



Institutional Policies Training: Integrating Title IX & Clery Act Requirements

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Expertise • Mission-driven
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WHAT WE DO:

- Education & Training
- Membership
- Policy Advocacy
- Initiatives:
Free topic-specific resources

WELCOME & INTRODUCTION

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TRAINING PRESENTERS:

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LEARNING OBJECTIVES:

- Understand the relationship between annual security report policy statements and institutional policy.
- Identify the distinctions between statute, regulation, and guidance.
- Analyze the dating and domestic violence, sexual assault, and stalking response and disciplinary procedures requirements under the Clery Act and Title IX.
- Apply the understanding of federal requirements to the development of institutional policy.

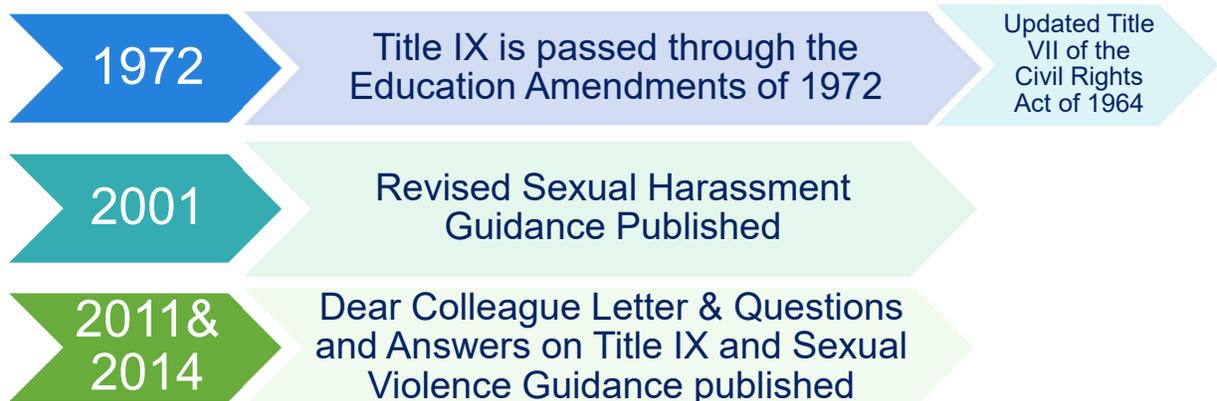
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TITLE IX: OVERVIEW

Who:	Officials with authority to institute corrective measures
Where:	Education programs or activities in the United States
What and How:	<p>Federal civil rights law prohibiting discrimination on the basis of sex in federally funded education programs</p> <p>Requires recipients of federal funds for education programs or activities to adequately respond to and address the effects of such discrimination when it has actual knowledge of its occurrence</p> <p>Institutions must provide and hold grievance procedures when such actual knowledge is provided</p>
Enforcement:	U.S. Department of Education (ED) Office of Civil Rights

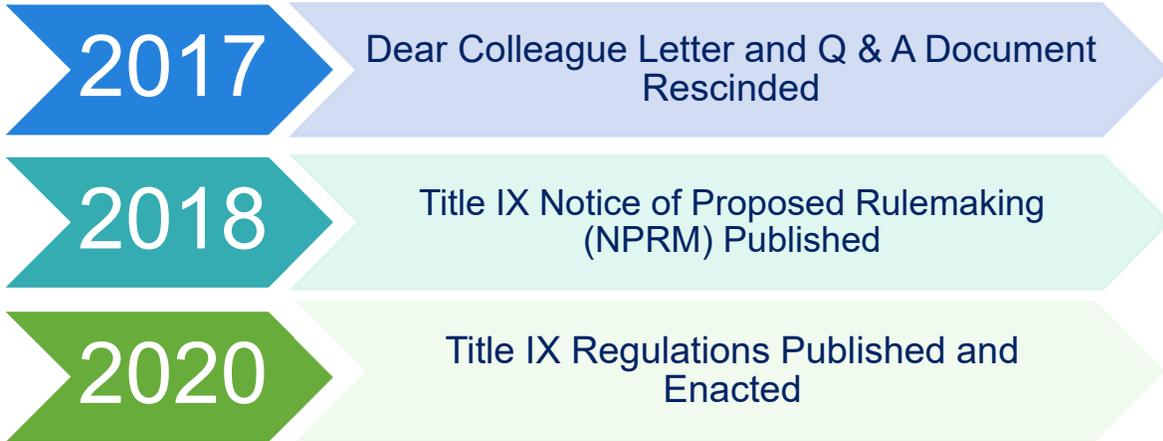
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TITLE IX TIMELINE HIGHLIGHTS



