2020 Title IX Regulations:

Policy Implications and Practical Application

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(Limited permission is granted to each attendee of this class to make training materials available per the requirements outlined in the Title IX Regulations published on May 19, 2020)
Final Rules

Agenda

- How we got here
- The Rules

Because You Didn’t Have Anything Else To Do Over The Next Three Months?

- Worrying about the Global Pandemic?
- Trying to keep up with new pandemic-related orders & guidance from Federal, State, And Local Governments?
- Learning the joys of working from home?
- Worried about your own children?
- Working with students suffering from stress of online learning, loss of in-person experience at college, etc.?
- Trying to decide if your institution will be open this fall?
How We Got Here

- Title IX prohibits discrimination on the basis of sex
- ED and the courts have interpreted Title IX to prohibit sexual harassment (including sexual assault)
- Among other things, colleges and universities must investigate allegations of sexual harassment and take appropriate disciplinary action

How We Got Here (Cont.)

- Obama-Era ED guidance focused on protecting victims
  - Included the 2011 “Dear Colleague” Letter and
  - The mandatory “Preponderance of the Evidence” standard
- Trump/DeVos-Era ED has focused on the due process rights of the accused:
  - Rescinded Obama-Era guidance
  - Issued informal guidance (including 2017 Q&A)
  - Engaged in Formal Rulemaking Process

What ED Is Saying:

“We can continue to combat sexual misconduct without abandoning our core values of fairness, presumption of innocence and due process.”

- Secretary DeVos
  May 6, 2020
**What One Opponent Is Saying:**

“Betsy DeVos has created a double standard that is devastating for survivors of sexual harassment and assault, who are overwhelmingly women and girls. We are suing to make sure this double standard never takes effect.”

- Ria Tabacco Mar
  Director of the ACLU's Women’s Rights Project

(Similar Litigation Is Expected To Follow)

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**General Comments and Thoughts**

- 26 pages of Regulations
- 2033 page Preamble

- Technical assistance
- Implementation date of August 14, 2020
- Possible delay

Litigation
Congressional Review Act

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**Preamble Highlights**

- Codifying what was done as Guidance
- Brings into alignment with SCOTUS
- Victim and survivor mean there was a responsible finding
- Schools are not like workplaces
- Do not believe Rules will reduce reporting or investigations
- Focus is on sexual misconduct, not other Title IX aspects
- Use informal resolution for educational process
- Status of advisors should not impact school’s compliance
- Training will combat prejudice we see in criminal justice system
- We DO have the authority (1311)
- “Many people” support changes
§106.3 – Remedial Action

- Fix it
- No monetary damages

§106.6 – Effect of Other Requirements and Preservation of Rights

- Constitutional Rights
- FERPA
- Title VII
- Parents and guardians
- State and local laws

§106.8(a) Designation of Coordinator

- Title IX Coordinator
- Notification of parties
- Contact information
- Reporting information
§106.8(b) Dissemination of Policy

- Notification do not discriminate
- Title IX Coordinator contact information
- Grievance procedure
- United States

§106.8(C) Adoption of Grievance Procedure

- Prompt and equitable
- Reports and complaints
- Response
- Educational materials

§106.8(d) Application Outside of the United States

- Only applies to US
- Use other policy
- No Clery conflicts
§106.12 – Religious Institutions

Submit in writing
Specific tenant
Not required
Raise any time

§106.30 Definitions – Actual Knowledge

Title IX Coordinator
Corrective measures
K-12
Designation
CSA

Complainant
Consent
Respondent

§106.30 Definitions – Complainant, Consent, Respondent
§106.30 Definitions – Formal Complaint

Signed formal complaint  Title IX Coordinator  Third parties  Anonymous reports

§106.30 Definitions – Sexual Harassment

Employee . . . conditioning aid, benefit, or service

Unwelcome conduct determined to be severe, pervasive, and objectively offensive . . . effectively denies equal access

Clery  Sexual assault

Sexual assault

Sexual Harassment under Title IX

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

PRONG 1: Quid Quo Pro

“This for That” Harassment

When favorable professional or educational treatment is conditioned on a sexual activity

