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The IL Preventing Sexual Violence in Higher Education Act



Title IX In Focus
February 29, 2024

Presenter – Jessica Galanos



- Higher Education Attorney & Consultant
- Former in-house Deputy Title IX Coordinator, Interim Title IX Coordinator, and litigator
- Currently serve in interim roles when needed, and provide investigative and decision-maker services for civil rights matters
- Based in Champaign, Illinois

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Presenter – Alison Hill

Supervising Attorney, Civil Rights Bureau of the Illinois Attorney General's Office

- The Civil Rights Bureau investigates patterns and practices of discrimination in housing, employment, education, public accommodations and financial credit services. The Bureau also investigates patterns and practices of unlawful or unconstitutional conduct by police departments and county corrections and brings civil action against perpetrators of hate crimes.
- Alison has filed numerous lawsuits alleging violations of the Illinois Human Rights Act, served as lead counsel in the state's first civil hate crime lawsuit, and challenged federal regulations through comment letters, amicus briefs and other affirmative litigation.
- Alison also coordinates the Bureau's legislative efforts on various topics including discrimination, school discipline, and campus sexual assault.
- **She oversees colleges and universities' compliance with Illinois' Preventing Sexual Violence in Higher Education Act, including providing statewide training and issuing compliance reports.**
- She serves as the **Attorney General's representative on the statewide Campus Climate Survey Task Force** and also represents the state of Illinois on the multistate Education Civil Rights Alliance. With expanded AG authority, Alison is currently staffing large scale matters, such as police reform, access to medical care in county jails, and conducting school-to-prison pipeline investigations.



Disclaimers



We can't help ourselves. We're Lawyers.

- We are not giving you legal advice
- Consult with legal counsel regarding specific situations
- You should have received slides for today's presentation
 - If not, check the link in the chat box

And another one...



Specific to the Title IX In Focus Webinar Series

- The 2020 Title IX regulations require training on a number of specific subjects (outlined in upcoming slides)
- While the Title IX In Focus webinar series will discuss *some* of the required subject matter, none of these one-hour webinars will cover *all* of the material required for Title IX training compliance
- Work with your TIXC to make sure that you are trained in accordance with Title IX, Clery, and any applicable state law (like the Illinois PSVHE Act)

Can We Post These Training Materials?

YES – Post away!

Institutions subject to Title IX are required by §106.45(b)(10)(i)(D) to post materials used to train Title IX personnel on its website.



What is the IPSVHE Act?



IL Preventing Sexual Violence in Higher Education Act

- Provisions in IL law:
 - 110 ILCS 155/1 *et seq.* (PSVHE Act)
 - 110 ILCS 12/10 (Campus Security Enforcement Act of 2008)
 - 110 ILCS 205/9.21(b) (Board of Higher Education Act)
- Effective August 21, 2015
- Amended on August 6, 2021 to include Sexual Misconduct Climate Survey provision
- Focus on students

Big Picture



IL Preventing Sexual Violence in Higher Education Act

- Comprehensive Policy
 - Definition of Consent
- Reporting and 12-hour Response
- Notice of Rights and Options
 - Confidential advisors
- Complaint Resolution Procedures
- Campus Training, Education, and Awareness
 - Primary Prevention & Awareness
 - Survivor-Centered & Trauma-Informed Response Training
- Campus-Wide or Regional Task Force
- Annual Report
- Climate Survey

Cases Citing to IPSVHE Act (1 of 2)



O'Shea v. Augustana College, 593 F. Supp. 3d 838 (C.D. Ill. 2022)

- Issued March 24, 2022
- Federal trial court for the Central District of Illinois
- Holding: the Court declined to consider the plaintiff's PSVHE Act claim alongside the Title IX claim

"Determining for the very first time whether an Illinois statute implies a private right of action is certainly a novel issue which the Court believes is best reserved for Illinois courts. Thus, the Court declines to exercise supplemental jurisdiction over Plaintiff's claims brought under the Preventing Sexual Violence in Higher Education Act. Counts VI, VII, and VIII are dismissed without prejudice."

Cases Citing to IPSVHE Act (2 of 2)



Gash v. Rosalind Franklin University, 2023 WL 5852258 (N.D. Ill.)

