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### Institutional Title IX Requirements for Researchers Conducting Human Subjects Research on Sexual Violence and other Forms of Interpersonal Violence

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Institutional Title IX Requirements for Researchers Conducting Human Subjects  
Research on Sexual Violence and other Forms of Interpersonal Violence

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Specific Aims

The purpose of this white paper is to provide guidance on how university and college (hereafter referred to as “university”) Institutional Review Boards (IRBs) and IRB administrators can oversee, and researchers can conduct, research investigating the different aspects of Sexual Violence and other forms of Interpersonal Violence (including sexual harassment, sexual assault, attempted sexual assault, unwanted sexual conduct, sexual misconduct, domestic violence, relationship abuse and stalking [including cyber-stalking] and dating violence) referred to herein as *sexual assault and other forms of interpersonal violence*. Specifically, the white paper outlines key issues involved in meeting the mandates associated with Title IX while maintaining the integrity of campus-based research to inform evidence-based prevention and intervention efforts around *sexual assault and other forms of interpersonal violence*.

Recent Legal Developments

Title IX of the Education Amendments of 1972<sup>1</sup> and its implementing regulations prohibit education institutions that receive federal funding from discriminating on the basis of sex. On April 4th, 2011, the U.S. Department of Education, which enforces compliance with Title IX, issued a “significant guidance document” concerning Title IX in the form of a *Dear Colleague Letter*.<sup>2</sup> This guidance document specifically includes

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<sup>φ</sup> The following white paper is published for informational purposes only and does not contain any legal advice from Prevention Innovations Research Center. This white paper does not attempt to address all legal concerns that may arise in addressing the discussed topic. Prevention Innovations Research Center recommends seeking legal guidance concerning all applicable laws, and updates to laws, that may affect the institution using this white paper for guidance.

sexual violence and sexual harassment as forms of gender discrimination that impede an individual's right to an education free of discrimination.

The 2011 guidance from the Department of Education states that certain university employees have an obligation to report to a designated employee all instances of *sexual assault and other forms of interpersonal violence* of which they become aware through witnessing the situation or learning about the situation through a disclosure from the victim<sup>7</sup> or another member of the university community. *Questions and Answers on Title IX and Sexual Violence* issued on April 29, 2014 by the U.S. Department of Education Office of Civil Rights<sup>3</sup> distinguishes between “responsible” and “non-responsible” university employees regarding their responsibilities when learning of sexual assault and other forms of interpersonal violence. “According to OCR’s 2001 Guidance, a responsible employee includes any employee: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.”<sup>3,4</sup> These responsible employees are required to report all of the details of the disclosure to a person designated by the university (on most campuses this person is the Title IX Coordinator). The Title IX Coordinator will then use the information gathered from a victim disclosure to identify ways in which the campus officials and community can address the behavior of the accused and protect the victim so he or she can proceed with his or her academic pursuits. These mandatory reporting obligations are aimed at making sure the Title IX Coordinator is able to support survivors and address safety and climate issues, and hopefully increased reporting will help reduce the instances of sexual violence on campuses.

In addition, the document, *Questions and Answers on Title IX and Sexual Violence* issued on April 29, 2014 by the U.S. Department of Education Office of Civil Rights states that each school needs to determine who is a responsible employee; there is no indication that designation was intended for every employee, yet besides professional and pastoral counselors, the categories of employees is broad and there is not a lot of discretion given to institutions in this regard. “A school must make clear to all of its employees and students which staff members are responsible employees so that students can make informed decisions about whether to disclose information to those employees.... Whether an employee is a responsible employee will vary depending on factors such as the age

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<sup>7</sup> In this paper we use the term survivor and victim interchangeably. Some researchers use the term survivor to describe a person who has been a victim and is in the process or have reclaimed the power that was taken away by the perpetrator.

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and education level of the student, the type of position held by the employee, and consideration of both formal and informal school practices and procedures.”<sup>3</sup>

Many colleges and universities have stated that all faculty and staff are “responsible employees.” Exceptions, however, are made in the case of mental health and medical professionals, professional and pastoral counselors, who are specifically exempted by the Department of Education from the role of “responsible employee.” Students working for the university in certain positions (e.g., resident assistants, teaching assistants) may also be considered responsible employees.

### Problems with Requiring Academic Researchers to Report

#### *A Chilling Effect on Research*

While there have been many discussions about Title IX, we focus exclusively on the critical issue of how these mandates intersect with research on *sexual assault and other forms of interpersonal violence* among college students. All researchers must conduct their research in accordance with the requirements of their university’s IRB, and, where applicable, any sponsor requirements. These requirements, based in federal and state human subjects regulations and laws, in addition to ethical and professional codes of conduct work to ensure the protection of human research subjects.

Title IX raises particular issues for researchers and IRBs across the U.S. in relation to participant disclosures of *sexual assault and other forms of interpersonal violence* and mandatory reporting requirements. Specifically, if faculty and staff are “responsible employees” with reporting obligations, then in their role as researchers they are required to report and disclose information about victimization and/or perpetration that they learn about in their research. The impact of federal (and, in some cases, state law) mandates are of greatest concern for research that is not anonymous and involves an identifiable victim and/or perpetrator, which is often the case in longitudinal research and clinical trial research where researchers use carefully protected lists that link names to identifying data necessary for tracking purposes. This is also likely to be an issue in face-to-face qualitative interviews.

