

# RESPONDING TO GENDER-BASED VIOLENCE ON CAMPUSES:

## Helping Responsible Employees Understand Their Role



Title IX (TIX)<sup>1</sup> is a civil rights law that ensures that all institutions of higher learning (campuses) that receive qualifying federal assistance do not discriminate based on gender. Therefore, campuses are required to respond “promptly and effectively”<sup>2</sup> to any allegations of gender-based violence.<sup>3</sup>

As part of this obligation, campuses must appoint and identify employees who have a duty to report gender-based violence to the TIX Coordinator or another appropriate campus designee.<sup>4</sup> These individuals are called Responsible Employees (RE) and have a great deal of significance. REs are on the front-lines of addressing gender-based violence, and their reports place campuses on notice of a potential TIX violation, requiring an immediate response to a survivor (complainant).<sup>5</sup> REs provide complainants with a host of information including: (1) available confidential resources for victim advocacy, counseling, and other support services; (2) their right to file a TIX complaint; and (3) the option of reporting to campus or local police.

Campuses are required by the Office for Civil Rights (OCR) to make clear to all employees and students which staff members are REs, so students can make informed decisions about whom to confide in, and so that those designated understand their reporting obligations.

This document is designed to help Ohio campuses better understand and prepare their REs to fulfill their duties when a student reveals that s/he is a victim of gender-based violence. The information in this document is intended for educational purposes only. Do not rely on it as legal advice and always consult with your General Counsel for campus-specific decisions.

## Recommendations for Ohio Campuses

Campuses should make the process as easy as possible for Responsible Employees (REs). Do not expect individuals to innately know what to do or to understand why their role is important. It is the campus’s responsibility to prepare their REs and to create structures that support their role.

- Every year, identify and notify all the individuals on your campus who have a duty to report gender-based violence as a RE.<sup>6</sup>
- Disseminate accurate information about the role of REs and explain the goal of the role and its relation to the overall campus response.
- Consider offering various mechanisms for making a report – email, telephonic, electronic form, or in person.
- Provide opportunities for REs to meet the TIX Coordinator(s) and others who can respond to their questions and concerns about gender-based violence.
- Develop trainings, in partnership with local rape crisis, domestic violence, and diversity programs.
- Write talking points for REs<sup>7</sup> to use when speaking to complainants.
- Offer online and in person training. Use role plays and scenarios to demonstrate and explore interactions between REs and complainants.
- Ensure REs are trained annually on their role, campus policies, dynamics of gender-based violence, options for complainants and available resources.
- Guarantee there are confidential sources<sup>8</sup> on campus for those that have experienced gender-based violence.
- Develop a list of on- and off-campus confidential sources for those that have experienced gender-based violence. Maintain and distribute this list in an accessible format.
- Ensure the campus community knows, or can easily determine, which staff members are REs, so complainants can make informed decisions about in whom to confide.
- Produce a downloadable reference guide for resources and reporting options. Maintain this guide as current. The guide should contain a list of resources, on- and off-campus, specifically for individuals that have experienced gender-based violence.
- Check-in with REs on a regular basis to determine if they feel confident in their role or need additional assistance.
- Provide information about where REs can find or request additional training and resources.
- Verify that the training you offer is effective by utilizing a range of assessment and evaluation tools.

## Frequently Asked Questions by Responsible Employees<sup>9</sup>

### Q How do I know if I am a Responsible Employee (RE)?

A It is incumbent on every campus to 1) determine who are REs and 2) notify those individuals that they have that designation. In order to assist in that determination, the Office for Civil Rights (OCR) has provided campuses guidance on who are considered RE's. They are individuals:

- (a) who have the authority to act to remedy gender-based violence;
- (b) who have been given the duty of reporting incidents of gender-based violence or other misconduct by students to the Title IX coordinator/appropriate designee; or
- (c) who a student reasonably believes has this authority or duty.

To help survivors receive needed services and supports, there is a subset of professions that are exempt<sup>10</sup> from reporting or from reporting identifying information. It is therefore, very important you find out your status so that you don't either provide a false sense of confidentiality or breach a confidential relationship by making a report.