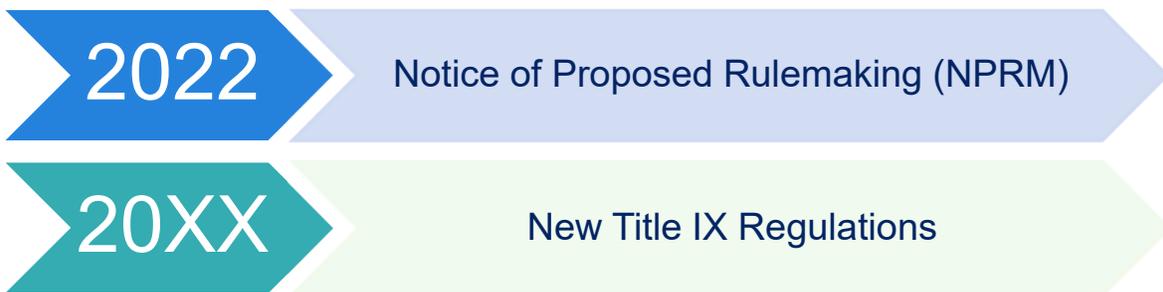
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TITLE IX TIMELINE HIGHLIGHTS



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TITLE IX TIMELINE HIGHLIGHTS



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CLERY ACT: OVERVIEW

Who: Campus security authorities (CSAs) and local law enforcement

Where: Clery Act geography

What and How: **Annual**

- Annual security report (statistics, policy statements)
- Statistics to Department of Education

Ongoing

- Disclosures (timely warnings, emergency notification, daily crime log)
- Rights and options for victims of dating violence, domestic violence, sexual assault, and stalking

Enforcement: U.S. Department of Education (ED) Clery Team (formerly Clery Act Compliance Division)

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CLERY ACT TIMELINE

1988

College and University Security Act (PA)

1990

Crime Awareness and
Campus Security Act of 1990
(Title II of Public Law 101-542)

Amended
HEA

1992

Buckley amendments (FERPA) and
Campus Sexual Assault Victims' Bill of
Rights amended HEA

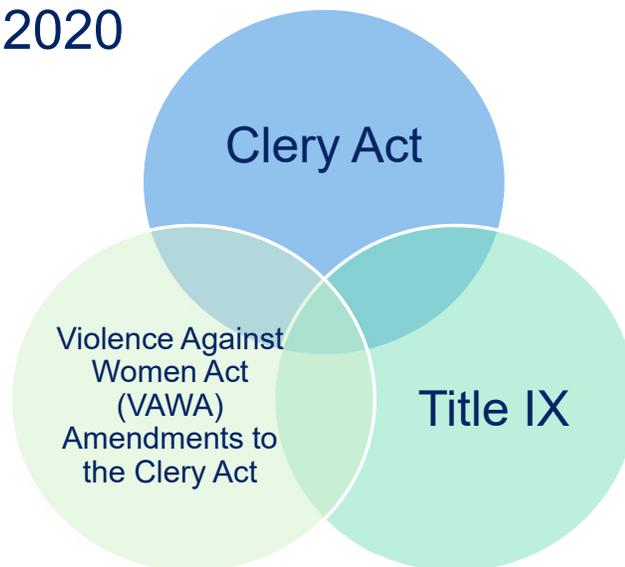
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CLERY ACT TIMELINE



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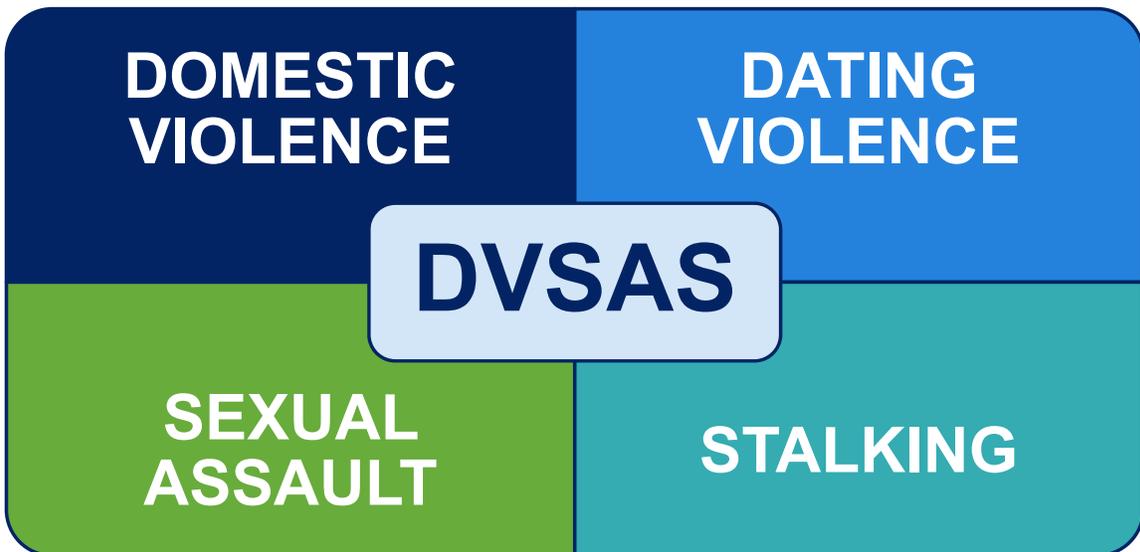
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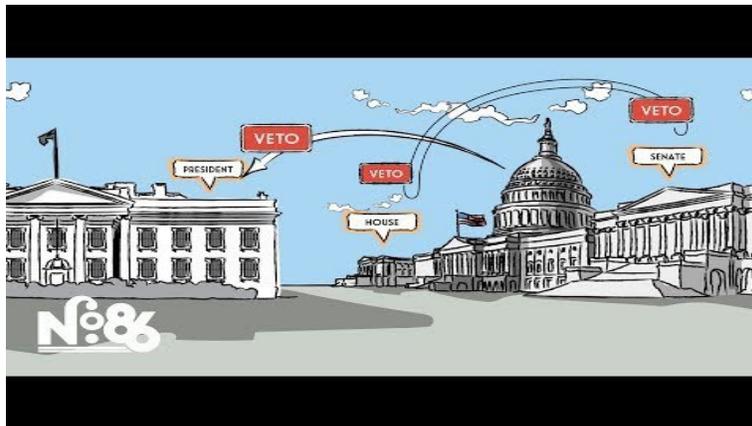


