



# Clery Center's Virtual Clery Act Training Seminar: Title IX-related Content

## NOTICE OF APPROVED USE

As a way to support institutions in their efforts to comply with section 106.45 of the final Title IX Rules, Clery Center has compiled all relevant Title IX training materials from the Virtual CATS (Clery Act Training Seminar) into one comprehensive document.

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Clery Center embraces a multi-disciplinary approach to Clery Act compliance and recognizes there are areas wherein the Clery Act and Title IX intersect. However, we believe that only some training content could be interpreted as Title IX training. As such, institutions requesting materials used in the training of "Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process" are only permitted to download and share this document in the format provided, with Clery Center logo and branding intact and unchanged. Individuals and/or institutions are not authorized to alter, copy, adapt, crop, or otherwise change the materials in any way, nor may they use the materials for training or for any commercial purpose unless expressly provided to the institution by Clery Center for that purpose.

# PERFORMANCE OBJECTIVES

- Identify Clery Act requirements for response to and disciplinary procedures for incidents of dating violence, domestic violence, sexual assault, or stalking
- Recognize intersections between Title IX and the Clery Act
- Develop or refine your institution's dating violence, domestic violence, sexual assault, and stalking policy statements
- Design a collaborative approach to support services for student and employee victims of crime



# TITLE IX REGULATIONS TIMELINE

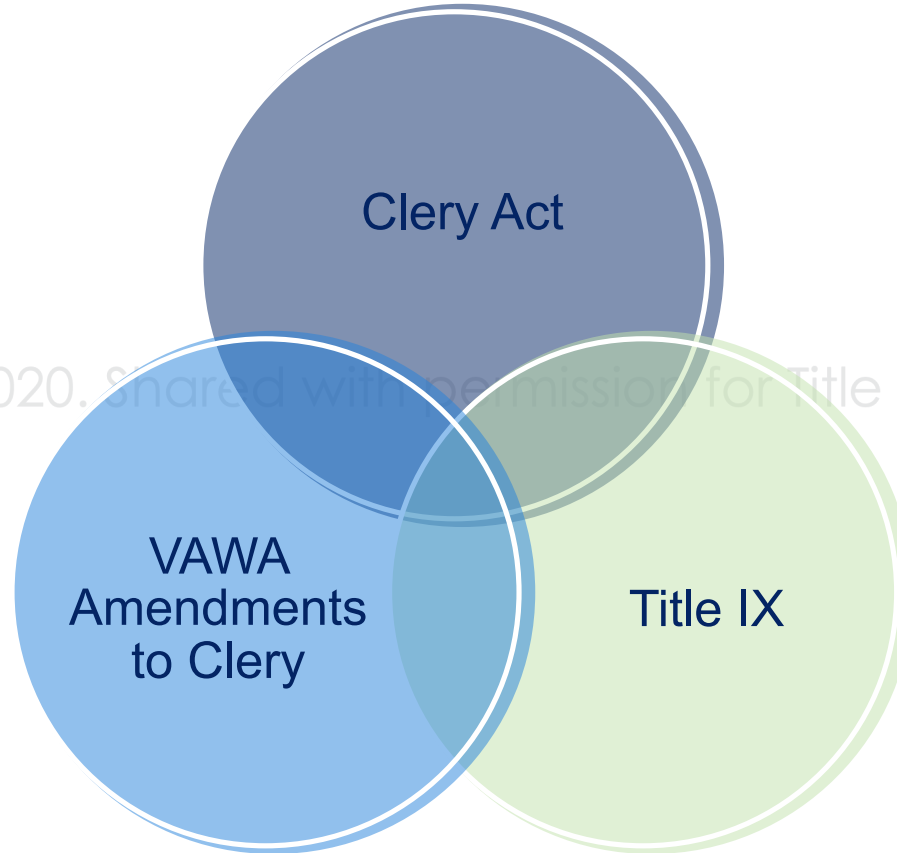
- September 2017
  - 2011 DCL and 2014 Q & A doc rescinded by OCR
  - New guidance issued
- November 2018
  - Title IX Notice of Proposed Rulemaking (NPRM) released
- November 2018-February 2019
  - Public Comment period (124,195 comments received)

# TITLE IX REGULATIONS TIMELINE (cont'd)

- May 6, 2020
  - Pre-print Title IX final regulations released to the public
- May 19, 2020
  - Final regulations published on the Federal register
- August 14, 2020 – Effective date
  - 100 days to comply; compare with typical 8 months which aligns with VAWA Amendments to Clery (9 months to implement)

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# AS OF MAY 2020



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# CLERY AND TITLE IX

- "The Department promulgates these final regulations under Title IX and not under the Clery Act...These final regulations do not change, affect, or alter any rights, obligations, or responsibilities under the Clery Act." (1784)
- "[Commenters] did not identify a true specific conflict. The Department acknowledges that its Clery Act regulations overlap with these final regulations and impose different requirements in some circumstances." (1788)

# 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\*
- Measures
- Grievance procedures

\*Dating violence, domestic violence, sexual assault, and stalking are Clery crimes and also one of three categories of sexual harassment as of the May 2020 Title IX regulations

# CENTERING THE CONVERSATION



Will approach this through the lens of a reporting party on your campus:

- Would a report be covered under Title IX? Under Clery? Both?
- What is considered a report to the institution under each law?
- What happens if I make a report?
- What resources and options are available to me?
- What might the disciplinary process look like under each law?



