



Preventing Sexual Violence in Higher Education Act (Act)

Frequently Asked Questions

Confidential Advisors

- **May confidential advisors provide services to respondents?**

No. The Act defines a confidential advisor as a person employed or contracted by a higher education institution (HEI) to provide emergency and ongoing support to student survivors of sexual violence. By definition, a confidential advisor only provides services to survivors of sexual violence. The Act does not prohibit higher education institutions from designating other individuals to provide equivalent support services to respondents.

- **Does the law require that the confidential advisor be available 24/7?**

No. But, the law requires every higher education institution to publish on its website and include in its comprehensive policy the name, telephone number, address and website URL, if available, of local, State and national sexual assault crisis centers.

- **Can professional and/or pastoral counselors on campus serve as confidential advisors?**

Yes, if (1) their official responsibilities include providing mental health counseling to members of the HEI community, and (2) they meet the training requirements under the Act. A licensed counselor whose responsibilities on campus do not include any mental health counseling may not serve as a confidential advisor. For example, a Dean of Students (or adjunct professor) who has a professional counselor's license and has received 40 hours of sexual violence training, but is employed by the HEI only as a Dean of Students (or adjunct professor) and not as a counselor may not serve as a confidential advisor.

All confidential advisors must receive 40 hours of training on sexual violence (if they haven't already done so) and attend a minimum of 6 hours of ongoing training annually on issues related to sexual violence. The HEI must also provide the confidential advisor with periodic training on the campus's policies and procedures related to campus sexual violence.

- **Can a professional or pastoral counselor who, in addition to mental health counseling, has additional responsibilities on campus (e.g., academic advising) that would otherwise make that individual a responsible employee for Title IX purposes serve as a confidential advisor?**

A professional or pastoral counselor who provides mental health counseling and has other non-counseling responsibilities on campus may serve as a confidential advisor only when acting in the role of a pastoral or professional counselor. The professional or pastoral counselor with additional responsibilities must be clear and up front with students about the role the counselor is serving at that

given time. This includes explaining to the student the counselor's reporting obligations to the Title IX coordinator associated with that role and whether the student can confidentially report to the counselor. Students speaking to a professional or pastoral counselor must receive enough information to be able to make informed decisions about whether to disclose information to the professional or pastoral counselor. If the pastoral or professional counselor serves in multiple roles, and those roles cannot be separated, then that pastoral or professional counselor cannot serve as a confidential advisor.

- **Can an HEI partner with a local sexual assault crisis center to provide confidential advisors? Yes.**

But, the HEI must ensure that the confidential advisor (1) has completed the 40-hour sexual violence training, (2) receives 6 hours of ongoing training annually and (3) has up-to-date information about the HEI's policies and procedures related to campus sexual violence. The HEI should also ensure that the confidential advisor has current contact information for the relevant individuals on campus who can secure interim protective measures and accommodations (e.g., the Title IX coordinator, Dean of Students, Residence Life Director).

- **What is contemplated by the Act's requirement that HEIs provide "periodic training on the campus administrative process, interim protective measures and accommodations and complaint resolution procedures" to confidential advisors?**

Confidential advisors should have up-to-date information regarding the school's policies, procedures and resources related to campus sexual violence. To the extent a school's policy and procedures or the contact information for relevant campus authorities change, confidential advisors should receive training/updated information in a timely manner.

- **Does the law require that confidential advisors have authority to secure interim protective measures and accommodations?**

No, but the HEI, at its discretion, may give confidential advisors this authority. HEIs must provide confidential advisors with up-to-date information about which campus authorities to contact to assist a survivor with securing interim protective measures and accommodations and the policies and procedures for securing these measures and accommodations, so that the confidential advisor can adequately advise the survivor and coordinate with the appropriate individuals, when requested to do so by the survivor. The confidential advisor should advise students of their right to request interim protective measures and accommodations as well as the HEI's policies and procedures related to these requests. The confidential advisor should advise the student in advance if obtaining certain interim protective measures and accommodations requires additional disclosure or reporting by the student that is not confidential or protected by a privilege.

Student Notification of Rights and Options

- **What method must an HEI use to respond within 12 hours to a person who reports electronically?**

Each HEI has the discretion to determine how it would like to follow up with a student who reports electronically. For example, the school can respond with a call, automatic email reply or a link to a website with the relevant information after a student completes an online form. The law does not specify

how an HEI must respond so as to provide schools with flexibility, but the law does require an initial response within 12 hours of the report to provide the reporter with specific information.