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PART I:
STATUTE VS. REGULATION VS. GUIDANCE

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STATUTE VS. REGULATIONS



<https://www.youtube.com/watch?v=bDy25B1OTyQ>

TERMS EXPLAINED

Law: Principles and rules governing the affairs or behavior of society or a community. Often passed by the dominant socio-economic, ethnic group in an area.

*May have underlying bias or promote inequity

Statute: A written law passed by a legislative body

Regulations: Official rules made by an agency responsible for enforcing a law

TERMS EXPLAINED

Guidance: administrative guidance is non-binding advice given by an administrative agency to the public regarding how best to comply with a law.

Policy: Guiding principles that dictate the parameters for how your institution interprets and implements regulations, laws, or a course of action.

- May be informed by the institution's culture, goals, mission, size, location, or other factors.

Procedures: How policies are carried out by responsible divisions, departments, or offices. Where policy often serves as the "Why," procedures serve as the "How".

TITLE IX

- Title IX of the Education Amendments of 1972 federal **statute** codified at [20 U.S.C. § 1681 – 1688](#)
- Implementing **regulations** in the U.S. Code of Federal Regulations at [34 C.F.R. Part 106](#) 
- **Guidance:** Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)

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THE CLERY ACT

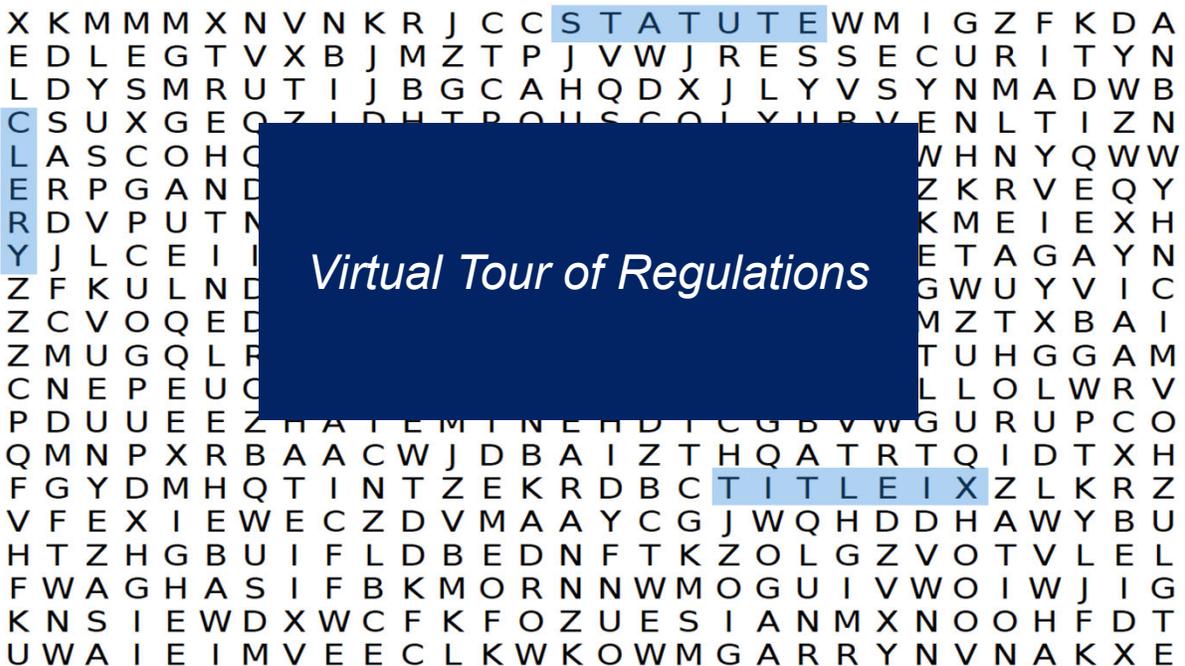
- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) federal **statute** codified at [20 U.S.C. § 1092](#)
- With implementing **regulations** in the U.S. Code of Federal Regulations at [34 C.F.R. 668.46](#)
- **Guidance:** Currently the Clery Act Appendix for the Federal Student Aid Handbook; formerly the Handbook for Campus Safety and Security Reporting

