

Title IX, VAWA & the Clery Act

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Before we get started . . .

Disclaimers:

- The contents of this presentation and the related discussion are for informational purposes only and do not constitute legal or regulatory advice.
- No party should act or refrain from acting on the basis of any statements made today without seeking individualized, professional counsel as appropriate.
- These materials and the accompanying discussion are primarily focused on certain aspects of Title IX and Clery Act requirements and are not intended to be comprehensive of all requirements applicable to all educational agencies and institutions.

Title IX & Clery Act

Agenda:

- Introduction to Sexual Harassment/Violence
- Specific Requirements from Recent Guidance from the Department of Education's Office for Civil Rights
- Practical Realities
- Clery Act Compliance
- Q & A

Title IX

Intro to Sexual Harassment/Violence

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a)

Title IX

Intro to Sexual Harassment/Violence

- The Administration has devoted an unprecedented amount of effort to increase awareness on this (continued ...):
 - The Department's Office for Civil Rights (OCR) issued multiple DCLs and a 53 page FAQ on sexual violence
 - The government launched www.notalone.gov/ as a one-stop resource for information on sexual violence
 - **A "MUST READ" DOCUMENT:** April 2015 release of OCR Title IX Resource Guide available on OCR website gives detail on:
 - Title IX Coordinator responsibilities and authorities;
 - Title IX administrative requirements - grievance procedures, notice to students; and
 - Title IX applicability to recruitment, admissions, counseling, financial assistance, athletics, sexual harassment, pregnant and parenting students, employment, retaliation and information collection and reporting.

Title IX

Intro to Sexual Harassment/Violence

Important guidance documents:

OCR Regulations on Title IX:

- <http://www.ed.gov/policy/rights/reg/ocr/edlite34cfr106.html>

79 FR 62752 (Oct. 20, 2014) (Violence Against Women Act 2013 Final Rules)

Revised Sexual Harassment Guidance (January 19, 2001)

- <http://www.ed.gov/ocr/docs/shguide.pdf>

Dear Colleague Letter: Harassment and Bullying (October 26, 2010),

- <http://www.ed.gov/ocr/letters/colleague-201010.pdf>

Notice of Nondiscrimination (August 2010)

- <http://www.ed.gov/ocr/docs/nondisc.pdf>

Dear Colleague Letter: Sexual Violence (April 4, 2011)

- <http://www.ed.gov/ocr/letters/colleague-201104.pdf>

Dear Colleague Letter: Retaliation (April 2013)

- <http://www.ed.gov/ocr/letters/colleague-201304.pdf>

Title IX

Intro to Sexual Harassment/Violence

Dear Colleague Letter: Pregnant and Parenting Students (June 25, 2013)

- <http://www2.ed.gov/ocr/letters/colleague-201306-title-ix.pdf>

Supporting the Academic Success of Pregnant and Parenting Students (June 2013)

- <http://www.ed.gov/ocr/docs/pregnancy.pdf>

Questions and Answers on Title IX and Sexual Violence (April 29, 2014)

- <http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf>

April 24, 2015 OCR DCL on Title IX Coordinators

- <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

April 24, 2015 OCR Letter to Title IX Coordinators

- <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

April 24, 2015 OCR “Title IX Resource Guide”

- <http://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>

Title IX

Intro to Sexual Harassment/Violence

The Administration has devoted an unprecedented amount of effort to increase awareness on this:

- The White House Task Force to Protect Students from Sexual Assault released its first report, [Not Alone](#).
- The Centers for Disease Control issued best practices regarding how to address campus sexual violence
- The U.S. Department of Education published the names of all schools currently being investigated “for possible violations of federal law over the handling of sexual violence and harassment complaints”

Title IX

Intro to Sexual Harassment/Violence

Sexual Harassment: unwelcome conduct of a sexual nature and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence

Sexual Violence: physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent

- Drugs
- Alcohol
- Intellectual Disability
- Physical Disability

Title IX

Intro to Sexual Harassment/Violence

A school violates a student's rights under Title IX regarding student-on-student sexual violence when:

- The alleged conduct is sufficiently serious [sufficiently severe or pervasive] to limit or deny a student's ability to participate in or benefit from the school's educational program, i.e., creates a hostile environment; and
- The school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

Title IX

Intro to Sexual Harassment/Violence

Sufficiently Serious/Hostile Environment:

