 NATIONAL ALLIANCE OF VICTIMS' RIGHTS ATTORNEYS & ADVOCATES
A project of the National Crime Victim Law Institute

Representing Survivors of Campus Sexual Assault

Presenter:
Carl Simon, J.D.
Fierberg National Law Group

Facilitator:
Amy C. Liu, J.D.
National Crime Victim Law Institute

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Who is NCVLI?

Mission: To actively promote balance and fairness in the justice system through crime victim centered legal advocacy, education, and resource-sharing.

What is NAVRA?

A membership alliance committed to the protection, enforcement, and advancement of crime victims' rights nationwide.

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Housekeeping Matters

- This webinar is being recorded
- A brief survey will follow the webinar; please provide feedback
- You will receive an e-mail with the PowerPoint slides
- You are muted, but you can ask questions & participate – and we hope that you do
- Certificates of attendance will be emailed to you after the presentation.

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**Presenters
and
Facilitators**

Presenter:
Cari Simon, J.D.
Fierberg National Law Group

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+ REPRESENTING SURVIVORS OF CAMPUS SEXUAL ASSAULT




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+ Representing Survivors

Campus Disciplinary Process	Accommodations
Federal Investigations	Civil Lawsuits
Defamation	

+ Title IX Amendment to the Higher Education Act of 1972



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 assistance.

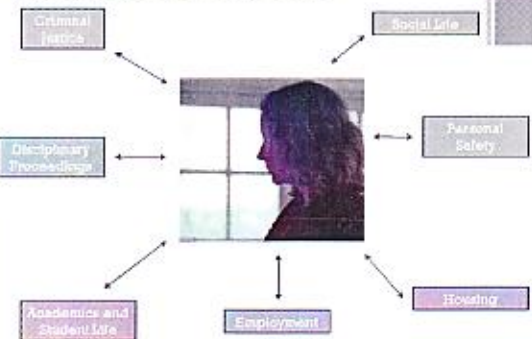
+ Enforcing Title IX

- Federal Investigations
- Civil Litigation



Standards and Remedies

+ The Victim's Perspective



The diagram features a central image of a woman's profile looking out a window. Surrounding this image are seven boxes, each with an arrow pointing towards the center. The boxes are labeled: Criminal Justice (top left), Social Life (top right), Personal Safety (middle right), Housing (bottom right), Employment (bottom center), Academics and Student Life (bottom left), and Disciplinary Proceedings (middle left).

+ Title IX: OCR guidance and enforcement

- 2011 Guidance
 - Prohibition on Student Harassment
- 2010 Sexual Harassment, Title IX and Academic
- October 2017 Guidance on Schools' Obligations to Protect Students from Sex-Based Student Harassment on the Basis of Sex, Race, Color, and National Origin, Disability
- April 4, 2011 Dear Colleague Letter
 - Student on Student Harassment
- 2014 Questions and Answers
- 2014 Guidance on Gender Equity in Career and Technical Education (June 2014)
- Relational Harassment
- Sexual Harassment Letters
- Title IX Coordinator Toolkit

+ DeVos Removes Obama-Era Title IX Protections for Sexual Violence Survivors

U.S. Department of Education Issues

- **Rescission Letter, September 22, 2017**
 - Rescinding 2011 Dear Colleague Letter on Sexual Violence issued [dated April 4, 2011]
 - Rescinding the 2014 Questions and Answers on Title IX and Sexual Violence [dated April 29, 2014]
- **Interim Guidance: September 2017 Questions & Answers**

3 Major Impacts

+ DeVos 2017 Interim Guidance and Letter

- **Appeals:** Allows schools to offer **ONLY** the perpetrators of sexual harassment the right to appeal and **not** the victim.
 - Footnote: Respondent is "the one who stands to suffer from any penalty imposed and should not be made to be tried twice for the same allegation."
- **Removal of 60 day timeline**
- **Interim Measures vs. Accommodations and Remedies**
 - Burden
- **Meditation allowed**

+ DeVos 2017 Interim Guidance and Letter

■ **Standard:** Allows schools to impose a heightened standard to find sexual violence: Clear and Convincing.

The levels of required proof.

REASONABLE SUSPICION
The amount of evidence that teachers need to "flag" someone.

PROBABLE CAUSE
The amount of evidence that an officer needs to arrest someone.

PREPONDERANCE
The amount of evidence it takes in an automobile accident case.

CLEAR AND CONVINCING
The amount of evidence necessary for the State to take a child away from a parent.

BEYOND A REASONABLE DOUBT
Evidence beyond any doubt based on a reason.

+ Title IX Rights for Victims Accommodations and Remedies

■ In Response to Sexual Harassment, a school must:

- Take "prompt and effective action calculated to end the harassment"
- "Prevent its recurrence" and
- "Remedy its effects"

■ Academic success and grades

■ Housing

■ Transportation

■ Employment

■ Financial impact

+ Campus Disciplinary Proceedings

Effective Representation

- Navigate Disciplinary Proceedings
- Communicate with police/DA
- Review Policy
- Ensure victims Title IX rights are protected
- Initial Complaint / Statements
- Gathering Evidence / Identifying Witnesses

+ Campus Disciplinary Proceedings

Effective Representation

- Interview preparation and interviews
- Response to Investigative Report
- Timeline / Extensions
- Respond to issues arising from perpetrator's lawyer
- Hearing prep and support during hearing (Qs, opening, closing, impact)
- Appeals

+

Retaliation

Jackson v. Birmingham Board of Education, 544 U.S. 161 (2005)

- Supreme Court held that "retaliation against a person because that person has complained of sex discrimination" is a form of gender-based discrimination actionable under Title IX.



+ Retaliation by School, Perp, or Others

State

"My School Punished Me"

Send a note about your experience at this school and help other students.



My school punished me for reporting a sexual assault. I was suspended for 30 days and my grades were lowered. I was also harassed by the principal and other staff members. I am still dealing with the aftermath of this incident.

+ Looking Ahead

- Notice & Comment: Opens March 2018
- Lawsuit filed by National Women's Law Center
- State Legislation to Protect Survivors
- Rights under the Clery Act

Thank you
Q & A

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For More Information

The screenshot shows the NAVRA website with the following content:

- www.navra.org
- NAVRA logo: National Alliance of Victim's Rights Attorneys & Advocates
- Membership Benefit Highlights:
 - Basic (Free) Members:
 - NAVRA List-Serv
 - On Demand CLE Trainings
 - Enhanced (Paid) Members:
 - Discount to CLE Trainings and Crime Victim Law Conference
 - Searchable Databases (case summaries, sample pleadings, and more)



Crime Victim Law Conference
June 7-8, 2018
www.victimlawconference.org

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Training Evaluation

Please take a minute to
complete a brief questionnaire

[Click here](#)

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