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INTENT OF GUIDANCE

- Departmental interpretation to assist with implementation
- Used by Department program reviewers responsible for evaluating compliance
- Statute and regulations take precedence if there are any differences between them and guidance
- Institutions are never found out of compliance for not adhering to actions only found in guidance

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LARGE GROUP ACTIVITY: SEEK AND FIND

Using the regs find answers to the following questions:

- Does the Clery Act dating violence definition include emotional or psychological abuse?
 Yes No
- What explanation did you find to support your answer?
- Does the Clery Act define what is meant by business day?
 Yes No
- If yes, what does it say?

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LARGE GROUP ACTIVITY: SEEK AND FIND

Using the regs find answers to the following questions

- Does Title IX define sexual harassment?
 Yes No
- What explanation did you find to support your answer?
- Does Title IX require a certain standard of proof or evidence for grievance procedures?
 Yes No
- What explanation did you find to support your answer?

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PART II:

RESPONSE & DISCIPLINARY PROCEDURES REQUIREMENTS

Annual Security Report

- The institution's annual security report includes policy statements of an institution's campus safety and security policies (including domestic violence, dating violence, sexual assault, and stalking policies)



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INTERSECTIONS BETWEEN THE CLERY ACT AND TITLE IX

THE CLERY ACT

- Reporting requirements
- All Clery crimes*
- Accommodations
- Disciplinary procedures

TITLE IX

- Reporting requirements
- Sexual harassment
 - Including dating violence, domestic violence, sexual assault, and stalking (DVSAS) as defined in the Clery Act
- Measures
- Grievance procedures

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GEOGRAPHY/JURISDICTION

THE CLERY ACT

- Four geographic locations for reporting
 - On-campus
 - On-campus student housing
 - Noncampus
 - Public property
- For response: on and off campus

TITLE IX

- Educational programs and activities
- May be on campus or off campus plus owned or controlled by recognized student organizations

REPORTING REQUIREMENTS

THE CLERY ACT

- Broader scope of reporting responsibility
- Non-personally identifiable information (nature, date, time, general location, current disposition)
- All Clery crimes

TITLE IX

- Higher threshold for a reported incident to be considered “actual knowledge”
- Sexual harassment – one category being DVSA as defined under Clery

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Under the Clery Act a crime is “reported” when it is brought to the attention of a campus security authority, the institution’s police department or campus safety office, or local law enforcement personnel by a victim, witness, other third party or even the offender.

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WHAT IS CONSIDERED A REPORT TO THE INSTITUTION UNDER TITLE IX?

- Institutions must respond when the institution has *actual knowledge*, meaning a notice of or allegations of sexual harassment (as previously defined) to:
 - The institution's Title IX coordinator; or
 - Any official...who has the authority to institute corrective measures on behalf of the recipient

WHAT MUST AN INSTITUTION DO WHEN IT RECEIVES A REPORT?

THE CLERY ACT

- A report of a Clery crime to a CSA leads to institutional actions required under Clery, including:
 - Determining whether there is a serious or ongoing threat that would require **a timely warning**

TITLE IX

- The institution must respond promptly in a manner that is not deliberately indifferent:
 - The Title IX Coordinator must promptly contact the complainant to discuss:
 - The availability of supportive measures
 - The individual's wishes with respect to supportive measures

WHAT MUST AN INSTITUTION DO WHEN IT RECEIVES A REPORT? (cont'd)

THE CLERY ACT

- Providing the individual with a written explanation of their rights and options, regardless of whether the incident took place on or off campus
- Determining whether information must be added to the daily crime log or in next year's annual security report

TITLE IX

- The availability of supportive measures with or without the filing of a formal complaint
- The process for filing a formal complaint

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FORMAL COMPLAINT UNDER TITLE IX

Formal Complaint (document filed by complainant or signed by TIXC alleging harassment and requesting investigation)

- Complainant must be participating in or attempting to participate in education program or activity at time of complaint
- Filed with TIXC in person, by mail, e-mail, or other methods of contact
- Physical or digital signature or otherwise indicates complainant is person filing.

