education Mandate
**Title IX**
- Investigation
- T9 Coordinator
- Adjudication/Response
- Freedom from retaliation

**Title VI**
- Inclusion of racial and ethnic identity

**Clery Act**
- Reporting options to the police & campus police
- Definitions of crimes
- Informed of resources
- Share information on prevention programing

**Campus SaVE/VAWA**
- Advisor of Choice
- Broadened university responsibility to address DV, Intimate partner violence
- Gender identity
- Prevention programming for staff and students

**Freedom from retaliation**

**Advisor of Choice**

**Prevention programming**

**Informed of resources**

**Share information on prevention programing**

**Definitions of crimes**

**Inclusion of racial and ethnic identity**

**Reporting options to the police & campus police**

**Broadened university responsibility to address DV, Intimate partner violence**

**Gender identity**

**Prevention programming for staff and students**
Opportunities for Survivor Legislative Advocacy in California
1. A1000 - requires schools to annually review, and update as necessary in collaboration with sexual assault counselors and student, faculty, and staff representatives, the written procedure or protocols for sexual violence reporting.

*Passed and Signed by the Governor!*
1. SB-493 - Adds additional requirements to California higher education institutions that receive state funds, including for student financial aid, including:
   a. Disseminate a notice of nondiscrimination to each employee, volunteer and individual or entity contracted with the institution.
   b. Create investigation procedures
   c. Publish on its website the name, title and contact information for the employee designated to coordinate the institution's efforts to comply with this bill's requirements and individuals with the authority to investigate complaints or to institute corrective measure.
   d. Provide training for each employee engaged in the grievance procedure.
   e. Provide training for residential life student and nonstudent staff on trauma-informed handling of reports regarding incidents of sexual harassment at an institution with on-campus housing.
   f. Notify employees of the obligation to report sexual harassment to appropriate school officials.
California State Legislative Opportunities for Survivors

1. AB-381 - Amends requirements for universities in order to receive state funds for student financial assistance, to enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations, to the extent feasible, to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, and including resources for the accused.
   a. Domestic Violence Shelters and Rape Crisis Programs are specifically mentioned
   b. Additional prevention mandates
Accountability Tools
EROC’s School Accountability Map

The University of Chicago
CHICAGO, IL
50,430 ENROLLED
TOTAL PAGE VIEWS: 2,312

SCORING:
8.4/10
Scoring is based purely on existing school policies and not on the experiences of individual students.

EMAIL
map@endrapeoncampus.org to learn how to get your school’s information uploaded!

EMAIL policy@endrapeoncampus.org for all other questions.
1. Apply your expertise in your home school district--- Do you know your local Title IX coordinator?

2. SARTs and cross-community bodies
Invite EROC to your next conference, training, or company event!

- We offer trainings on various topics for multiple populations, including:
  - Trainings for students on their rights
  - Trainings for young people on intersectionality, anti-white supremacy organizing
  - Trainings for professionals on sexual violence, workplace sexual harassment, and Title IX

Email Programs@endrapeoncampus.org
Text