- **What information must an HEI include in its response to a person who reports electronically?**

The electronic reporter must receive the information contained in the notification, written in plain language, of the student's rights and options that the HEI provides to survivors after the HEI receives a report. The response must include the following information:

- Survivor's right to report (or not report) to the HEI, law enforcement or both;
- Contact information for the HEI's Title IX coordinator, confidential advisor, local sexual assault crisis center, campus law enforcement and local law enforcement;
- Survivor's right to request and receive assistance from campus authorities in notifying law enforcement;
- Survivor's ability to request interim measures and accommodations;
- HEI's ability, at the survivor's request, to assist with accessing campus and local health and mental health services and other advocacy services; and
- Summary of the HEI's complaint resolution procedures.

- **If a student reports an incident of campus sexual violence via email to campus staff or faculty, does that person have an obligation to provide a response within 12 hours?**

The HEI may choose the official method (e.g., email to a specific address or group of addresses, web portal or online form) by which it will receive electronic reports. Students who report electronically and provide contact information through the HEI's official electronic reporting method must receive a response within 12 hours of making that report.

Training

- **Do professional continuing education units count towards the confidential advisors' training requirement?**

If the course covers issues related to sexual violence, these credits can count towards the law's training requirements. Confidential advisors must also receive periodic (at the school's discretion) campus-specific training on the administrative processes, interim protective measures and accommodations, and complaint resolution procedures. This is to ensure confidential advisors stay up to date on campus policies and procedures.

- **How does the law define "student" for training purposes?**

The law does not define student. But, the HEI must provide (i.e., offer) training to all students who attend one or more classes on campus. This includes non-traditional students, night students, non-credit students and younger students who take classes at the HEIs. (Age-appropriate training on sexual violence exists for all ages. The local sexual assault crisis center may have more information and resources.)

- **When must the training be completed?**

For students, primary prevention and awareness programming must be provided beginning in the 2016-2017 academic year and each academic year thereafter.

For employees, survivor-centered and trauma-informed response training must be provided beginning in the 2016-2017 academic year and each academic year thereafter.

Confidential advisors must initially receive 40 hours of training on sexual violence and shall attend a minimum of 6 hours of ongoing education training annually. The provision of the Act regarding confidential advisors does not define annual training. Therefore, HEIs satisfy the annual training requirement as long as they provide the training at least once in a year, whether in an academic year or calendar year.

Individuals whose duties include resolution of complaints of student violations of the comprehensive policy shall receive a minimum of 8 to 10 hours of annual training, beginning on or before August 1, 2016, and each year thereafter.

Task Force

- **Are you aware of any regional task forces being created?**

The Cook County State's Attorney's Office's VOICES project is developing regional task forces that bring together university faculty/staff, students, campus and local law enforcement, advocates and prosecutors for schools in Chicago and suburban Cook County.

Reporting

Submitting the Report

- **Who has to submit an annual report?**

All HEIs in Illinois must provide an annual report with data and information related to the implementation of the Preventing Sexual Violence in Higher Education Act. A "higher education institution" includes any "public university, a public community college, or an independent, not-for-profit, or for-profit higher education institution located in this State." See 110 ILCS 155/5.

- **Where do HEIs submit the report?**

The Act requires HEIs to provide an annual report to both the Illinois Attorney General's Office and the Illinois Department of Human Rights. Send submissions to the Attorney General's Office by mail or email to:

Office of the Illinois Attorney General
Civil Rights Bureau
115 S. LaSalle St.
Chicago, Illinois 60603
CivilRights@ilag.gov

Send submissions to the Illinois Department of Human Rights to:

Illinois Department of Human Rights
555 W. Monroe Street, Suite 700
Chicago, Illinois 60661
IDHR.LiaisonUnit@illinois.gov

- **When is the report due?**

Higher education institutions must submit an annual report by November 1 each year.

- **What is the consequence for failing to submit a complete annual report on time?**

The Illinois Attorney General's Office will include on its website a publicly available list of all HEIs that fail to comply with the annual reporting requirements.

Report Format

- **Is there a form HEIs should use to prepare the Preventing Sexual Violence in Higher Education Act annual report?**

The Illinois Attorney General's Office has prepared a form that schools may use for their annual report. The form is available on the Illinois Attorney General's website at <https://illinoisattorneygeneral.gov/Rights-of-the-People/civil-rights/>. A school may also use its own form as long as it includes the required information and data.