- Issued September 11, 2023
- Federal trial court for the Northern District of Illinois
- Holding: No explicit private right of action under the PSVHE Act
- NOTE: the Court held that the issue of whether the drafters intended to imply a private right of action should be decided by a state court – not a federal court
 - Stay tuned

Comprehensive Policy - Generally

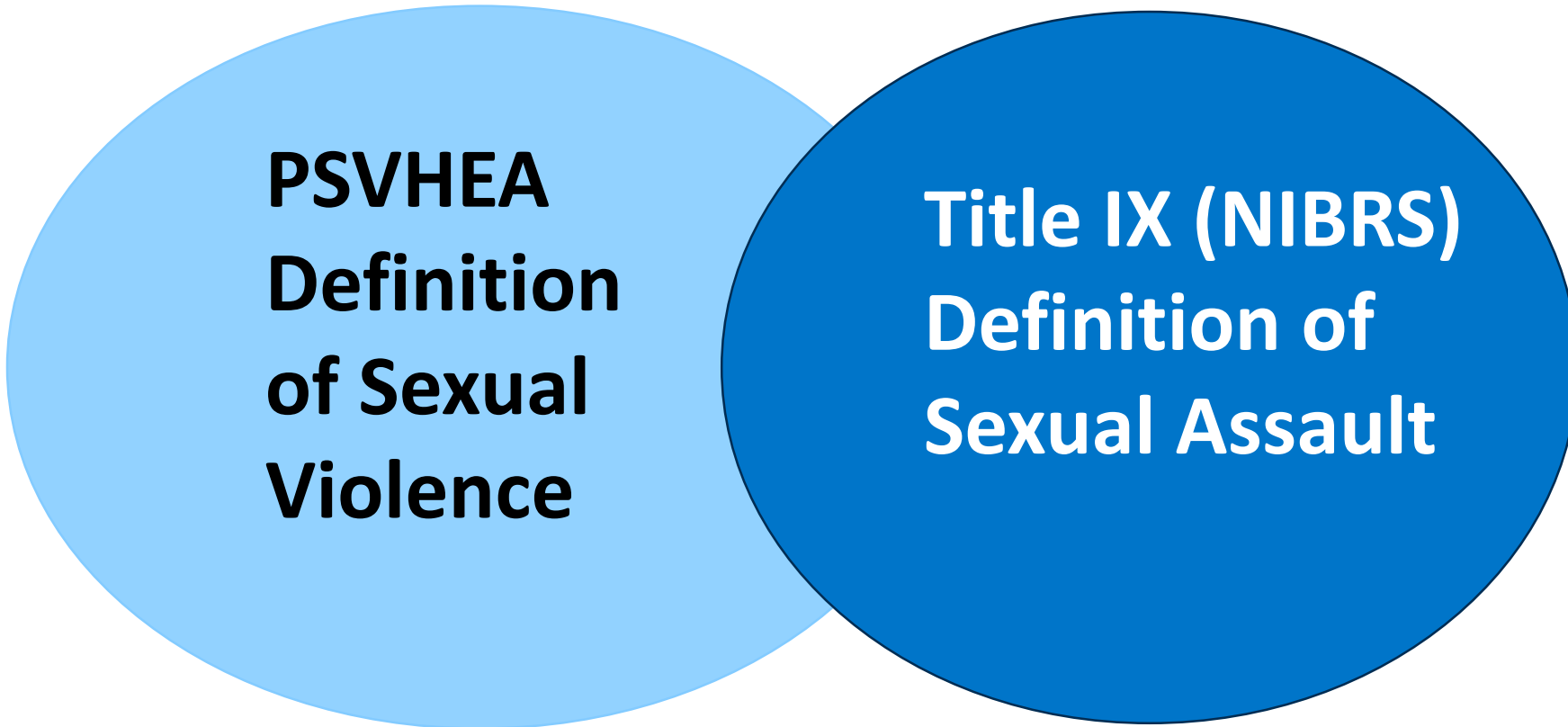
110 ILCS 155/10

- "Concerning":
 - Sexual Violence*
 - Domestic Violence
 - Dating Violence
 - Stalking
- Consistent with federal & state law
- Sexual harassment?



"Sexual Violence"

110 ILCS 155/5

A Venn diagram consisting of two overlapping circles. The left circle is light blue and contains the text 'PSVHEA Definition of Sexual Violence'. The right circle is a darker blue and contains the text 'Title IX (NIBRS) Definition of Sexual Assault'. The two circles overlap in the center.

