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2020 Title IX Regulations: Policy Implications and Practical Application

Presented by:

**Beth Devonshire, Cathy Cocks,
Adrienne Murray and Ann Todd**
Associates

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2020 Title IX Regulations:
Policy Implications and Practical Applications

Online Course Agenda for 2 Day Version

This course runs from 10:00am to 5:00pm EDT each day.
There will be a half-hour break for lunch from 12:45pm to 1:15pm.
Fifteen-minute breaks will be given at approximately 11:30am and 2:45pm

Day 1

- Module: Title IX - Final Rules
- Lunch break - 12:45pm - 1:15pm
- Module: The Clergy Act
- Questions & Answers

Day 2

- Module: Drafting the Policy
- Lunch break - 12:45pm - 1:15pm
- Module: Practical Implications
- Case Studies

Online Course Agenda for 5 Day Version

This course runs for 2.5 hours each day for 1 week (various time options are available)
There will be one 15-minute break each day.

Day 1	Module: Title IX - Final Rules
Day 2	Module: The Clergy Act
Day 3	Module: Drafting the Policy
Day 4	Practical Implications
Day 5	Case Studies

Check out the options at: www.naccop.org (Training & Webinars Tab)



Dolores Stafford, President & CEO



Ms. Stafford was the Chief of Police at The George Washington University in Washington, DC from 1992-2010. During her distinguished 26 year career in the law enforcement and security industry, she worked in Campus Law Enforcement for 23 years at Bucknell University, Butler University, and most recently, at the George Washington University, where she served as Chief of Police of a 176 member police department for 18 years. Chief Stafford retired from active law enforcement on May 5, 2010. She has a Bachelor's Degree in Criminal Justice from Mansfield University and has a Master's of Science Degree in Education from Bucknell University. Chief Stafford is a Certified Litigation Specialist.

As one of the nation's premier campus police chiefs, she is a much sought after speaker, consultant, educator, expert witness, and instructor on campus security, campus safety and law enforcement related issues and on compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The Clery Act) and the security and safety requirements of the HEOA.

Chief Stafford has won numerous accolades for her 26 years of service in the law enforcement field. She won the "Breaking the Glass Ceiling" award in 2002 in honor of her ongoing contributions to improving the law enforcement profession. In 2004, Stafford was honored by the European Association for Campus Security for her expertise and achievements in campus security. Campus Safety Magazine awarded her their 1st Annual Campus Safety Director of the Year Award for 2006. In June 2008, Chief Stafford was presented with the Distinguished Young Alumni Award by her alma mater, Mansfield University in Pennsylvania.

She has been a member of the International Association of Campus Law Enforcement Administrators (IACLEA) since 1990 and she served on the Board of Directors from 2000-2005. She served as the Chair of the IACLEA Accreditation Commission from 2005-2008 and she served as the 45th President of the International Association of Campus Law Enforcement Administrators in 2003-2004, she was the first female to hold that office.

Chief Stafford has been a keynote speaker and has conducted presentations on the Clery Act for various organizations, including IACLEA, NACUBO, American Council on Education (ACE); the Stetson Law Conference, Security on Campus Inc, and other video/teleconference training companies.

She was a member of the IACLEA Government Relations Committee from 1995 to 2010 and was the Committee Chair from 1998 to 2000. Chief Stafford has testified at several congressional hearings, one at the request of the U.S. House of Representatives in July of 1997 and two at the request of the U.S. Senate in March of 1998 and July of 2015. Chief Stafford was selected to represent IACLEA as the primary negotiator during the 1999 and 2009 Negotiated Rule Making processes sponsored by the Department of



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Education regarding the development of final rules for the implementation of the Clery Act. She is a nationally recognized expert on compliance with the Clery Act.

Chief Stafford has been a featured speaker in many other areas of security and safety for the American Council on Education (ACE); American Association of State Colleges and Universities (AASCU); National Association of Student Personnel Administrators (NASPA), the National Association of College and University Business Officers (NACUBO); University Risk Management and Insurance Association (URMIA); Stetson University College of Law; and the International Association of Campus Law Enforcement Administrators (IACLEA).

Chief Stafford led the GW Police Department as the agency became an internationally accredited law enforcement agency with the Commission of Law Enforcement Accreditation (CALEA) in March of 2006 and the agency was successfully reaccredited in March of 2009. The agency subsequently achieved accreditation with the International Association of Campus Law Enforcement Administrators in May of 2007. She was chosen to become an assessor for CALEA in March 2006 and she is currently an IACLEA assessor, and as such, she has completed numerous on site assessments for those organizations.

She has published more than a dozen articles in various professional journals and magazines. She was one of the lead authors of the International Association of Campus Law Enforcement Administrator's [Blueprint for Safer Campuses: An Overview of the Virginia Tech Tragedy and Implications for Campus Safety](#). This document, unveiled at a press conference sponsored by the Woodrow Wilson School at Princeton University on April 18, 2008, is a roadmap for campus safety and security. The Blueprint for Safer Campuses outlines the guiding principles for campus safety and security worldwide.



Catherine Cocks, Consultant Student Affairs, Title IX, and Equity Compliance Services



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.