PRONG 2: The Davis Standard

Hostile Environment +

First Amendment protections

Not a “zero tolerance” standard

PRONG 3: The VAWA Crimes

Sexual Assault

Rape

Fondling

Statutory Rape

Incest

Intimate Partner Violence

Dating Violence

Domestic Violence

Stalking
§106.44 Recipient’s Response to Sexual Harassment; (b) Response, (c) Emergency Removal; (d) Administrative Leave

- Response to formal Complaint
- Emergency removal
- Administrative leave

§106.45 Grievance Process for Formal Complaints of Sexual Harassment; (a) Discrimination, (b) Grievance Process

- Equity
- Grievance process

§106.45 Grievance Process for Formal Complaints of Sexual Harassment; (b) Grievance Process(I) Basic Requirement

- Equity
- Objective Evaluations
- Impartiality and Training
- Presumption of Not Responsible
- Prompt Time Frames
§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process, (1) Basic Requirements

- Range of sanctions and remedies
- Standard of evidence
- Appeal
- Supportive measures
- Respect privilege

§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process, (2) Notice

- Notice requirements
- Additional allegations
- Clarifications

§106.45(b)(3) Dismissal of a Formal Complaint

**Must dismiss:**
- Behavior does not constitute sexual harassment
- Did not occur in educational program or activity, not in the United States
- Notification
- The Department notes that recipients retain the flexibility to employ supportive measures

**May dismiss:**
- Complainant withdraws formal complaint
- Respondent no longer enrolled/employed
- Insufficient evidence
§106.45(b)(4) Consolidation of a Formal Complaint

- Multiple respondents
- More than one complainant against one or more respondent
- One party against other party

§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process, (5) Investigation

- Burden of proof
- Witnesses and facts
- “Gag orders”
- Advisor
- Notice
- Inspect evidence
- Investigative report

§106.45(b)(6) Hearings

- Live hearing
- Cross-examination
§106.45(b)(8) Appeals

- MUST have
  - Procedure
  - New evidence
  - Conflict or bias
  - That impacted outcome
- Additional grounds permitted
- No other role
- Reasonably prompt time frame

§106.45(b)(8) Appeals

- Notification of appeal
- No conflicts
- Equal opportunity to respond
- Written outcome - rationale

§106.45(b)(9) Informal Resolution

- Notice
- Voluntary
- Not allowed for Employee/student
§106.45(b)(10) Recordkeeping - Investigations

- 7 years
- Investigation
- Appeal
- Informal resolution
- Training materials

Determination
Recordings
Sanctions and remedies

§106.71 Retaliation Prohibited

Intimidation, threats, coercions, discrimination
May use same grievance procedure
1st Amendment
False reports

§106.71
Retaliation
Prohibited

Direct
Questions and
Other Miscellaneous
Items

Application to elementary and secondary schools
Application based on type or age of parties
Individuals with Disabilities
Executive orders and other requirements
Clery Act
Conflicting standards

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Key Requirements of the Clery Act

- Collect, classify, and count Crime Reports/Statistics
- Issue Campus Alerts
- Publish Annual Security Report
- Submit Crime Statistics to the Department

Key Requirements (part 2)

- Provide educational programs and campaigns on Dating/Domestic Violence, Sexual Assault & Stalking
- Have procedures for institutional disciplinary action for DV/DV/SA/S
- If you have a campus police or security department: Publish Daily Crime Log
- If you have residential facilities: Fire log, Fire Safety Report, Missing Persons procedures
1. Was the crime reported to a Campus Security Authority?