- **Can HEIs submit their Annual Security & Fire Safety Report (also known as the Clery Act Report) to fulfill their reporting requirement under the Preventing Sexual Violence in Higher Education Act?**

HEIs do not need to create a separate report if their Annual Security & Fire Safety Report includes the data and information schools must submit for their Preventing Sexual Violence in Higher Education Act report. Schools also may submit the Annual Security & Fire Safety Report and, if necessary, supplement it with additional data and information to fulfill the Preventing Sexual Violence in Higher Education Act's reporting requirements.

- **What period of time should be covered in the report due by November 1?**

The report must include data from the previous calendar year. For example, the report due on November 1, 2019, must contain data from January 1, 2018, through December 31, 2018. (The Act's requirement differs from the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act's requirement that annual security reports, due October 1, include statistics covering the three previous calendar years.)

- **Is the confidential advisor required to provide data to include in the annual report?**

The Act requires each school to report aggregate data regarding the number of confidential and anonymous reports of sexual violence, domestic violence, dating violence and stalking it receives during a calendar year. These numbers should include reports made to the confidential advisor and professional and pastoral counselors, and through any other confidential or anonymous process implemented by the school.

Counting Reports

- **For purposes of gathering data for the Preventing Sexual Violence in Higher Education Act report, what qualifies as a reported incident of sexual violence, domestic violence, dating violence or stalking?**

HEIs must identify the number of incidents of sexual violence, domestic violence, dating violence and stalking reported during the relevant calendar year to either the (1) Title IX coordinator or responsible employees and/or (2) confidential and anonymous sources.

HEIs should consider an incident “reported” when information regarding an incident is shared with an individual, department, entity or organization that the school has identified in its comprehensive policy as a place where students may report or disclose violations of the comprehensive policies, e.g., with the Title IX coordinator, responsible employees, confidential advisor, campus police department or safety office, and pastoral or professional counselors. Data must include reports made electronically, anonymously and confidentially as well as third-party and bystander reports.

For reporting purposes, HEIs should include the number of reported incidents that happened on campus, pursuant to the definition of Clery geography, during the relevant reporting period. For example, a school should include in its report a student who sees a counselor because of anxiety and happens to mention a domestic violence incident that happened in the student’s dorm room on campus. Conversely, a school is not required to include in its report a student who sees a counselor because of anxiety and happens to mention a domestic violence incident that happened over winter break while the student was visiting her home town. Similarly, a school is not required to include in its report an incident of sexual assault that occurred several years ago when the student was a child. The school still has a responsibility to provide services to the student in the latter scenarios, but is not required to add these incidents to its report.

- **Which “confidential and anonymous sources” must provide data for the annual report?**

HEIs must request aggregate data from all individuals, departments or organizations to whom a student may report a violation of the comprehensive policy. This includes professional and pastoral counselors, confidential advisors, as well as anonymous reporting hotlines and platforms. If an HEI has a contract, memorandum of understanding or other agreement with an organization to provide confidential services to students regarding sexual violence, domestic violence, dating violence or stalking, the school must request aggregate data regarding its students from that organization to include in its report. The HEI may include in its report an explanation of the various sources used to gather statistics related to confidential and anonymous reports. HEIs are not required to request or provide data for confidential resources (e.g., a national hotline) with which it has not entered into a formal agreement or arrangement to provide services to its students.

- **Are HEIs required to report complaints of incidents that occurred off campus?**

To the extent possible, schools should only report data related to complaints of incidents that occurred within the geographic areas defined by the Clery Act, i.e., Clery geography. *See* 34 C.F.R. § 668.46(a). HEIs do not have to provide a breakdown of the data by location. If a report does not include the location of the incident alleged in the complaint, schools should include that report or disclosure in its data and may annotate the annual report to indicate the number of reports or disclosures where no location was given.

- **Are institutions required to report incidents that occurred on a campus located outside of the State of Illinois?**

No. The Board of Education Act requires reporting from only HEIs located within the State. However, HEIs should consider adopting policies and best practices to address student allegations of sexual violence, domestic violence, dating violence and stalking in order to protect and provide resources to all of their students, regardless of the location of the campus.

- **Are HEIs required to report only on student-on-student complaints?**

To report data for 110 ILCS 205/9.21(4)-(8), include all student complaints, whether filed against another student, an HEI employee or someone unaffiliated with the HEI. For 110 ILCS 205/9.21 (9)-(10), include only data related to complaints made by students against students subject to discipline under the HEI's complaint resolution procedure.