*"Perhaps most important, we need to keep saying to anyone out there who has ever been assaulted: you are not alone. We have your back. I've got your back."*

President Barack Obama

### Q What do I need to know about my role?

A After you have confirmed that you are a RE, you will need to complete your required training.<sup>11</sup> That training should answer some of the most common questions, such as:

- What is gender-based violence and why is it a problem?
- What should you tell someone that has experienced gender-based violence?
- How can your response to a complainant be more trauma-informed?
- What options are there for someone that has experienced gender-based violence, including who can the complainant speak to confidentially?
- How should you submit a report and what should be included?
- What will happen after your report is received?
- Who should you contact if you have questions about your reporting responsibilities or a particular situation?

### Q What are my duties as an RE?

A As a RE, you have two duties. One is to inform; the other is to report. You must report incidents of gender-based violence to whoever has been identified as the person to receive that report. Most often, it is the TIX Coordinator. Also, you have a responsibility of informing the complainant about their options for reporting the incident, confidentiality, and support services.

As a RE, you need to cover several distinct issues with the person disclosing. The first component concerns your obligation to report. Before a complainant shares information with you that s/he may want to keep confidential, you should make every effort to ensure that the person disclosing victimization understands that you need to report identifying information about the incident to the TIX Coordinator. This obligation is to help keep the campus community safe. For that reason, the duty cannot be waived.

However, there are options. The second and third components of the duty to inform are closely related to the first. You must tell the complainant that if they want to maintain their confidentiality<sup>12</sup> or if they do not want the campus to take any action, that this request can be included in your report. While their request will be considered, it cannot be guaranteed. If they want to only speak with someone on campus who does not have to report to the TIX Coordinator (i.e. is a confidential source), you can provide a list of people for that person to talk to.

As a RE, you must also inform a complainant s/he is entitled to support services, no matter what their decision is about how to proceed. You should provide a list of information about these services and explain the supports are designed to help make them feel safer and many professionals have expertise in working with individuals who have experienced gender-based violence and traumatic events.

Finally, let them know that the campus does not allow retaliation for reporting gender-based violence and takes those allegations seriously.

### RE SAMPLE SCRIPT

*"I am so sorry this has happened to you. Before we talk further, I want to let you know that I have an obligation to report any information about gender-based violence to the campus TIX Coordinator. This is part of my job to help make sure we have a safe campus environment."*

*"I'm glad you are telling me about what happened to you and I want to continue the conversation. But I totally understand if you do not want to share anything more with me since this is not confidential."*

*"If you wish to speak with someone who can provide that confidentiality, I will connect you with that person. This is your choice about how you want to proceed. Whatever you decide, I support you. I also have some information I want to give you about supportive services for victims of gender-based violence."*

## Checklist for Responsible Employees:

- ✓ Disclose your duty to report up front;
- ✓ Confirm that the complainant understands that you are not a confidential source;
- ✓ Provide the list of confidential sources to the complainant if s/he wants only to speak with someone who is;
- ✓ If complainant continues to disclose, inform them of option to request confidentiality in report (not guaranteed);
- ✓ Inform the complainant of their right to file a campus report and/or one with local law enforcement;
- ✓ Provide the list of on and off-campus support services;
- ✓ Reinforce that the campus does not tolerate retaliation.

### Q What must I report?

A You must report incidents of gender-based violence and/or retaliation<sup>13</sup> that you 1) observe; 2) learn about through third parties; or 3) someone discloses to you directly. All incidents are covered under your duty, regardless of whether they occurred on or off campus. It's important to make the report in a timely manner.

### Q What information should I include in my report?

A You need to include: 1) if the complainant has opted to speak only with a confidential source<sup>14</sup>; 2) if known, the name of the complainant(s), the future respondent, and any witnesses; 3) any relevant facts the complainant chose to share, such as the date, time, and location of the alleged incident; and 4) if applicable, the complainant's option to request that the campus maintain his or her confidentiality or make no investigation, which the campus will consider.

If a complainant is not comfortable sharing information, do not ask prying questions. Simply report the details you know. It is not your role to try to find out additional information about the incident OR to determine whether or not the information shared is true. In fact, if you engage in those activities, it is beyond the scope of your role and may compromise a proper investigation by the campus or the police.