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PROCEDURES VICTIMS SHOULD FOLLOW IN CASES OF DV/SAS



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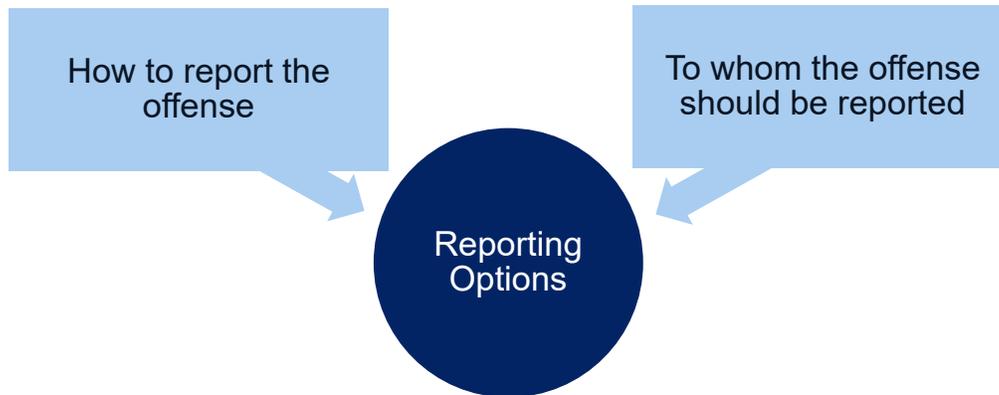
PROCEDURES TO FOLLOW: PRESERVING EVIDENCE

Importance of Preserving Evidence

- **Proof in a criminal or campus disciplinary proceeding**
- **May be helpful in obtaining a protection order**
- Knowledgeable of what may be preserved and for how long
- Recent/fresh complaints
- Basic preservation instructions/tips

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PROCEDURES TO FOLLOW: REPORTING OPTIONS



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PROCEDURES TO FOLLOW: REPORTING OPTIONS (CONT'D)

Involvement of law enforcement and campus authorities, including notification of the victim's option to:

- **Notify** proper law enforcement authorities, including on-campus and local police
- **Be assisted** in notifying law enforcement authorities if victim so chooses
- **Decline** to notify authorities
- **Rights of victim and institution's responsibilities** for orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal, civil, or tribal court or by the institution

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PROCEDURES TO FOLLOW: CONFIDENTIALITY

Information about how the institution will protect the confidentiality of victims and other necessary parties

- Publicly available record-keeping (ex: timely warnings, daily crime log)
- Without the inclusion of personally identifying information about the victim
- **Any accommodations or protective measures provided to the victim (to the extent it will not impair institution's ability to provide them)**



Confidentiality when providing accommodations is required under the Clery Act and current Title IX regulations

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ACCOMMODATIONS & MEASURES

THE CLERY ACT

- Accommodations
- Must be provided in writing
- Options for, available assistance in, and how to request changes to:
 - Academic
 - Living
 - Transportation
 - Working
 - Protective Measures
- If requested by the victim
- If reasonably available
- Regardless of whether the victim chooses to report to campus police or local law enforcement

TITLE IX

- Supportive Measures
- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge
- To the complainant or the respondent
- Before or after the filing of a formal complaint or where no formal complaint has been filed

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DISCIPLINARY PROCESS

THE CLERY ACT

- Prompt, fair, and impartial
- Describe the standard of evidence
- Be conducted by officials who receive annual training
- Advisor of choice
- Simultaneous notification of results

TITLE IX

- Prompt and equitable
- Regulations inform standard of evidence
- Annual training requirements
- Advisor of choice with role in cross-examination
- Simultaneous notification of results

PROCEDURES TO FOLLOW: INSTITUTIONAL DISCIPLINARY ACTION

- Explanation of procedures, including:
 - Type of [proceeding](#)
 - Steps involved
 - How institution determines which type to use
- How to file a disciplinary complaint

Go to the *Title IX Required Process Flow Chart*. Reflect upon your institution's disciplinary procedures.

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THE CLERY ACT

Describe:

- Each type of disciplinary proceeding used by the institution
- Steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding

TITLE IX

For example, under current regulations

- Written notice of allegations
- Investigation
- Investigative report
- Live hearing
- Determination regarding responsibility
- Appeal

They also require *reasonably prompt timeframes*

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HOW TO FILE A DISCIPLINARY COMPLAINT

THE CLERY ACT

- Communicate how to file a disciplinary complaint
- If processes or contacts vary based on type of proceedings, make sure to include all relevant procedures
- Ex: contact information, forms, links, etc.

TITLE IX

- *Under current regulations:*

A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator and by any additional method designated by the institution

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HOW THE INSTITUTION DETERMINES WHICH TYPE OF PROCEEDING TO USE

- Under the Clery Act, your policy has to be clear on how the institution determines which proceedings apply under what circumstances

Questions to Consider:

- What is the jurisdiction of your policy?
 - Does it extend to incidents that occur off-campus? To incidents that fall outside of Title IX?
 - If so, do you use the same proceedings or are there different proceedings?
 - Does the identity of the respondent influence which type of proceeding the institution uses?