2. Is the crime a Clery Act crime?

3. Did the crime occur on or within the institution’s reportable Clery geography?

Campus Security Authorities (CSA)

- Campus police/security
- Security responsibility
- Individual or organization where crimes should be reported
- An official with responsibility for student and campus activities
Reporting Comparisons

Clery CSA
- Campus Law Enforcement and Public Safety
- MU, RA, other Housing officials
- Dean of Students Office/Student Conduct
- RAs, RDs, other Housing officials
- Faculty or Staff Advisor to Student Orgs
- Access Monitor: Campus/Security Officers
- Safety escort on campus (including students)
- Student Union/Student Activities Staff
- Greek Affairs staff
- Administrator at Branch/Campus/Seperate Campus
- Study Abroad Coordinators
- Title IX Coordinator(s)
- Director of the Student Health Center

Title IX Responsible Employee
- Title IX Coordinator
- Others as deemed "official of the recipient who has authority to institute corrective measures on behalf of the recipient."

Who may not be a CSA?
- Faculty members who are not advisors of student groups (i.e., no responsibility for student or campus activities beyond the classroom)
- Most support staff
  - Clerical
  - Secretaries
  - Receptionists
  - Facilities Staff
  - Plumbers
  - Electricians
  - Food Service Workers
  - Cashiers
  - Cooks

Who is never a CSA?

Professional Counselors
Includes individuals who are unlicensed and uncertified but acting under the supervision of an exempt counselor (e.g., a graduate student doing an internship)

Pastoral Counselors
NOTE: These positions are exempt only when acting within the scope of their duties as a counselor or trainer.
CSA's function is to report allegations of Clery Act crimes made in good faith.

CSA Reporting Recommendations

- CSA crime reports should include sufficient detail, such as dates and locations, and, where appropriate, personally identifying information, including name and contact information, if available.
- This is important for law enforcement purposes to ensure that all crimes are counted and to avoid double counting crimes.

CSAs are responsible for reporting allegations of Clery Act crimes that are reported to them in their capacity as a CSA.

Reporting Crimes

This means that CSAs are not responsible for investigating or reporting incidents:
- They overhear students talking about a hallway conversation
- What a classmate or student mentions during an incident
- What a victim mentions during a speech, workshop, or any other form of presentation
- What the CSA overhears about in an indirect manner

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DISCUSSION: INTERSECTION WITH TITLE IX

HOW DOES REPORTING DUTIES DIFFER NOW WITH CSAS VS. TITLE IX?

COUNTING CRIME STATISTICS: CLERY CRIMES

Three Part Test

1. Was the crime reported to a Campus Security Authority?

2. Is the crime a Clery Act crime?

3. Did the crime occur on or within the institution’s reportable Clery geography?
Clery Reportable Crime Categories

- Murder/Non-negligent Manslaughter*
- Negligent Manslaughter*
- Sex Offenses* (Rape/Fondling)
- Sex Offenses* (Incest/SR)
- Robbery*
- Aggravated Assault*
- Burglary*
- Motor Vehicle Theft*
- Arson*

Arrests and Disciplinary Referrals for:
- Liquor
- Drugs
- Weapons
- Domestic Violence
- Dating Violence
- Stalking
- Hate Crimes for *, plus
  - Larceny-Theft
  - Simple Assault
  - Intimidation
  - Vandalism

If a crime is reported (and otherwise meets the three-part test) it is counted.
- Includes attempts
- Includes cases a DA would reject
- Includes cases of “not responsible”
- Does NOT include every conduct code violation

It is not the word used but the facts of the case that determine how it gets counted.

Clery Crime Categories

Primary Crimes
Hate Crimes
Arrests and Referrals for Drug, Liquor and Weapon Violations
Dating Violence, Domestic Violence and Stalking Incidents (VAWA Crimes)
Rape

Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes any gender of victim or respondent.

Fondling

The touching of the private body parts of another person for the purpose of sexual gratification without consent of the victim, including instances where the victim is incapable of giving consent b/c of his/her age or temporary or permanent mental or physical incapacity.

CONSENT

- The Clery Act does not require any particular definition of consent
- ASR must include definition of consent as defined by jurisdiction (state law)
- Institution should have a definition in their institutional sexual misconduct policy
**Non-Forcible** Sex Offenses

**INCEST**
Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

**STATUTORY RAPE**
Non-forcible sexual intercourse with a person who is under the statutory age of consent

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**Discussion: Intersection with Title IX**

- Did we cover Sexual Assault in the past as defined under Clery (all 4 crimes?)