**PSVHEA
Definition
of Sexual
Violence**

**Title IX (NIBRS)
Definition of
Sexual Assault**

Comprehensive Policy – Additional Elements



110 ILCS 155/10(2)-(11)

- Procedure for reporting violations and for responding to reports
- Statement re: obligation to provide survivors with information about rights and options (in plain language)
- Nearest medical facility for free forensic examination
- Contact info for sexual assault crisis center
- Notice of interim protective measures
- Procedure for resolving alleged policy violations
- Potential sanctions for policy violations
- Amnesty provision for low-level drug or alcohol use
- Prohibition on retaliation

Comprehensive Policy - Consent



110 ILCS 155/10(1) - sets a floor, not the ceiling

Must recognize, at a minimum:

- ✓ Freely given agreement to sexual activity
- ✓ Can be withdrawn at any time

~~Lack of verbal or physical resistance~~

~~Submission resulting from force or the threat of force~~

~~Manner of dress~~

~~Unable to understand the nature of the activity~~

Unable to Understand the Nature of the Activity

A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances like:

- Incapacitation due to the use or influence of alcohol or drugs;
- Sleep or loss of consciousness
- Below the age of consent
- Mental disability

110 ILCS 155/10(1)(A)-(D)

Reporting Sexual Violence



110 ILCS 155/10(2)

Comprehensive Policy must provide:

- Contact information for TIXC, confidential advisors, others on campus to whom a report may be made
 - Whether others may keep the information confidential
- Options for:
 - Electronic reporting
 - Anonymous reporting
 - Confidential reporting
 - Third-party & bystander reporting



Responding to Reports

110 ILCS 155/15(a)

Student Notification of Rights & Options:

- Right to report to the institution and/or law enforcement
 - Confidentiality of reporting options
 - Contact information
- Right to assistance with reporting to law enforcement
- Ability to request interim protective measures
- Right to assistance with accessing health and mental health services
- Summary of the institution's complaint resolution process

12-Hour Response Rule

Key Points:


- Applies to receipt of electronic reports
- "Shall respond" with Notice of Rights & Options (see prior slide)
- Discretion over manner of response (verbal or electronic)

Confidential Advisors



110 ILCS 155/20

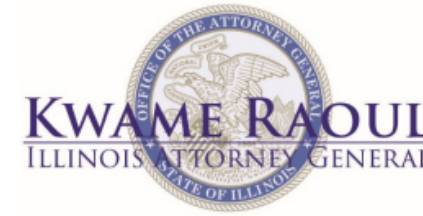
"A person who is employed or contracted by a higher education institution to provide emergency and ongoing support to student survivors of sexual violence with the training, duties, and responsibilities described in Section 20 of this Act." **110 ILCS 155/5**

- ✓ Complainants only
- ✓ Not Responsible Employees
- ✓ 40 hours of initial training  6 hours of annual training
- ✓ Specific tasks outlined in 110 ILCS 155/20(d) (provide information about resolution options and resources, work with campus partners, etc.)

Confidential Advisors FAQs

From the OAG

- HEIs can provide equivalent services to Respondents
- No requirement of 24/7 availability
- Who may serve as a Confidential Advisor?
- External providers may be okay
- Provision of interim protective measures



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.

Complaint Resolution Procedures (1 of 3)

- One procedure
- Opportunity to request prompt & timely resolution
- Enough trained staff
- POE standard
- Prior notice of decision-maker/sanctioner to request substitution

Complaint Resolution Procedures (2 of 3)

- Procedure for determining interim measures
- Privacy must be protected
- Rights of all parties to provide evidence & witnesses
- No direct cross-examination by one party of another**



Complaint Resolution Procedures (3 of 3)

- Right to have an advisor of choice present, who must comply with rules
- Cannot compel parties to testify "in the presence of the other party"
- Simultaneous, written notice of the outcome within 7 days of a decision or sooner
- No disclosure of party identities beyond what is necessary to resolve the complaint, implement interim protective measures, or provide accommodations
- Right to Appeal (next slide)

Appeals under the IL PSVHE Act

- Right to Appeal decision within 7 days of appellate review of findings/sanctions
 - Bases:
 - (1) Procedural Error
 - (2) New information exists that would substantially change the outcome of the finding
 - (3) Disproportionate sanction
- ** Compare to bases for appeal in the Title IX regulations (34 CFR 106.45(b)(8))



Training, Education, & Awareness



Know the role of your trainees – different standards apply

Students

Employees

Confidential
Advisors

Those who
Resolve
Complaints



Annual Primary Prevention & Awareness Training for Students

Topics:

- Consent
- Inability to Consent
- Retaliation
- Reporting (HEI & Law Enforcement)
- Available Survivor Services
- Strategies for bystander intervention and risk reduction

110 ILCS 155/30(b)

Annual Training for Employees



110 ILCS 155/30(c)

- "Survivor-Centered and Trauma-Informed Response Training"
- Applies to any employee involved in:
 - (i) the receipt of a student report of an alleged incident of sexual violence, domestic violence, dating violence, or stalking;
 - (ii) the referral or provision of services to a survivor; or
 - (iii) any campus complaint resolution procedure that results from an alleged incident of sexual violence, domestic violence, dating violence, or stalking.
- Will always include: TIXC, campus law enforcement, and campus security