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STANDARD OF EVIDENCE

THE CLERY ACT

- Must describe the standard of evidence that will be used

TITLE IX

- Must state whether institution uses preponderance of the evidence or clear and convincing
- Must be same standard for formal complaints against students as for formal complaints against employees
- Must apply same standard of evidence to all formal complaints of sexual harassment

SANCTIONS & REMEDIES

THE CLERY ACT

- Must list all possible sanctions
- Must describe range of protective measures

TITLE IX

- Must describe range of sanctions, but...
- Must describe range of remedies

PROVIDE THAT PROCEEDINGS WILL

THE CLERY ACT

- Include a prompt, fair, and impartial process from the initial investigation to the final result

TITLE IX

- Must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints

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TRAINING

THE CLERY ACT

- Proceedings must be conducted by officials who receive annual training on:
 - Issues related to dating violence, domestic violence, sexual assault, and stalking
 - How to conduct an investigation and hearing process that protects the safety of victims and promotes accountability

TITLE IX

- Individuals involved in process must receive training on specific topics listed in regulations
- Must make training materials publicly available on the institution's website (or if no website, available upon request for inspection)

ANNUAL TRAINING COMPONENTS

- Definitions in policy and scope of educational program or activity
- **Relevant evidence and how it should be used during a proceeding**
- **Proper techniques for interviewing witnesses**
- How to serve impartially
- **Basic procedural rules for conducting a proceeding**
- Training on technology to be used at a live hearing
- **Avoiding actual and perceived conflicts of interest**

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OTHER POSSIBLE TRAINING COMPONENTS

- Effects of trauma
- Cultural awareness training
- Any others to highlight here?

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ADVISOR OF CHOICE

THE CLERY ACT

- Both parties must have same opportunities to be accompanied by an advisor of choice
- May not limit choice of advisor
- Allows institutions to establish restrictions on how the advisor may participate as long as applied equally to both parties

TITLE IX

- Both parties notified that they may have an advisor of choice who may, but is not required to be, an attorney
- Responsible for conducting cross-examination (directly, orally, and in real time)
- Must be included in party's receipt of evidence and investigator's report
- May also serve as witness
- If no advisor, institution must provide one to conduct cross-examination (institution's choice, does not have to be an attorney, but...)

NOTICE OF OUTCOME

THE CLERY ACT

- Simultaneous notification in writing of:
 - Result of any institutional disciplinary proceeding
 - Procedures for accused and victim to appeal the result, if such procedures are available
 - Any change to the result
 - When such results become final
- Must include rationale for the results and the sanctions

TITLE IX

- Simultaneous written determination, including:
 - Allegations potentially constituting sexual harassment
 - Procedural steps taken
 - Findings of fact supporting determination
 - Conclusions regarding application of code of conduct to the facts
 - Statement of, and rationale for, the results as to each allegation

PROCEDURES TO FOLLOW: WRITTEN INFORMATION

TO STUDENTS & EMPLOYEES

- Notification of on- and off- campus services
- Counseling
- Health
- Mental Health
- Victim Advocacy
- Legal assistance
- Visa and immigration assistance
- Student financial aid
- Other services available for victims

TO VICTIMS AFTER A REPORT

- Accommodations
- Rights & options

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GUIDE TO CREATING A WRITTEN NOTIFICATION

TITLE OF YOUR DOCUMENT

If you or someone you know has experienced dating violence, domestic violence, sexual assault, or stalking, XYZ University is here to help. You have the right to live, learn, and/or work in a safe and welcoming environment. Violence is unacceptable, and University policy prohibits dating violence, domestic violence, sexual assault, and stalking (DVSAS). This document outlines steps to take depending on what services you want or need. Dating violence, domestic violence, sexual assault, or stalking, are significant experiences and can be traumatizing. Each person's experience is unique and numerous options are available for support and reporting at XYZ University. It is important to note there is no one correct response – simply different options to access support and different reporting options. Your immediate and long-term safety is what's most important. The resources and options outlined below may be helpful as you decide what next steps are a good fit for you.

[Note from Clery Center: Research and feedback from campuses consistently shows that survivors may not know what constitutes dating violence, domestic violence, sexual assault, or stalking. Therefore, you may consider providing examples of behaviors that qualify as DVSAS, or at a minimum, the Clery definitions. This element is not required under the Clery Act and may only serve as a way to further personalize your written notification.]

Unsure of where to start?

You may want more information or to talk to someone confidentially as you decide what you'd like to do moving forward. You can access crisis counseling, information, and support by connecting with the resources listed below.

[Consider defining confidential and/or private.]



FIRST STEPS: THINGS TO CONSIDER

Are you in danger?