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**Date Rape Drugs**

A case where it is determined, through investigation, to have involved the administration of a date-rape drug in an unsuccessful attempt to incapacitate and sexually assault the victim (and the perpetrator's intent was to commit a sex offense)—the incident should be classified as a Sexual Assault.

A case in which there is no knowledge of the "intent" of the perpetrator should be classified as Aggravated Assault.
An institution may not withhold, or subsequently remove, a reported crime from its crime statistics based on a decision by a court, coroner, jury, prosecutor, or other similar non-campus officials.

An institution may withhold, or subsequently remove, a reported crime from its crime statistics in the rare situation where:

sworn or commissioned law enforcement personnel have fully investigated the reported crime and,

based on the results of that full investigation and evidence, have made a criminal determination that the crime report is false or baseless and therefore “unfounded.”

Three Part Test

1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution’s reportable Clery geography?
Impact of Location & Party

"The only specific geographic limitation that these final regulations respect is a limitation...imposed in Title IX by requiring the sex discrimination to be against a person in the United States." (p. 1793)

- 2020 Title IX Regulations
- Conduct that occurs within its 'education program or activity'...
- Against a person within the United States
- School must have exercised substantial control over both the respondent and the context in which the sexual harassment occurred
- Also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution
- Clery Act
- On campus; on public property within or immediately adjacent to and accessible from the campus; in or on non-campus buildings or property that your institution (or a recognized student organization) owns or controls
- May include some study abroad programs
- For VAWA crimes, must use processes even if occurs off-campus
Clery Reporting Obligations

Daily Crime Log
Annual Security Report
Emergency Notifications/Timely Warnings

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Timely Warning/Emergency Notification

<table>
<thead>
<tr>
<th>TIMELY WARNING (TWN)</th>
<th>EMERGENCY NOTIFICATION (EN)</th>
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<tbody>
<tr>
<td>Legal Standard:</td>
<td>Immediate threat to health and safety</td>
</tr>
<tr>
<td>Circumstance:</td>
<td>Clery-reportable crimes that have been reported (occurred in past)</td>
</tr>
<tr>
<td>Audience:</td>
<td>Clery-reportable crimes as well as other types of emergencies (happening right now or about to happen)</td>
</tr>
<tr>
<td>When Issued:</td>
<td>As soon as pertinent information is available</td>
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<tr>
<td>Follow-Up:</td>
<td>Upon confirmation of emergency (when possible)</td>
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<tr>
<td></td>
<td>Not Required</td>
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<td></td>
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Timely Warning Decisions

EVERY Clery-reported crime must be assessed on a case by case basis for timely warning purposes.

The nature and type of the crime

The continuing danger to the campus community

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VAWA: NEW CRIME CATEGORIES

Duties Under VAWA

Clery Crime Categories

Primary Crimes
Hate Crimes
Arrests and Referrals for Drug, Liquor and Weapon Violations
Dating Violence, Domestic Violence and Stalking Incidents (VAWA Crimes)
Domestic Violence

A felony or misdemeanor crime of violence committed by:

a) a current or former spouse or intimate partner of the victim
b) by a person with whom the victim shares a child in common
c) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner
d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

i. The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

ii. For the purposes of this definition -

i. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

ii. Dating violence does not include acts covered under the definition of domestic violence.

What is a “Crime of Violence?”

According to Section 16 of title 18 of the United States Code, the term “crime of violence” means—

a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.
Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

a) Fear for the person’s safety or the safety of others; or

b) Suffer substantial emotional distress.

course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, queries, threatens, or communicates to or about, a person, or interferes with a person’s property.

reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

What's Missing?

- There are behaviors that may be policy violations (or crimes) that are not covered in Clery:
  - Sexual exploitation
  - Psychological or emotional harm
  - Sexual harassment (Title IX but not Clery)
  - Gender-based harassment (Title IX but not Clery)
VAWA Procedural Requirements

Process Requirements under VAWA

Procedures victims should follow if a crime or dating violence, domestic violence, sexual assault, or stalking has occurred AND procedures your institution will follow in the case of alleged dating violence, domestic violence, sexual assault or stalking.