Goals of Employee Training (1 of 2)



HEI "shall design the training to improve" understanding of:

- The HEI's comprehensive policy
- Relevant state & federal law concerning survivors
- Roles of the HEI, medical providers, law enforcement, and community agencies in ensuring a coordinated response to a report
- The effects of trauma on a survivor
- Conduct that constitutes sexual violence, dating/domestic violence, & stalking (including same-sex violence)
- Consent and the impact drugs and alcohol may have on the ability to consent

Goals of Employee Training (2 of 2)



"shall also seek to improve the trainee's ability to respond..."

- With cultural sensitivity
- Provide services to or assist in locating services for a survivor
- With sensitivity and compassion when communicating with a survivor

Initial and Ongoing Training for Confidential Advisors

- 40 hours of training on sexual advisor before service as a confidential advisor
- 6 hours of annual training on issues related to sexual violence
- "Periodic training on the campus administrative processes, interim protective measures and accommodations, and complaint resolution procedures"

110 ILCS 155/20(c)



Those Who Resolve Complaints



110 ILCS 155/25(b)(3)

(3) All 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 on issues related to sexual violence, domestic violence, dating violence, and stalking and how to conduct the higher education institution's complaint resolution procedures, in addition to the annual training required for employees as provided in subsection (c) of Section 30 of this Act.

- 8-10 hours of annual training + Section 30(c) of the Act (Annual Survivor-Center and Trauma-Informed Response Training)

Campus-Wide or Regional Task Force



110 ILCS 12/10

- HEIs "shall" either establish a campus-wide task force OR participation in a regional task force
- "Shall" include:
 - Staff
 - Students
 - Community-based organizations
 - Law enforcement
- The assignment: Improved coordination to assist with prevention and ensure a coordinated response "in terms of law enforcement & victim services)"



PSVHE Annual Report (110 ILCS 205/9.21(b))

- Data from previous calendar year
 - Report submitted on Nov. 1, 2024:
 - Data from Jan. 1, 2023 – Dec. 31, 2023
- Submission to Dept. Of Human Rights and the AG
- AG shall maintain a list of non-compliant institutions on its website

Non-Data Submissions for Annual Report

- A copy of the Comprehensive Policy
- A copy of the Notice of Survivor Rights and Options

Data Required for Annual Report (1 of 2)



- Number, type, and number of attendees – primary prevention/awareness training
- Number of incidents of sexual violence, domestic violence, dating violence, and stalking reported to TIXC or Responsible Employees
- Number of confidential/anonymous reports
- Number of allegations in which the survivor requested not to proceed with HEI's complaint resolution process

Data Required for Annual Report (2 of 2)



- Number of allegations investigated
- Number of allegations that were referred to law enforcement**
- Number of allegations that the HEI reviewed through its complaint resolution process
- Aggregate number of students who were:
 - Dismissed/Expelled
 - Suspended
 - Otherwise Disciplined
 - Found Not Responsible

Reporting FAQs

From the OAG

- May submit Clery report & supplement with PSVHE data (remember the difference in deadlines and reporting period)
- Confidential Advisor Data?
 - Yes – should include reports made to CAs, professional, and pastoral counselors

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.

What qualifies as a reported incident?

- Reported to TIXC, Responsible Employee, and/or confidential and anonymous sources
- Includes anonymous and third-party reports
- On-campus conduct during the relevant period (using Clery geography)
- Ex: student sees a counselor for anxiety and discloses domestic violence incident over winter break in their hometown
 - Not required to report



Student-on-Student Complaints Only?

All categories EXCEPT discipline:

- Include all complaints by or about a student survivor
- Even when complaint is against another student, an employee, or a non-affiliate

Disciplinary Data:

- Only data related to complaints made by students against students subject to discipline by HEI



Timing of Reporting HEI Actions after Receipt of Report

- HEIs must report responsive actions (survivor requested to not proceed, law enforcement referral, complaint resolution procedure) that occurred in the reporting year,
- Even when the incident occurred in the prior year

Example: On December 31, 2023, a student reports an incident of domestic violence that occurred in December 2023. At the student's request, the HEI refers the matter to local law enforcement on January 1, 2024.

- The 2023 Annual Report (filed Nov. 1, 2024) – include the domestic violence report
- The 2024 Annual Report (filed Nov. 1, 2025) – include the law enforcement referral

Additional FAQs

Q: What is considered an allegation "**referred to local or State law enforcement**"?