- Consider conduct from the perspective of a reasonable person in the alleged victim's position
- Look at subjective and objective factors
 - The type of harassment (e.g., verbal or physical);
 - The frequency and severity of the conduct;
 - The age, sex, and relationship of the individuals involved (e.g., teacher-student or student-student);
 - The setting and context in which the harassment occurred;
 - Whether other incidents have occurred at the school; and
 - Any other relevant factors.
- The more severe the conduct, the less need to show a pattern

Title IX

Intro to Sexual Harassment/Violence

Notice

- When responsible employees have actual or constructive notice of possible sexual harassment of students
 - Notice can come from anyone
 - Responsible employees include any employee who has the authority to redress or report sexual harassment or that a student could reasonably believe had such authority
- **You must HAVE and name a Title IX Coordinator, and you must inform students of how to complain of sexual harassment**
- Actual or Constructive
 - Does not require the filing of a formal complaint
 - Faber College & Delta Tau Chi

Title IX

Intro to Sexual Harassment/Violence

Prompt and effective steps reasonably calculated to end the sexual violence

- General requirements
 - Clear policies and procedures for reporting, investigating, and tracking complaints
 - Specific requirements of policies and procedures (i.e., preponderance of the evidence standard)
 - Training obligations for students, staff, faculty, and administration
 - Creating a campus culture that is open to making complaints

- Case Specific Requirements
 - Need to investigate/follow your policies and procedures
 - Protect the complainant/interim measures
 - Remedy the problem

Title IX

Specific Requirements Set Forth by OCR:

- Policies
- Training
- Interim Measures
- MOU with Law Enforcement

Title IX

Specific Requirements Set Forth by OCR:

Schools must:

- Disseminate a notice of nondiscrimination;
- Designate a Title IX coordinator (and other officials to assist, if necessary); and
- Adopt and publish grievance procedures.
- Policies and procedures must be user-friendly:
 - Accurate/consistent definitions of various types of sex discrimination;
 - Notice of the grievance procedures that apply to different types of complaints;
 - An explanation of how to file complaints and how such complaints will be handled;
 - Must treat the accused and the accuser equally; and
 - Must track the results of complaints.
- **Schools should** enter into a MOU with law enforcement

Title IX

Specific Requirements Set Forth by OCR: Six Keys for an Effective Grievance Procedure

Must ensure grievance procedures explain where and how complaints may be filed and are “easily understood, easily located, and widely distributed.”

Must ensure that the grievance procedures are applied consistently to sexual harassment complaints.

Must provide adequate, reliable, and impartial investigation of complaints, and must treat both sides equally in the conduct of the investigation and any hearing.

Grievance procedures must specify the time frames from start to finish – and the typical investigation should take about 60 days.

Must provide notice to both parties of the outcome of the complaint.

Must take steps to remedy the situation.

Title IX

Specific Requirements Set Forth by OCR:

Title IX training for most members of the campus community covering (among other topics):

1. Institution's policies and grievance procedures
2. Institution's responsibilities to address allegations
3. What to do if a witness/receiving a complaint
4. Recognizing and appropriately responding to allegations
5. How to conduct and document investigations
6. Retaliation will not be tolerated!
7. Trainings should be conducted annually, and surveys to assess effectiveness are encouraged

Title IX

Specific Requirements Set Forth by OCR:

Interim Measures: Schools should proactively consider offering remedies to address sexual harassment even before a resolution of the matter:

- providing an escort;
- ensuring that the complainant and alleged perpetrator do not attend the same classes;
- providing counseling and medical services;
- providing academic support services, such as tutoring;
- arranging for the complainant to re-take or withdraw from a course without penalty; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct.

Title IX

Specific Requirements Set Forth by OCR:

Schools should enter into a Memorandum of Understanding with local law enforcement

- Should address:
 1. training and prevention efforts;
 2. coordination and communication related to a report of sexual violence; and
 3. how the parties will respond to reports of sexual violence
- The White House Task Force to Protect Students from Sexual Violence released a model memorandum of understanding.
 - http://www.whitehouse.gov/sites/default/files/docs/white_house_task_force_law_enforcement_mou.pdf
- BONUS – OCR believes schools should also conduct “climate” surveys to assess prevalence of Title IX concerns

Title IX

Practical Realities: Requests for Confidentiality

- Must investigate even if complainant requests confidentiality
 - Should explain consequences to complainant
 - Should inform complainant it cannot ensure confidentiality
- Considering the request for confidentiality:
 - the seriousness of the alleged harassment;
 - the complainant's age;
 - whether there have been other harassment complaints about the same individual; and
 - the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under FERPA
- In some cases state laws may require reporting despite request for confidentiality.