If yes, call 911.

[Department Name] can also provide support by calling xxx-xxx-xxxx. We will coordinate transport to pick you up from your location and make plans for your next steps.

Do you need medical attention?

You can receive medical attention at any medical facility; however, certain facilities have specially-trained staff to help survivors of sexual assault and/or have the ability to offer a sexual assault forensic exam (SAFE). Medical exams can also address other physical needs or trauma and assess for sexually transmitted infections or pregnancy.

The following locations have sexual assault nurse examiners (SANE):

[Insert contact information for hospitals with SANE nurses (name of hospital, address, phone number.) Also emphasize any locations that may have expertise in responding to domestic violence, dating violence and stalking. Also list all known providers that offer SAFEs whether or not administered by a SANE.]

WRITTEN NOTIFICATION

Guide to Creating a Written Notification

- Use this resource to carefully assess processes and consider how a network of people, offices, and activities all come together to support survivors
- Look at this guidance, as well as other samples from other colleges and universities as you create your own

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Initial Questions to Consider:

- Do these documents exist?
- Are they provided to the right audiences?
- Does the policy say what is provided and when?
- Is it clear what information is provided in the written explanation of rights and options?

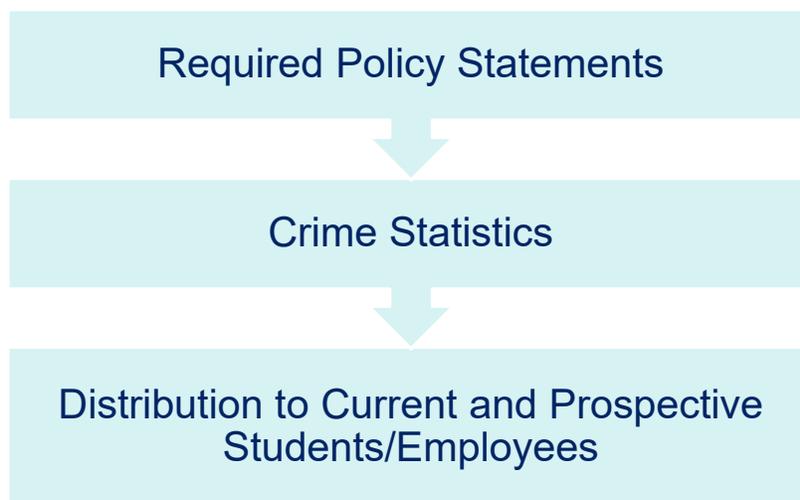
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BREAK TIME: 10 MINUTES

PART III:
POLICY ANALYSIS

ANNUAL SECURITY REPORT OVERVIEW

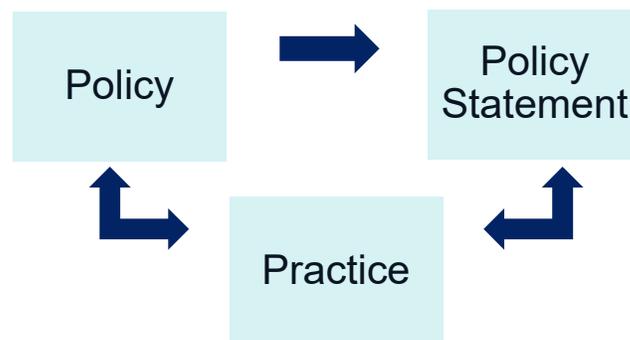


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ASR THINGS TO REMEMBER

- Summary of current, existing policies and procedures as well as three previous calendar years of Clery crime statistics
- Creation of ASR ensures policies and processes are in place
- “Say what you do; do what you say.”
- Ask: “Who is at the table?” “Is it a useful document?”

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CLERY ACT POLICY STATEMENT REQUIREMENTS FOR DVSAS

- Requires a description of all procedures used to address cases of DVSAS
- All required policy statement elements must be in place for all proceedings used to address cases of DVSAS

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TITLE IX BIFURCATED POLICIES

- Some campuses now have in place multiple policies and procedures to address DVSAS
 - One that captures all Title IX requirements, including a live hearing with cross-examination
 - One or more that address DVSAS that fall outside of the jurisdiction of Title IX (outside of education programs or activities in the U.S.) in order to avoid subjecting individuals to a live hearing with cross-examination