Make sure it is all in WRITING.

“Information about the importance of preserving evidence that may assist...”

- Evidence to prove the alleged criminal offense occurred
- Evidence that may be helpful in obtaining a protective order
- Includes digital evidence as well (social media, cell phone, etc.)
- Not required, but ideal:
  - Where to obtain forensic exams
  - Specific contact information
  - Info that completing forensic exam does not require police report
  - Can have exam now, decide later
“How and to whom the alleged offense should be reported”

- List any person or organization that can assist the victim
- Include institutional resources as well as community organizations
- Include specific contact information
  - Rape crisis centers
  - Coalitions against domestic violence

“Options about the involvement of law enforcement and campus authorities”

- Notification of the victim’s option to
  - Notify proper law enforcement authorities, including on-campus and local police;
  - Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
  - Decline to notify such authorities

“Rights of victims for orders of protection, ‘no contact’ orders or similar lawful orders...”

- Do you issue them on campus?
- What options are in your jurisdiction?
- How do you file (at your institution or externally)?
- What is your responsibility to comply with/enforce orders?
“How the institution will protect the confidentiality of victims and other necessary parties”

- Publicly available recordkeeping has no personally identifying information about the victim (not required for respondent but best practice in most cases)
- Accommodations and protective measures are confidential (to the extent they can be without impairing the ability to provide them)

“Existing services available for victims, both within the institution and in the community”

- Counseling
- Health
- Mental Health
- Victim Advocacy
- Legal Assistance
- Visa and Immigration Assistance
- Student Financial Aid
- Other services available for victims

“Options and how to request changes to accommodation and protective measures”

- Academic, living, transportation, working
- Must make them if requested and reasonably available
- Regardless of whether the victim chooses to report
Providing support for the accused

- ED Clarification in Federal Register
- Allegations (whether police or school conduct) may be stressful for the accused as well as the accuser.
- "Therefore, institutions should consider providing the accused with information about existing counseling, health, mental health..."
- "Although we encourage institutions to provide written notification of this sort to an accused student or employee, the statute does not refer to or support requiring it."

"Describe each type of disciplinary proceeding"

- Anticipated timelines
- Decision-making process
- Options for filing a school complaint (with contact info)
- How school determines which process to use
- Who makes decisions
- Include employee procedures
- Use procedures regardless of Clery geography

"State the standard of evidence, all possible sanctions, and range of protective measures"

- Can use any standard but must then use in all cases
- Must list all sanctions for each offense and be specific
- Not required to list all protective measures
- Orders of protection (all types)
- Transportation help or escorts
- Modification to class or schedule
- Changes in living/working situations
Reasonable Time Frames

- Allow for the extension of timeframes for good cause;
- with written notice to the accuser and the accused of the delay and the reason for the delay;
- Policy must have timeframes for different steps

Grievance Procedure
- Is transparent and consistent with policy
- Timely notice of meetings
- Timely and equal access to parties and officials any information that will be used during disciplinary meetings and hearings
- Conducted by officials without conflict of interest or bias

DISCUSSION: CLERY AND TITLE IX
- What does a report “Trigger” under the respective laws?
Requirements for Officials

“Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused”

“Be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability”

Requirements for Officials

- Training must be described in ASR
- Updated annually
- Should include (at a minimum):
  - Relevant evidence and how it should be used
  - Proper interview techniques
  - Basic procedural rules for conducting a proceeding
  - Avoiding actual/perceived conflicts
- Can be in person or electronic (webinar or video)

Advisor Requirement

- Advisor - individual who provides support, guidance, or advice
- Do not limit the choice of advisor
- May restrict participation if applied equally
- Provide timely notice of meetings
- May form a pool of people
- Can remove a disruptive advisor
- Could allow them to serve as a proxy
- Don’t have to delay for them (but encouraged to be reasonable)
“Simultaneous notification, in writing...of the results”