Title IX

In the last year under Title IX:

- Dealt with Male on Male Conduct (likely gender stereotyping/bullying)
- Dealt with issues related to treatment of pregnant students
- At k-12 level – dealt with transgender rights to showering facilities
- Cases against proprietary/vocational schools as well as traditional, residential universities
- Issues related to standard of proof
- Imposed monetary sanctions (payable to the complainant)

Title IX

Common Compliance Failures

- Lack of clear and consistent policies and procedures for resolving Title IX complaints;
- Finding information on how to file a complaint too difficult and failure to publicize the information to students and employees;
- Did not use the preponderance of the evidence standard in evaluating complaints;
- Did not provide specific timeframes for the conclusion of a complaint and failed to resolve complaints timely;
- Did not conduct annual climate checks;
- Did not enter into a Memorandum of Understanding with local law enforcement regarding the handling of sexual violence issues involving the school; and
- Failed to provide adequate training for faculty, staff and students.

Title IX

Common Remedies:

- Track & report on the Title IX Coordinator actions handling of complaints;
- Revise the Title IX grievance procedures and policies;
- Change the standard of proof
- Provide regular and mandatory trainings;
- Enhance outreach and feedback from the students;
- Conduct a climate survey
- Provide monetary compensation to the Complainant;
 - “provide the students identified in the complaints with remedies relating to the educational and other expenses incurred from the date on which each student first reported alleged sexual assault/violence to the university to the date of resolution”; and
- Review past complaints to assess whether the school investigated the complaints consistent with Title IX and provide any additional remedies.

Title IX

Best Practices:

Centers for Disease Control and Prevention Guidance

- Prevention strategies should be theory-based and include multiple skill-based sessions
- Two programs have “rigorous evidence of effectiveness for preventing sexual violence”: Safe Dates and the building-level intervention of Shifting Boundaries
- Develop comprehensive prevention plans
 - “Brief, one-session educational programs focused on increasing awareness or changing beliefs and attitudes are not effective at changing behavior in the long-term”
- Use data (campus climate surveys)
- Evaluating strategies that are implemented
- Sharing lessons learned

Title IX-Letter to Title IX Coordinators

- Title IX Coordinator should “should report directly to the recipient’s senior leadership, such as the district superintendent or the college or university president”
- Full-time, stand-alone Title IX Coordinator preferred
- Large universities should think about having more than one
- Although Title IX Coordinator typically will handle “coordination” - may handle specific cases or determine outcome of complaints
- Title IX Coordinator should be involved in drafting/revision of policies
- A dedicated website is “encouraged” and the Title IX web page should have a link on the school's home page.
- “A recipient, therefore, must not interfere with the Title IX coordinator’s participation in complaint investigations and monitoring of the recipient’s efforts to comply with and carry out its responsibilities under Title IX.”

VAWA

Congress amended the Clery Act in the Violence Against Women Reauthorization Act of 2013 to provide additional procedural protections to victims of sexual violence who are attending Title IV institutions.

- Final Rule amending 34 C.F.R. § 668.46 was published in October 2014 and is effective **July 1, 2015**.
- Adds required reporting of crime statistics for dating violence, domestic violence, stalking and sexual assault using the definitions contained in the Final Rule.
- New Statements of Policy are required in the Clery Act Annual Security Report (ASR) regarding an institution's policies and procedures for *preventing* and *responding to* sexual assault, domestic violence, dating violence and stalking. **These policies must be described in the ASR issued by October 1, 2015.**
- Clery Act is enforced by Federal Student Aid are now a regular part of FSA Title IV program reviews
- Unlike when OCR investigates, fines are a likely response to violations

VAWA

VAWA AMENDMENTS

Crime Reporting

New Crimes to keep data on **dating violence, domestic violence, sexual assault, and stalking.**

Revised definition of “rape” to reflect the Federal Bureau of Investigation’s (FBI) updated definition in the UCR Summary Reporting System.