### Q What should I do if the complainant asks that their identity be kept a secret?

#### RE SAMPLE SCRIPT

*"I definitely will let the TIX Coordinator know that you want your identity to be protected. I cannot guarantee that the campus can provide confidentiality. You can discuss your request and share why it's important to you when the TIX Coordinator reaches out to you."*

A If a complainant does not want to be named during the campus TIX investigation process, you should indicate their request in your report. Explain to the complainant that their request will be considered, but the campus will also examine other factors, such as the safety of the larger campus, in their decision on whether they can uphold the request.

#### RE SAMPLE SCRIPT

*"I understand your position. As I mentioned before, I have to report what you have told me so far. It is your choice not to make any direct reports. If you change your mind in the future, you can file a TIX complaint or a police report. The criminal justice process is different than the campus process. If you want to pursue a criminal justice response, the campus can help you do that."*

*There are two things I would like you to consider doing right away. The first is preserving any evidence relating to the incident. There are several types of evidence. Physical evidence, if you were physically or sexually assaulted. There is also document evidence, such as photographs, text messages, emails, voicemail messages, social media contacts, etc. This way if you decide at a later point in time to pursue an action, you will have not lost that evidence.*

*The second is to speak to someone who has expertise in gender-based violence. There are advocates, medical professionals, and counselors who have been trained to help people who have experienced the type of trauma you have.*

*If you want to do either of those things I mentioned, I can connect you with the right people. I've worked with (insert name) at the rape crisis center and they are a great resource for discussing next steps."*

### Q What if the complainant does not want to make a report?

A That is okay. There are many reasons a person would not want to involve the campus or law enforcement. Even though as a RE you must tell the TIX Coordinator what you learned about the incident, complainants have the right not to make a report. Your job is not to convince that person to do otherwise. Let the complainant know that you understand their standpoint, and encourage them to seek medical attention, counseling and support. Make it clear to the complainant that if s/he changes their mind, they can make a report at a later date. Although delays in reporting may weaken the evidence necessary to determine whether the respondent is found responsible for engaging in prohibited conduct.

### Q What if the person tells me that they or someone else remains in danger or needs immediate assistance?

A If there is an emergency or a serious and continuing threat to anyone, call 911. If the complainant is reporting that they are suicidal, consider taking that person to the campus counseling center or to a similar resource. If at any time you are uncertain about what to do, contact your campus TIX Coordinator.

### Q What is the importance of the first 96 hours in sexual assault cases?

A In incidents of sexual assault, it is believed that the first 96 hours are the critical window for both physical evidence<sup>15</sup> collection and medical treatment. If the complainant recently experienced a sexual assault, you should talk about the role of a specially trained nurse, called a Sexual Assault Nurse

Examiner (SANE). A SANE can assess for injuries related to physical trauma; evaluate for sexually-transmitted infections and possible pregnancy; provide medical care and can, within the first 96 hours, administer a forensic exam.<sup>16</sup> The kit collection<sup>17</sup> of the exam is provided at no-cost to the complainant and is confidential.

**Q** *What reactions should I expect from complainants?*

**A** There is no one response. Some complainants might seem confused or even demonstrate affect that does not correspond with the information they are sharing with you. Some might be angry and take that anger out on you. Some complainants might be afraid. Others may appear stoic as if nothing really bothers them or even blame themselves for the violence. Memories can be fragmented and a complainant might not present information in a cohesive way.

These are all common responses to a traumatic event. It is your role to listen and support, not to push or question. Remember to be patient. It is not easy for the person to describe what happened in words and they may seem confused.

Disclosures about gender-based violence are often difficult, and you may be the first person to whom the person has spoken about the violence. We know that if complainants do not feel supported in these first conversations, they may not seek the help or resources they need.

No one expects you as a RE to be an expert in trauma or gender-based violence. There are people on the campus resource list that are. Make sure you try to connect the complainant with those individuals.

If at any time you feel ill-equipped to respond to the complainant, ask if you can direct them to someone who has the expertise in gender-based violence as you want to make sure that they are talking to someone who can truly help. Make sure to take the time to directly link them directly to that person. Be comfortable saying “I do not know the answer to your question, but I will help connect you to someone who does.”