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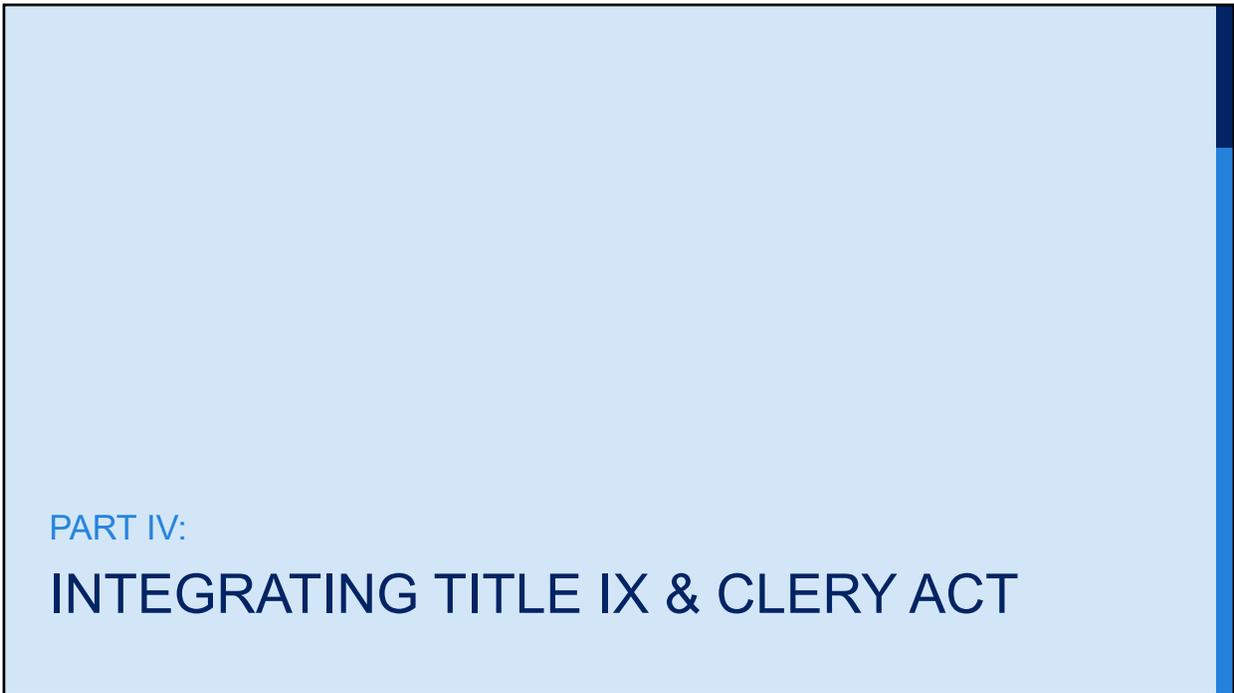
AS A RESULT...

- Campuses must describe multiple disciplinary proceedings within their ASRs in order to represent all the different procedures that take place and meet Clery requirements

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This. Is. Hard.

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POLICY STRUCTURE OPTIONS

1. One policy for all DVSAS cases incorporating all Title IX requirements
2. One policy for Title IX cases that applies to both students and employees and then a separate policy (or separate procedures under singular policy) for non-Title IX DVSAS cases that applies to students and employees

POLICY STRUCTURE OPTIONS

3. Separate Title IX policies for students and employees; separate non-Title IX policies for students and employees
4. Additional, separate procedures for other circumstances due to state law requirements
 - Ex: CA requires live cross-examination for any case where the potential sanction could result in separation from the University

ON TOP OF ALL OF THIS

- Incorporating response and Clery-required prevention programming requirements could take place
- Separate policies could exist for just prevention, just response, or prevention and response

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BENEFITS/DRAWBACKS OF POLICY STRUCTURES

- + One policy for everything makes processes and descriptions clear and easy to understand and apply
- One policy for everything causes all DVSA cases to undergo a live hearing with cross-examination

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BENEFITS/DRAWBACKS OF POLICY STRUCTURES

- + One overall Title IX policy and one overall non-Title IX policy streamlines practices without requiring unnecessary involvement in steps that might cause or perpetuate trauma
- Administering two policies can be difficult to manage and also explain to the campus community

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BENEFITS/DRAWBACKS OF POLICY STRUCTURES

- + Having separate student and employee Title IX and non-Title IX policies allows for the most intentional development and application of strategies that apply to each type of situation and role
- Administering four policies can be difficult to manage and also explain to the campus community

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BEST PRACTICES FOR POLICY CREATION

- Remember that each of the Clery requirements must be in place for each and every policy that guides procedures for disciplinary action for DVSAS cases
- Ensure that the policy and resulting policy statement in an ASR accounts for each of these elements
- Consider utilizing visuals like charts or infographics to show the relationship between policies or to demonstrate the qualities each policy has or shares
- Focus on creating the most equitable procedures and the most clear, streamlined descriptions of those procedures

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Policy Analysis 2.0: If/Then

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CLOSING



BECOME A CLERY CENTER MEMBER!

Clery Center Membership connects campus safety professionals with ready-to-use materials, resources, and strategies to help guide them through understanding and implementing the provisions of the Clery Act. Members receive unparalleled expertise in the form of:



Learn more: clerycenter.org/become-a-member

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CLERY CENTER ON-DEMAND TRAINING OPTIONS



Learn more: clerycenter.org/on-demand-training

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