Add **gender identity** and separate **ethnicity** and **national origin** categories to hate crimes reporting.

VAWA

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 (does not include domestic violence)

Domestic violence. A felony or misdemeanor crime of violence committed--

By a current or former spouse or intimate partner of the victim;

By a person with whom the victim shares a child in common

By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

By a person similarly situated to a spouse of the victim, or

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.

VAWA

Sexual assault. An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and included in Appendix A of this subpart.

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.

VAWA

Institutions must provide to incoming students and new employees, and **describe in their Annual Security Reports** (provided annually) primary prevention and awareness programs. These programs must include:

- A statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking, as those terms are defined in the Final Rule;
- The definitions of these terms in the applicable (state) jurisdiction;
- The definition of “consent,” in reference to sexual activity, in the applicable jurisdiction;
- A description of safe and positive options for bystander intervention;
- Information on the institution’s policies and procedures after a sex offense occurs; and
- Information on risk reduction.

VAWA

Annual Security Report - 14 Required Policies (including sexual assault)

- Campus crime data
- Policies concerning security of and access to campus facilities
- Policies concerning campus law enforcement
- A description of the type and frequency of campus security and crime prevention programs for students and employees
- Policy concerning the monitoring & recording through local police agencies of criminal activity off campus
- Alcohol/drug policies and description of abuse programs
- Emergency response and evacuation procedures
- Non-retaliation policy

VAWA

More required policies:

- Policies for making timely warning reports to members of the campus community;
- Policies for preparing the annual disclosure of crime statistics;
- A list of the titles of each person or organization to whom students and employees should report crimes; and
- Policies or procedures for victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

VAWA

Sexual Discrimination Policies

- Programs and policies to prevent dating violence, domestic violence, sexual assault, and stalking. Must include:
 - Description of the institution’s educational programs and campaigns to promote the awareness
 - Description of the rights of victims and the institution’s responsibilities for orders of protection, “no-contact” orders & restraining orders
 - Procedures victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred including:
 - The importance of preserving evidence;
 - How and to whom the alleged offense should be reported;
 - Options about the involvement of law enforcement and campus authorities, including notification of the victim’s option to:
 1. Notify proper law enforcement;
 2. Be assisted by campus authorities in notifying law enforcement authorities; and
 3. Decline to notify such authorities.

VAWA

Sexual Discrimination Policies (continued):

- Information about how the institution will protect the confidentiality of victims and other necessary parties and address
- A statement about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community;
- A statement that the institution will provide written notification to victims about various interim measures
- **Procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking;** and
- The institution will provide student or employee victim of dating violence, domestic violence, sexual assault, or stalking with a written explanation of rights and options

VAWA

Sexual Discrimination Policies (continued):

- Officials are appropriately trained and do not have a conflict of interest or bias for or against the accuser or the accused;
- The accuser and the accused have equal opportunities to have others present, including an advisor of their choice;
- The accuser and the accused receive simultaneous notification, in writing, of the result of the proceeding and any available appeal rights;
- The proceeding is completed in a reasonably prompt timeframe;
- The accuser and accused are given timely notice of meetings at which one or the other or both may be present; and
- The accuser, the accused, and appropriate officials are given timely and equal access to information that will be used during informal and formal disciplinary meetings and hearings.

VAWA

Summing it up on Sexual Discrimination Policies

Institutions must:

- Provide and describe in their Annual Security Reports, **ongoing prevention and awareness campaigns** for students and employees.
- Describe each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision making process for each type of disciplinary proceeding; how to file a disciplinary complaint; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking.
- **List all of the possible sanctions** that the institution may impose following the results of any institutional disciplinary proceedings for an allegation of dating violence, domestic violence, sexual assault, or stalking.
- Describe **the range of protective measures** that the institution may offer following an allegation of dating violence, domestic violence, sexual assault, or stalking.

Clery Act

Clery Act Compliance Generally

1. Campus crime reporting
- 2. Timely warning notices**
3. Emergency notifications and emergency response testing
- 4. Fire safety reporting and missing student procedures**
5. Notices to prospective students and employees
- 6. Required policy statements in ASR**

Clery Act

Clery Act Compliance

- Annual Security Report - Deadline For Publication/Dissemination is October 1 annually
- Must contain statistics for all Clery Act reportable crime occurring on campus for the current calendar year and the two preceding years.
- The institution must request crime statistics from all Campus Security Authorities (CSA) and local law enforcement agencies with jurisdiction on campus.