- Results = initial, interim, and final decisions by any officials
- Results must include Sanctions and Rationale
  - How evidence was weighed
  - How evidence supported results and sanctions
- Notice must include
  - Appeals procedures if available
  - Change to the result
  - When the result becomes final

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VAWA Education Requirements

- Annual training for conducting “Officials” (Investigators, Adjudicators, Appeals)
- Primary Prevention and Awareness Programs for all Incoming students and new employees
- Ongoing Prevention and Awareness Campaigns for all students and employees
- CSA Training and “Super” CSA Training
Primary Prevention & Awareness

“The institution’s primary prevention and awareness programs for all incoming students and new employees, which must include—”

- Statement prohibiting dating violence, domestic...
- Definitions of dating violence...
- Definition of consent
- Safe and positive options for bystander intervention;
- Information on risk reduction

Primary Prevention Best Practices

“Programming, initiatives, and strategies intended to stop dating violence...stalking... before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in a health and safe directions.”

- Not required that all students take or attend (but mandate encouraged)
- Must show “good faith effort” to reach them with “active notification.”
- Format and timeframe encouraging maximum attendance

Ongoing Prevention & Awareness

“Ongoing prevention and awareness campaigns for students and employees...must provide the same information as the primary awareness and prevention programs”

- Deeper dives
- Sustained over time
- Promote services
- Range of strategies/audiences
  - Social media, email, posters, ads
  - Take Back the Night
  - Sports teams, Greek, dorms
  - Student fairs or campus events
  - DV program for supervisors
CSA Training (recommendations, not requirements):

- Role of a CSA
- Provide Reporting materials
  - map of Clery geography
  - list of Clery crimes
  - forms for documenting
- Importance of documentation
- Need for timely reporting
- "Super CSAs?" Do in person
Drafting the Policy

Agenda

- Policy vs. Procedures
- Important considerations
- Policy sections
- Additional considerations

Policy and Procedure

- **Policy**
  What are the rules, why they exist, when they apply

- **Internal Procedures**
  Step by step actions for the staff

- **External Process Information**
  Information through a notice letter or information sheet explaining the process and steps for the involved parties
Example

Policy statement
- Prior to completion of the investigative report, the Respondent and Complainant, and their respective advisors, if any, will be provided a copy of the evidence in an electronic format or a hard copy. The parties will have 10 business days to submit a written response, which the investigator will consider prior to completion of the investigative report.

Internal procedure
- All documents considered evidence should be converted to and merged into one PDF.
- The PDF should be watermarked, and security settings should be set to prohibit editing.
- The document, and any other media not able to be converted to a PDF, should be uploaded to Dropbox.
- A transfer link is then sent to the parties.

External process information
- Prior to the completion of the report, you and your advisor, if applicable, will receive a Dropbox link to access a copy of the evidence. You will have 10 business days from date of notification to review the evidence. To provide a written response to the investigator, use the following link: [submission link].

Important Considerations

Scope
Related policies
MOUs
Multiple campuses
Jurisdiction
Minors
Multiple Policies

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<th>WHAT</th>
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<td>STUDENTS</td>
<td>RACE, COLOR, OR NATIONAL ORIGIN</td>
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<td>EMPLOYEES</td>
<td>RACE, COLOR, RELIGION, SEX</td>
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<td>STUDENTS/EMPLOYEES</td>
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<td>ADA/ADAA</td>
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<td>PDA</td>
<td>EMPLOYEES</td>
<td>PREGNANCY/TITLE VII</td>
<td>EEOC</td>
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<tr>
<td>USERRA</td>
<td>EMPLOYEES</td>
<td>VETERANS</td>
<td>DOL/DOJ</td>
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</tbody>
</table>
MULTIPLE VOICES TO CONSIDER

Competencies

Laws and legal issues
Cultural competencies
Campus climate
Campus politics
Approval process

Policy Sections

Statement of policy
Related policies
Applicability/jurisdiction
Grievance procedures
Title IX Coordinator
Employee responsibilities
Definitions
Prohibited conduct
Reporting options
Retaliation and supportive measures
Interim action
Education and prevention
Record management
Additional Considerations