# WORKBOOK ACTIVITY:



WB 69

- Go to the *Clery/Title IX Intersections* Workbook activity.
- Let's walk through these answers together throughout this module taking into consideration the new Title IX regulations.

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# WHAT BEHAVIORS ARE COVERED UNDER TITLE IX?

- Title IX covers *sexual harassment*, which means conduct on the basis of sex that satisfies one or more of the following:
  - (1) An employee of the recipient (institution) conditioning the provision of 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 (institution's) education program or activity; or....

# WHAT BEHAVIORS ARE COVERED UNDER TITLE IX?

- ... (3) Sexual assault (which includes rape, fondling, incest, and statutory rape), domestic violence, dating violence, and stalking under the

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# GEOGRAPHY/JURISDICTION

## THE CLERY ACT

- 4 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

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# REPORTING REQUIREMENTS

## THE CLERY ACT

- Broader focus 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

# 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

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# 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

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# 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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## THE CLERY ACT

- Clery Act reporting authorities are called **campus security authorities**
  - Campus police/security department
  - Individuals with responsibility for campus security
  - Individuals/organizations specifies in policy as individual or organization to which to report offenses
  - Individuals with significant responsibility for student and campus activities

## TITLE IX

- Institutions may expressly designate specific employees as officials with authority for the purposes of Title IX (“taking into account the...unique educational environment”)

## THE CLERY ACT

- Clery Act reporting authorities are called **campus security authorities**

## TITLE IX

- If a CSA is considered an official who has the authority to institute corrective measures, then notice to that person constitutes actual knowledge
- ED states that it's "very likely that at least some of the institution's CSAs" have this authority, but does not assume every CSA has this authority

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Under both the Clery Act and Title IX, the report does not have to be from the alleged victim themselves – it could be from a third party.



# 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

# 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

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WB 72

Go to the *Outline Your Disciplinary Procedures* Workbook activity. Reflect upon your institution's disciplinary procedures.



# 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

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# 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

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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
- Handbook for Campus Safety and Security Reporting lists what topics this should address

## 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**

# 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

Who is at the table when drafting policies, procedures, and written information about dating violence, domestic violence, sexual assault, and stalking ?



- A. Campus law enforcement/security
  - B. Student conduct
  - C. Title IX Coordinator
  - D. Victim advocates
  - E. Legal counsel
  - F. Health Services
  - G. Other
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*Select all that apply.*

# RESPONSE

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## CLERY/TITLE IX INTERSECTIONS

Answer the questions below. You can use the questions/answers to create your own reference sheet on intersections between Title IX and Clery.

### Support for Victims

1. What are steps that victims may choose to take after an incident of dating violence, domestic violence, sexual assault, or stalking that might immediately impact their health or safety? (*List. Note next to each step if it is required under Clery and/or under Title IX. Highlight areas of overlap.*)

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2. What are examples of Clery accommodations or Title IX measures available to victims of dating violence, domestic violence, sexual assault, and stalking? (*List and highlight areas of overlap.*)

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### **Campus Disciplinary Processes**

3. What are examples of the types of disciplinary procedures that could take place in response to an incident of dating violence, domestic violence, sexual assault, or stalking? (*Note how Clery vs. Title IX requirements interact and highlight areas of overlap.*)

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## OUTLINE YOUR DISCIPLINARY PROCEDURES

Review the below outline of Clery policy statements related to disciplinary procedures. Record your initial responses to the directions. You can use a hard copy of your policies or ASR or can access them on your phone, tablet, or laptop for reference.

**Policy Statement:** Procedures to follow in response to an allegation of dating violence, domestic violence, sexual assault, and stalking, must contain:

### 1. Description of the disciplinary action taken

- Description of each type of disciplinary proceeding\* used by the institution
- Steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding\*
- How to file a disciplinary complaint
- How the institution determines which type of proceeding\* to use based on circumstances of an allegation

*\*Proceeding: all activities related to a non-criminal resolution of an institutional disciplinary complaint*

In the space below, document the practices at your institution related to each bullet listed above.

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2. Description of the range of protective measures that the institution may offer following an allegation

3. Statement that the proceedings will: Include a prompt, fair, and impartial\* process from the initial investigation to the final result

*\*Prompt, Fair and Impartial Process:*

- *Completed within reasonably prompt timeframes designated by an institution's policy, including a process that allows 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*
- *Conducted in a manner that is consistent with the institution's policies and transparent to the accuser and accused, includes timely notice of meetings at which the accuser or accused, or both, may be present, provides timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings, and conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused*
- *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***

List existing training for officials who conduct investigations or disciplinary proceedings for these types of allegations:

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**4. Statement that the institution provides the accuser and accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice\***

*\*Advisor of choice: any individual that provides support, guidance, or advice; cannot limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties*

**5. Statement that the institution provides simultaneous notification in writing to both the accuser and the accused of...**

- a. The result of any institutional disciplinary proceeding that results from an allegation
- b. The institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available
- c. Any change to the result and
- d. When such results become final

Includes:

- How the institution weighed the evidence and information presented during the proceeding
- How the evidence and information support the results and sanctions
- How the institution's standard of evidence was applied (not just whether it was met or not met)

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## REMINDERS: RESPONSE

### Message To Your Institution

*When you return to your institution, what key points will you share with students and employees related to campus response to dating violence, domestic violence, sexual assault, and stalking? What about a broader prevention and response effort?*

### Networking Reminders?

*(Who/for what/what follow-up)*

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### Remaining Questions?

*For each question, indicate who will you seek out/what you will do to get answers.*