Clery Act

Clery Act Compliance

Three Part Test –

1. Was the crime reported to a CSA?
2. Is the crime a Clery Act reportable crime?
3. Did the crime occur in a Clery Act reportable geographic area?

Clery Act

Who is a Campus Security Authority?

1. Campus police department or campus security department.
2. Any other individual(s) who has responsibility for campus security, such as an individual responsible for monitoring an institutional building entrance.
3. Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.
4. An official of an institution who has significant responsibility for student and campus activities, including but not limited to student housing, discipline, and campus judicial proceedings. (An "official" is any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.)

Clery Act

Who is a Campus Security Authority?

Titles are not determinative. Assess the individual's function on campus.

- Does that person's activities involve interacting with students?
- If so, that person will be a CSA if they have a significant responsibility for student and campus activities.

Institutions should conduct an assessment of their professional and student employees and build a comprehensive list of all CSAs.

Clery Act

Campus Security Authorities

- Identify all CSAs
- Update that list regularly
- Train each CSA regarding their obligations under the Clery Act
- Maintain records of all training of CSAs
- Ensure your institution has a streamlined process for gathering crime statistics from CSAs each year for inclusion in the Annual Security Report

Clery Act

Reportable Offenses

The ASR must include crime statistics for reportable crimes that occur in any building or property owned or controlled by the institution within the same “reasonably contiguous geographic area” and used by the institution in direct support, or in a manner related to, the institution’s educational purpose, including residence halls.

1. Campus buildings
2. Non-campus buildings or property
3. Public property within or immediately adjacent to and accessible from the campus

Clery Act

Clery Geography

- On-Campus Geography includes buildings and properties that:
 - Your institution owns or controls
 - Are reasonably contiguous to one another, and
 - Directly support or relate to the institution's educational purposes
- On-campus geography also includes properties that:
 - Your institution owns but does not control
 - Are within your campus, or reasonably contiguous to it
 - Are frequently used by your students, and
 - Are used to support the institution's educational purposes

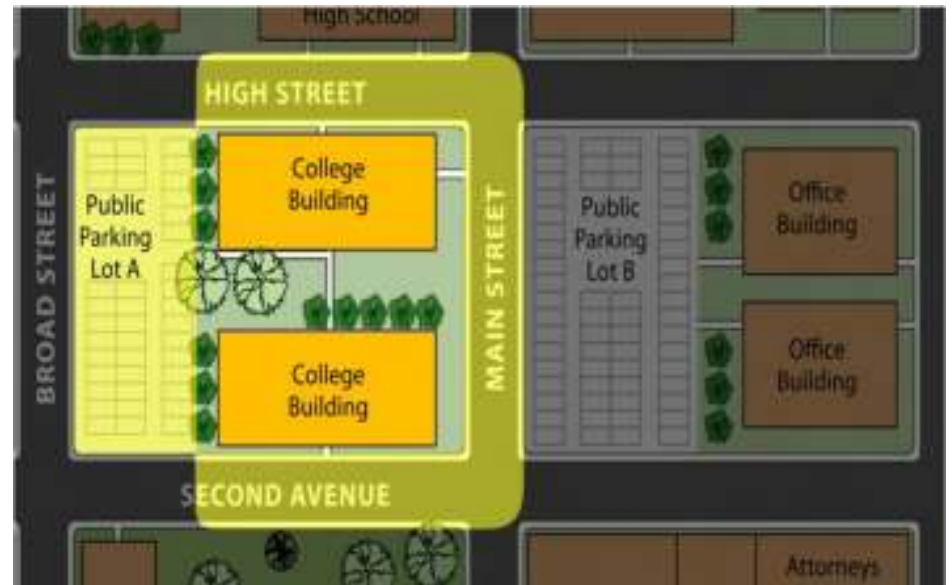
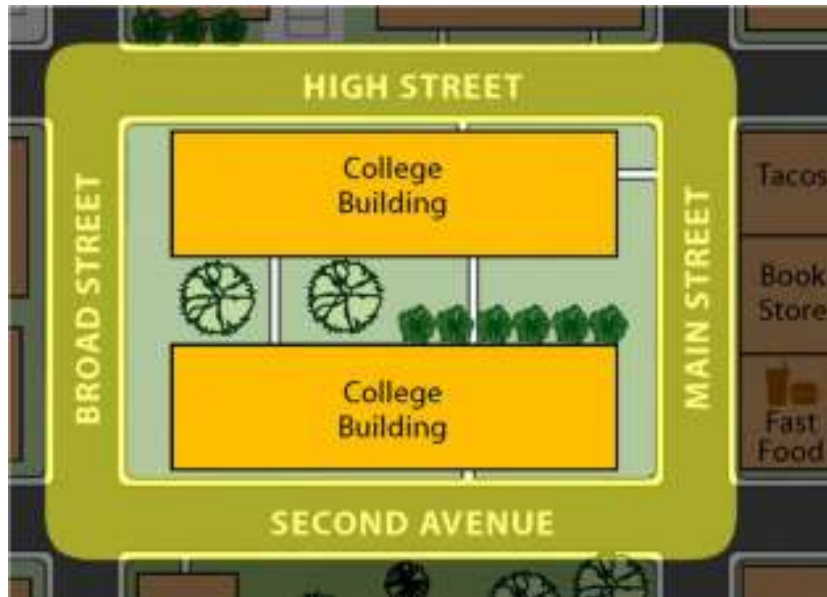
Clery Act