- **Are institutions with more than one campus required to submit separate reports for each campus?**

If your school has more than one campus, each campus must comply independently with the Preventing Sexual Violence in Higher Education Act's requirements. Your institution may submit one annual report as long as the report distinguishes each campus's policies and data. Alternatively, each campus may submit its own report.

- **How should HEIs count a report when the complaint involves more than one violation?**

When more than one violation has been reported from a single incident (e.g., sexual assault and domestic violence), the HEI must count all violations separately in its report. HEIs that submit their Clery Act report must update data to account for any reported incident of sexual violence not included in their Clery Act report because the school applied the FBI's Uniform Crime Reporting hierarchy rule. *See* 34 CFR 668.46(c)(9).

- **Should HEIs count a report of an incident that occurred before any involved party was a student at the HEI?**

HEIs must include all reports of incidents of sexual violence, domestic violence, dating violence and stalking that occurred during the calendar year before the current reporting year (e.g., January 1, 2016, through December 31, 2016, for the 2017 reporting year) and were reported to the individuals, departments or organizations to whom a student may report under the HEI's comprehensive policy. Schools may identify the number of reported incidents that occurred before any involved party enrolled as a student at the HEI, if desired, in Part C of the report form (or in supplemental materials). Schools may also indicate if they could not obtain information regarding when an incident occurred in collecting the data due to the nature of how the report was made (e.g., confidential and anonymous reports).

- **What timeframe should HEIs cover when providing data for 110 ILCS § 205/9.21(6)-(9), which relates to actions taken after the HEI receives a report?**

HEIs must provide the number of each action (e.g., survivor requested not to proceed, law enforcement referral, reviewed through complaint resolution procedure) that occurred during the calendar year preceding the reporting year, even when the report or incident occurred during the previous calendar year. The HEI may, if desired, in Part C of the report form (or in supplemental materials) identify whether a specific number of actions relate to reports made in previous calendar years. Example: On December 31, 2016, a student reports an incident of domestic violence that occurred in December 2016. At the student's request, the HEI refers the matter to local law enforcement on January 1, 2017. The HEI's 2018 report (which covers the time period of January 1, 2017, through December 31, 2017) would include the referral of an allegation of domestic violence to law enforcement. The HEI should include the report of domestic violence in its 2017 report.

- **Does the law specify how often HEIs must obtain reporting data from individuals or entities who receive confidential or anonymous reports?**

The Act does not specify how often an HEI must obtain data for the annual report, providing the HEI the flexibility to choose the frequency at which it requests data to be compiled in the annual report. An HEI should not obtain data so often that it will compromise confidentiality or review personally identifiable information. However, the obligation to obtain and report data under the Act does not affect any reporting obligations an HEI has under applicable local, State or federal laws, including the Clery Act.

- **In which category should an individual report if they have multiple roles on campus, including as a confidential resource?**

If an individual has dual roles at the HEI, one as a confidential resource (e.g., confidential advisor, pastoral counselor or professional counselor) and another that would otherwise qualify that person as a responsible employee, and the roles cannot be separated, reports to that person should be included in the Title IX/responsible employee category. If that person's roles can be separated, then the person should include data related to reports in the category corresponding to the role the person was serving when receiving the report of an incident.

- **What is considered an allegation “referred to local or State law enforcement”?**

HEIs should count a referral to law enforcement when they directly refer the complaint to law enforcement. A referral to law enforcement also should be counted when the school gives advice and guidance to a specific student after that student reports an incident to the school. Advice and guidance includes, but is not limited to, notifying the student of the option to report to law enforcement and/or helping the student file a complaint with law enforcement.

- **How should an HEI handle “double counting” student reports made to multiple individuals and/or entities on campus?**

The Illinois Attorney General’s Office understands that a student may report or disclose an incident of sexual violence, domestic violence, dating violence or stalking to more than one person affiliated with the higher education institution. Furthermore, the Illinois Attorney General’s Office recognizes that in identifying the number of reports received, a higher education institution may “double count” a report or disclosure if a student confidentially and anonymously reported/disclosed an incident and also reported the incident to a Title IX coordinator or responsible employee. If a higher education institution is aware of the “double counting” of reports or disclosures, then the school can include an explanation in Part C. If a school is unsure whether a report has been counted more than once, the school can indicate so in Part C.