**RE SAMPLE SCRIPT**

*“I know I am giving you a lot of information. You don’t have to make any decisions right now. I want to make sure you are safe and that you know where you can go if you need any support.”*

**Q** *Are there things I can do or say that would help me respond in a more trauma-informed manner?*

**A** Be present. Don’t overwhelm someone with information. Instead, let the person take the lead while talking. Slow the process down. Remember the information being shared is very personal and traumatic. Remind the complainant that the incident is not their fault. Try to avoid questions that sound like you are questioning their actions (blame) or being directive about what they should do. Some statements and questions<sup>18</sup> that you can include in your conversation are:

*“I am sorry this happened to you.”*

*“How can I help?”*

*“Do you feel safe leaving here today?”*

*“Have you had a chance to see a doctor?”*

*“I am glad you shared this with me.”*

*“Thank you for telling me.”*

Remember, this is their life. Their experience.<sup>19</sup>

**RE SAMPLE SCRIPT**

*“I want to let you know what will happen next. You will be contacted by the TIX Coordinator or someone who works closely with that person. S/he will ask you about the incident, describe your options, and provide more information about resources and support. You will need to discuss your preference about how to proceed.*

*The campus needs to be certain you have information about local resources that might be helpful. They will also want to ensure that you and others on campus are safe. For example, if there is a safety issue, they may be able to help you change your class schedule or living arrangements.*

*You can decide how much or how little you want to share with the person that contacts you - that is up to you. It is just my job to let them know that this happened.”*

**Q** *Do I have additional obligations after I make a report to the designated campus?*

**A** Not typically.<sup>20</sup> After the TIX Coordinator or other authorized individual receives the information from you, they will take over all contact with the complainant. Once you have reported the incident, you should not share the information with anyone else. If the complainant remains in contact with you about their victimization, it is your choice whether to remain in a supportive role. However, you still do not have a confidential relationship with the complainant and it will be imperative to remind the complainant of this fact.

**Q** *What happens with the information I give to the TIX Coordinator?*

**A** When a RE is made aware of gender-based violence, the campus is considered to have notice and must act promptly and appropriately. The TIX Coordinator will reach out to the complainant and discuss more in depth rights, options, and resources that can increase safety and well-being. The TIX Coordinator is able to provide concrete answers to the myriad of questions a complainant may have and outline campus procedures in detail. Your role is to let the complainant know that someone will be following up with them.

**Q** *Why should I fulfill my obligation as a RE?*

**A** First and foremost, as a RE you help ensure the safety and well-being of the complainant. By fulfilling your obligation, individuals who have experienced gender-based violence are informed of their reporting options to campus and criminal justice authorities and are linked to a variety of services to assist in their health and recovery from the trauma. Second, we all need to be working together to intervene and prevent this public health atrocity. It is our collective responsibility to help keep Ohio campuses environments where people can achieve their educational aspirations, or be gainfully employed, and not experience gender-based violence. Third, non-reporting can lead to your campus being in violation of Title IX. Some of the consequences for that is losing federal funding from the U.S. Department of Education, being subjected to a federal investigation, and other civil litigation. Finally, if you have been designated as a RE, it is now part of your job and you can face to personal and professional consequences.

**Q** *What should I do if I feel I need more information or education so I am comfortable in my role as a RE?*

**A** Contact your campus TIX Coordinator and find out if there are additional trainings (either in person or online) that you can take. Your TIX Coordinator may also be able to 1) answer questions about your campus policy and response to gender-based violence; 2) craft a script for you to use if someone discloses gender-based violence; and 3) connect you with experts trained in gender-based violence that can answer specific questions about the trauma and dynamics involved with this type of harassment and violence. You can also contact the [Ohio Alliance to End Sexual Violence](#) (OAESV), Ohio's statewide coalition that addresses prevention and intervention in sexual violence. OAESV has a variety of resources, including ones that are campus-specific.