Clery Geography

- Public Property
- “All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus”
- Non-campus Buildings or Property
- Includes any location (except a separate campus) that:
 - Is owned or controlled by the institution
 - Supports or is used for the institution’s educational purposes
 - Is frequently used by students, and
 - Is not considered part of the core campus
 - Also includes any building or property that is owned or controlled by a student organization if “officially recognized”

Clery Act

Clery Geography



Clery Act

Timely Warnings

- The institution must provide timely warnings notices for Clery Act crimes
 - That are reported to CSAs or local police, and
 - Which constitute a serious or continuing threat to students and employees.
- Key question: Am I certain that there is no further danger to the campus community?

Clery Act

Emergency Notifications

- Emergency notifications must be given upon confirmation of a dangerous situation on campus constituting an immediate threat to the health and safety of students or employees.
- The situation could be a crime or any other inherently dangerous event
- Schools must conduct a yearly test of emergency response and follow-through activities, for the purpose of assessing the capability and effectiveness of the school's ability to respond to emergency threats.

Clery Act

Fire Safety & Missing Persons

- **Institutions with student housing facilities** must publish an annual fire safety report (ASFR), including fire statistics, a description of the school's fire safety systems, and seven policy statements specific to fire safety.
- **Institutions with student housing facilities** must also have a written procedure for gathering missing person contact information and a policy for a response when the institution receives a report that a student is missing.

Clery Act

Distribution – ASR and AFSR

- ASR/AFSR must be distributed by October 1 to all enrolled students and current employees.
- Direct distribution via mail (USPS, campus mail, e-mail)
- Hand delivery
- Posting on Internet website or Intranet website (if the school elects this option it must also distribute a notice to all students that includes a statement of the reports availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request.)

Clery Act

Clery Act Reviews

Typical document request:

1. List of all CSAs
2. Copy of catalog/handbook
3. List of all incidents of crime reported to the institution's police/public safety department
4. Organizational chart for security related functions
5. Complete set of police/public safety department procedures for dispatch, response to calls, report writing, arrests-citations, and protocols for arson, sexual assault, and active shooter scenarios
6. Copies of written materials normally distributed to prospective students, prospective employees, first-time students, new hires that address campus crime and security
7. Copies of all agreements with any third parties that provide security services, counseling or other services related to campus safety programs

Clery Act

Clery Act Reviews

8. Detailed description of school's dispatch/response and record keeping systems (hardcopy/software etc.) used by any officer or contractor with security-related responsibilities (e.g. public safety, Judicial Affairs, Student Affairs)
9. Copies of all campus, patrol, and or sector maps (with legends) used by any officer or contractor with security-related responsibilities, or for real estate purposes
10. List of all buildings and land owned or controlled by the school, including leased property
11. List of buildings and land owned by any institution-recognized student organizations, including leased property
12. Copies of the 2 most recent ASRs and evidence that the reports were distributed properly
13. Copy of the most recent biennial review of the Drug and Alcohol Abuse Prevention program

Title IX VAWA & the Clery Act

QUESTIONS & ANSWERS

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