The Office of Civil Rights’ guidance for interpreting and enforcing Title IX presents challenges and consequences for those whose research focuses on *sexual assault and other form of interpersonal violence*. That is, university researchers may be required to disclose the names of victims and perpetrators revealed to them in research. These researchers will then have to disclose this requirement to potential participants/students as part of the informed consent process, as with other mandatory reporting requirements.

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The result will likely be that students with relevant victimization or perpetration experiences will not volunteer to participate in research, which would likely deter from participating the very people intended to be the primary subjects of the investigation. This may severely restrict the ability of researchers to gather credible data about perpetration and victimization, victims' experiences with campus response systems; the impact and effectiveness of prevention strategies; and the utility of new clinical interventions on campus. Researchers will also be restricted in the research methods they can use to investigate these topics. They will likely continue to use anonymous surveys but will be less likely to use the type of longitudinal and follow-up research methods that require tracking of participants over time. These limitations in methodological practices (i.e., only surveys) effectively limit the questions researchers can ask about *sexual and other forms of interpersonal violence* and the answers that researchers can acquire.

Furthermore, in-depth interviews and other forms of qualitative analyses will be challenging to implement without a promise of anonymity, thus limiting the depth and scope of information researchers can gather on this important issue.

The ultimate goal of research on campus-focused *sexual assault and other forms of interpersonal violence* is to inform best practices for prevention and intervention, so that university officials can reduce the scope and impact of campus-based *sexual assault and other forms of interpersonal violence* across the United States. The absence of official guidance that permits universities to create exceptions to mandatory reporting responsibilities for those researchers who are seeking to study participants' experiences with Sexual Violence may impede the goal of facilitating valid research. Without participants, programs of research would come to a halt, and so too would researchers' ability to work towards ending campus-based *sexual and other forms of interpersonal violence*. Mandatory disclosure requirements for researchers may result in a significant loss in research funding for the universities and colleges that do not exempt researchers of sexual violence from mandatory reporting requirements (i.e., federal agencies will not fund research studies where there are significant concerns about participant recruitment and retention).

### Existing Protocols and Solutions

#### *Lessons from Medical Research*

HIV researchers have set a precedent for working with participants whose mandatory disclosure of HIV may have implications for participants' economic, social, and educational wellbeing. Universities with medical schools and their IRBs have developed solutions to these types of disclosures. In order for researchers examining HIV prevalence and prevention strategies to conduct research, they wanted to guarantee to their research participants that the participants' diagnosis of an HIV positive result would

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not be reported. If HIV testing is being done purely for research purposes in an IRB-approved research study, the HIV positive individual will not be reported to the Centers for Disease Control and Prevention.<sup>5,6</sup> As long as HIV research is being conducted for non-diagnostic purposes, researchers do not disclose the HIV status of a participant and are exempt from reporting the HIV status of research participants. A similar model of exemption for campus-based *sexual assault and other forms of interpersonal violence* research conducted in compliance with university's IRB is proposed in this white paper. The protection of vulnerable research participants is most important, especially because participating in HIV research often increases the likelihood of social, economic, and psychological risks. Thus, a researcher's primary task when conducting HIV-related research is to pay attention to defenselessness and to protect vulnerable research participants.<sup>7</sup> A similar exemption for researchers studying *sexual assault and other forms of interpersonal violence* because of the potential chilling effect on participation in research.

Recommended University Protocols for research on campus-based *sexual assault and other forms of interpersonal violence*

In light of the information and arguments presented in this white paper, researchers who conduct IRB-approved research on campus-based *sexual assault and other forms of interpersonal violence* should be exempt from Title IX reporting requirements. Specifically, we recommend that:

- Universities develop a procedure exempting an academic employee, *when in the researcher role*, from Title IX mandatory reporting. This is only a narrow exemption for certain types of research, and this exemption emanates from the fact that students would not expect faculty conducting this type of research (research on *sexual assault and other forms of interpersonal violence*) to have a duty to report disclosures to other university officials.
- The exemption also does not apply to other instances of state law/s that might intersect with this issue, for instance state mandatory reporting laws of child abuse and/or neglect.
- The exemption only applies when the employee is acting in his or her capacity as a researcher. It does not apply to instances of disclosure that occur when academic employees are speaking with students during office hours or in other academic roles (e.g., teachers, advisors, administrators).
- The exemption does not apply to students under the age of 18 (who have permission to participate in the research) or when students over 18 disclose violence involving a minor as researchers are mandatory reporters of suspected child abuse and/or neglect.

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- The IRB require trauma-centered training for researchers who may or will have contact with sexual violence survivors to ensure that they can help support victims.
- The consent form, signed by research participants, must explicitly outline the difference pertaining to Title IX mandatory reporting requirements in the academic employee's role when acting as a researcher.
- Researchers give participants a resource sheet that, in addition to common inclusion of detailing local, state, and national resources, also provides participants with referral information about the university Title IX office.

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