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- 1 Title IX of the Education Amendments of 1972 20 U.S.C. §1681 et seq. For more information about TIX, See, [Title IX Resource Guide](#), U.S. Department of Education, Office for Civil Rights (April 2015) and [Questions and Answers on Title IX and Sexual Violence](#), U.S. Department of Education, Office for Civil Rights (April 29, 2014).
- 2 Id. and see, Ohio Department of Higher Education & Ohio Alliance to End Sexual Violence, [Transforming Ohio Campuses: A Toolkit for Implementing the Changing Campus Culture Initiative](#), Ohio Alliance to End Sexual Violence (2016).
- 3 For purposes of this document, "gender-based violence" is an umbrella term that encompasses all forms of violence and harassment committed against an individual because of and/or based on their biological sex, gender identity and/or sexual orientation. This term includes sexual assault, rape, sexual harassment, all forms of intimate partner violence, and stalking.
- 4 It is considered best practice to do this on a regular basis, annually if feasible, and not less than every other year.
- 5 Supra, note 1 at Questions and Answers.
- 6 Supra, note 3 at Transforming Ohio Campuses. There are charts and a worksheets included in the at [Confidentiality](#) section of the Toolkit designed to help campuses identify the persons on their campus who are Responsible Employees.
- 7 An example of this is [Talking Points for Responsible Employees](#) developed by the University of Virginia.
- 8 Confidential sources are only required to report aggregate data and therefore do not have a duty to provide identifying details to the campus about the incident. For a more comprehensive discussion about confidentiality and confidential sources see, supra note 2 at Transforming Ohio Campuses.
- 9 This FAQ contains common questions asked by REs. Campuses are encouraged to use and expand upon the information in this document to help educate their REs. Campuses should add other questions that they receive from REs and tailor the FAQs with information about their respective campus process.
- 10 To encourage complainants to seek medical care and other needed supports, OCR does not require certain employees to report incidents of gender-based violence to Title IX Coordinators (but note that these persons should consult their general counsel regarding if a Campus Security Authority (CSA) designation applies for Clery Act reporting). OCR exempts campus mental health counselors, pastoral counselors, social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality, and the people they supervise. Although OCR has stated that individuals providing assistance to students who experience gender-based violence who are not professional or pastoral counselors (e.g. individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers, health centers) are not required to be REs, some campuses have designated them as a confidential resource or moved these individuals under a program or individual with licensure privilege (i.e. counseling services) so that the advocate will not have reporting responsibilities under [ORC §2921.22](#).
- 11 Your campus should have at least one training (online or in person) that you must complete and may have options for others that you can participate in if you so elect. OCR says this training must occur on a regular basis.
- 12 Confidentiality for this purpose means that the person's name or other identifying information are not used or revealed during a campus investigation and disciplinary process.
- 13 This is retaliation for reporting a violation of the campuses code of conduct pertaining to gender-based violence, including assisting in the campus' investigation of that complaint.
- 14 Confidential sources are individuals who are specially trained to perform a survivor-centered, trauma-informed response on campus and can help answer questions, provide information, and help complainants navigate the options available both on campus and in the community. Confidential sources can include both on and off campus resources. See, supra note 3 at Transforming Ohio Campuses.
- 15 This evidence can be collected even if someone does not want to make a police report or if they want to make one as a Jane/John Doe (anonymous kit). This way it is preserved in case the complainant changes their mind in the future or the police may be able to use the DNA to track serial rapists.
- 16 A forensic exam is typically called a rape kit. This is where evidence is collected of sexual contact and/or physical trauma (including injuries to the body and genitals), trace evidence, biological fluids, and identifiable DNA. The exam can also include toxicology testing if there is a belief the rape may have been facilitated by drugs or alcohol. For more specifics about Forensic Exams, see Ohio Alliance to End Sexual Violence, Facts for Survivors: Sexual Assault Forensic Exam Process. [Sexual Assault Forensic Exam Process](#) (2014).
- 17 See, RAINN for more information about [Rape Kits](#).
- 18 Questions come from the [Employee Resources, Stop Sexual Violence](#) developed by Indiana University.
- 19 For more tips on being trauma-informed and also "BLAB IT" (Breathe, Listen, Affirm, Information, Trauma-Informed Support) see supra Note 3 at [A Guide to Trauma-Informed Approaches](#).
- 20 Consult your TIX Coordinator to find out if you also are considered a Campus Security Authority (CSA) under [The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act](#) 20 U.S.C. § 1092(f)(1990), with implementing regulations in the [Federal Register](#) 34 C.F.R. 668.46.