A: HEIs should count a referral to law enforcement when they:

- Directly refer a complaint to law enforcement
- Give advice and guidance to a specific student after that student reports an incident to the school – including notifying the student of the option to report to law enforcement and/or helping the student file a complaint with law enforcement

Q: "**Double Counting**" when reports are made to multiple people or offices?

A: The HEI may include an explanation when they are aware that a report has been "double-counted," or when they are unsure whether a report has been counted more than once (e.g., an anonymous report with similar facts),

Sexual Misconduct Climate Survey



110 ILCS 155/35

- Annual
- All students at each HEI
- Base Survey + Campus-Specific questions that do not seek PII
 - Task Force & Board of Higher Ed/IL Community College Board created the Base Survey
- Implementation Deadline: **August 2024**
- Summary of results to be submitted to BHE within 120 days of completion
 - No later than 1 year
- Summary of results to be posted on the HEI's website

Base Survey Recommendations and Implementation Plan

Available at ibhe.org

- Students = those 18 and over, includes international students, study abroad students, those taking classes online
- Estimated 15-20 minutes to complete
- Optional incentives may be offered
- Definitions in the Base Survey questions may not be modified unless otherwise specified

TASK FORCE ON CAMPUS SEXUAL MISCONDUCT CLIMATE SURVEYS

BASE SURVEY RECOMMENDATIONS AND IMPLEMENTATION PLAN

July 31, 2023
Updated January 22, 2024

Outline of Base Survey Questions



- I. Introduction
- II. Demographics (age, gender identity, year, etc.)
- III. Perceptions of Student Wellness and Campus Safety
- IV. Understanding of Resources
- V. Consent (Optional)
- VI. Sexual and Gender Harassment
- VII. Stalking
- VIII. Dating and Domestic Violence
- IX. Sexual Violence
- X. Student Misconduct
- XI. Institutional Responses
- XII. Peer Response
- XIII. Debriefing (including information regarding resources & reporting)

Penalties for Non-Compliance



(j) The Board of Higher Education and Illinois Community College Board shall establish rules and procedures, including deadlines for dissemination and collection of survey information, consistent with the purposes of this Section and shall promote effective solicitation to achieve the highest practical response rate, collection, and publication of statistical information gathered from higher education institutions.

(k) Upon determination, after reasonable notice and opportunity for a hearing, that a higher education institution has violated or failed to carry out any provision of this Section or any rule adopted under this Section, the Board of Higher Education or Illinois Community College Board, whichever is applicable, may impose a civil penalty upon such institution not to exceed \$50,000, which shall be adjusted for inflation annually, for each violation. The Board of Higher Education and Illinois Community College Board shall use any such civil penalty funds to provide oversight of this Section and to provide funding to community organizations that provide services to sexual assault victims. The Attorney General may bring an action in the circuit court to enforce the collection of any monetary penalty imposed under this subsection (k).

(Source: P.A. 102-325, eff. 8-6-21; 103-288, eff. 7-28-23.)

Questions for Alison



- Campus climate surveys under VAWA?
- Financial penalties for climate survey non-compliance
- Counting the "number of allegations investigated" versus the "number of allegations reviewed through the complaint resolution procedure"
 - Investigations versus the number of cases that went to a hearing/informal resolution?
- "Stalking" under the PSVHEA – only sex-based (like Title IX)?
- Reconciling the survivor-centered state law requirements with the more neutral provisions in the 2020 Title IX regulations?
- What happens with the Annual Report data? And the climate data?

Further Questions for OAG?



If you have additional questions:

CivilRights@ilag.gov

312-814-3400

Upcoming Title IX In Focus Webinars



March 28, 2024: Trauma-Informed Intake Meetings

April 25, 2024: Weighing the Evidence in Sexual Violence Cases

May 10, 2024: Title IX Litigation Update (11:00 a.m. CT/12:00 p.m. ET)

August 29, 2024: Trauma-Informed Resolutions

September 26, 2024: Hostile Environment Basics

October 31, 2024: Common Issues in Investigating IPV

November 21, 2024: Title IX Litigation Update

February 27, 2025: Employee Sexual Misconduct Cases

March 27, 2025: The Romanticizing of Stalking Behavior

April 24, 2025: Sexual Misconduct Hearings

May 29, 2025: Title IX Litigation Update

Upcoming Higher Ed Webinars




- Higher Education **Free** Webinar Series:
 - Ohio's House Bill 68 – March 6, 2024
 - Higher Education Contracts: Reviewing for Red Flags – March 20, 2024
 - Athletics Hot Topics – April 12, 2024
 - Title IX Litigation Update – May 10, 2024

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