- Inappropriate relationships
- Minors on campus
- 1st Amendment
- Accommodation and interpretive service requests
- Interpretation and revision
- State laws

Statement of Policy

- Mission of the institution
- Intent of the policy
- Behaviors
- Presumption of responsibility
- Equity
- Other

Related Policies

- FERPA
- Code of Conduct
- Retaliation
- Employee handbook
- Minors on campus
- Inappropriate relationships
- Vendor contracts
- Collective bargaining agreements
Applicability/Jurisdiction

Who
Location
Educational program or activity

Grievance Procedures (more on this later)

Title IX Grievance Procedure: Formal or Informal
Referrals: Students, Employees
Academic Medical Centers
High School Programs

Title IX Coordinator

Role
Contact information
Additional coordinators/deputies?
Employee Responsibilities

- Reporting
- Participation in the process

Definitions

<table>
<thead>
<tr>
<th>Actual knowledge</th>
<th>Advisor</th>
<th>Appellate administrator</th>
<th>Business Day</th>
<th>Complainant</th>
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<tbody>
<tr>
<td>Conduct file</td>
<td>Contractor</td>
<td>Decision maker</td>
<td>Designee</td>
<td>Employee</td>
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<tr>
<td>Evidence - Inculpatory</td>
<td>Evidence - Exculpatory</td>
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<td>Formal complaint</td>
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Definitions

<table>
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<tr>
<th>Incident database</th>
<th>Investigator</th>
<th>Program or activity</th>
<th>Remedies</th>
<th>Respondent</th>
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<tbody>
<tr>
<td>Sanctions</td>
<td>Student</td>
<td>Supportive measures</td>
<td>Third party</td>
<td>Vendor</td>
</tr>
</tbody>
</table>

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Prohibited Conduct

- Discrimination
- Discriminatory harassment
- Harassment based on sex
  - Employment
  - Severe, pervasive, and objectively offensive that effectively denies access or participation in a program or activity
- Gender-based
- Sexual exploitation
- On-line
- Clery Crimes
- Implications of Title VII and Title IX

Prohibited Conduct

- Sexual Assault
- Definitions
- Consent
- Dating Violence
- Domestic Violence
- Stalking

Prohibited Conduct

- Retaliation
- Assist and encourage
- Amnesty for other violations
Primary and on-going  | Bystander
---|---
Risk reduction  | Annual training

### Education and Prevention

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### Record Management

- Reports
- Training material
- Data custodian
- Record retention

- Duration
- Access
- Graduation

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### ADDITIONAL CONSIDERATIONS
Grievance Procedures

Introduction
Equity
Objective evaluation of evidence
Training
Presumption of not responsible
Prompt timeframes
Range of sanctions and remedies
Standard of evidence
Appeal
Range of supportive measures
Privileged information

Notice
• Requirements

Dismissal
• Intake process
• Referrals

Consolidation of complaints
• Multiple parties, complaints, cross-claims

Investigation
• Requirements

Grievance Procedure

Hearing
• Live hearing with cross-examination
  • Hearing procedures/rules

Determination of responsibility
• Requirements

Appeals
• Grounds
• Outcome

Informal resolution
• Notice, voluntary, when available

Retaliation
• Prohibition
  • False claims

Appeals
• Notice, voluntary, when available

Informal resolution
• Notice, voluntary, when available

Retaliation
Practical Implications

Agenda

- Group Discussion - Issues
- Report Out
- Questions & Answers

Group Discussion

Breakout groups

Each group will be assigned a breakout room.
Identify a reporter who will present back to the larger group.

45 minutes of group discussion

Reporting out
Topics
1. Hostile Environment+
2. Intersection of Title IX policy with employee/student code processes
3. Title IX personnel
4. Investigators
5. Live hearings
6. Advisors

Assignment
1. Identify the issues, challenges, and opportunities associated with the new regulations.
2. What are the major changes that will need to occur at your institution?
3. What is in place at your institution that will assist in implementation?

Questions
You can send questions to the chat while you work, and we will discuss them in the reporting out phase.

Report out

Questions