Beth Devonshire, Consultant
Equity Compliance and Title IX/Civil Rights Training



Beth Devonshire, Esq., has been an Associate with DSA since 2012 and she became a full-time consultant in August of 2018. She was the Associate Dean of Students at UMass Boston from November 2016 to July 2018. In that role, Beth administered the student conduct system, chaired the CARE and BIT Teams, served as the Deputy Title IX Coordinator, oversaw the U-Access (an office dedicated to assisting students who are dealing with a multitude of issues such as food insecurity, homelessness, emancipation from foster care, and chronic poverty), and acted as a liaison with the various constituencies around the University. Additionally, Beth was responsible drafting the policies and procedures related to students. Prior to that, Beth was the Director of Student Conduct at Bridgewater State University and the Director of Community Standards Stonehill College. Before beginning her career in Higher Education, Beth served as a clerk for the Justices of the Superior

Court, and in various positions for the Massachusetts House of Representatives. Beth has also presented extensively on Title IX including presentations to Colleges, State Wide Organizations, Regional Conferences, and at the OCR Title IX Conference in March of 2011.

Additionally, Beth has given multiple presentations on other legislation and legal issues effecting higher education, including FERPA, Clery and Alcohol and Other Drug Prevention. Beth is the former National Knowledge Community Public Policy Liaison for NASPA, and also the former Massachusetts Public Policy Liaison for MA NASPA. Beth also served as the Director of the Legislative Committee for The Association for Student Conduct Administrators (ASCA) for two years. In those roles, Beth was charged with keeping abreast of proposed and passed legislation and cases impacting higher education and communicating those changes to the membership.

Before beginning her career in Higher Education, Beth served as a clerk for the Justices of the Superior Court from 2006-2007. Prior to that, Beth worked at the Massachusetts State House as Deputy Attorney for House Ways and Means, Chief of Staff for the Committee on Election Laws and as a Researcher for the Committee on Local Affairs.

Devonshire currently serves as an Associate for D. Stafford & Associates, a highly reputable consulting firm specializing in delivering on organizational, physical security, vulnerability and arming assessments; Clery



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Act compliance audits; assessments of Title IX compliance; Behavioral Intervention Team and Student Conduct Assessments and Training; and a host of other services related to security, safety and compliance for institutions of higher education.



Adrienne Meador Murray, Executive Director of Training and Compliance Activities



Adrienne Meador Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.). In January 2014, Murray joined the National Association of Clery Compliance Officers & Professionals (NACCOP) and D. Stafford & Associates where she currently serves as Executive Director of Training and Compliance Activities after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012.

As the Executive Director, Equity Compliance and Civil Rights Services, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based



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trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



Ann Todd, Consultant

Equity Compliance and Civil Rights Investigations



Ann Todd, Esq is a seasoned civil rights investigator in higher education for D. Stafford & Associates (DSA). Ms. Todd is a graduate of Davidson College with a degree in psychology and holds a JD from the University of Nebraska. Prior to joining DSA, she practiced law in Charlotte, NC, specializing in employment and civil rights and worked for a number of non-profit organizations. She returned to her alma mater (Davidson College) in 2008 and worked there through March of 2016 serving as the Assistant Director of Human Resources with the responsibility of managing employee relations and the learning and development function.

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources

background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with schools to draft policies and processes that provide equity and fairness to all parties involved and is adept at facilitating discussions with institutions to ensure the end product represents the values of the campus community.

Ms. Todd is a member of the NC Bar and a Certified Clery Compliance Officer through the National Association of Clery Compliance Officers and Professionals (NACCOP). She is also a certified 360 facilitator through the Center for Creative Leadership. She lives in Davidson, NC where she volunteers on a number of local and town boards.

Final Rules

1

Agenda

- How we got here
- The Rules

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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?

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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

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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

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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




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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


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§106.3 – Remedial Action



Fix it



No monetary damages

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§106.6 – Effect of Other Requirements and Preservation of Rights

Constitutional Rights

FERPA

Title VII


Parents and guardians

State and local laws


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§106.8(a) Designation of Coordinator




Title IX Coordinator



Notification of parties



Contact information



Reporting information

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§106.8(b) Dissemination of Policy

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

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§106.8(C) Adoption of Grievance Procedure

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

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§106.8(d) Application Outside of the United States

- Only applies to US
- Use other policy
- No Clery conflicts

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Submit in writing

Specific tenant

Not required

Raise any time

§106.12 – Religious Institutions

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§106.30 Definitions – Actual Knowledge

Title IX Coordinator

Corrective measures

K-12

Designation

CSA

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Complainant

Consent


Respondent

§106.30 Definitions – Complainant, Consent, Respondent


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§106.30 Definitions – Formal Complaint




Signed formal complaint



Title IX Coordinator



Third parties




Anonymous reports


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§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
IPV
Stalking

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Sexual Harassment under Title IX


Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:


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;
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

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PRONG 1: Quid Quo Pro


 "This for That" Harassment


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


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PRONG 2: The *Davis* Standard

 Hostile Environment +




 First Amendment protections

 Not a "zero tolerance" standard

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PRONG 3: The VAWA Crimes

 Sexual Assault	Rape Fondling Statutory Rape Incest
 Intimate Partner Violence	Dating Violence Domestic Violence
 Stalking	

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**§106.30
Definitions –
Supportive
Measures**


-  Non-disciplinary
-  Both parties
-  Academic, housing, and athletic impact
-  No contact orders

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Schools



Elementary and secondary



Postsecondary

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**§106.44 Recipient's Response to Sexual Harassment;
(a) General Response to Sexual Harassment**

DELIBERATELY
INDIFFERENT

EDUCATIONAL
PROGRAM OR
ACTIVITY

EQUITY

CONTACT
COMPLAINANT

ON-LINE

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

Response to formal Complaint Emergency removal Administrative leave

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

Equity Grievance process

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§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process(1) Basic Requirement

Equity Objective Evaluations Impartiality and Training

Presumption of Not Responsible Prompt Time Frames

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§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

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

Notice requirements Additional allegations Clarifications

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

<p>Must dismiss:</p> <ul style="list-style-type: none"> 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 	<p>May dismiss:</p> <ul style="list-style-type: none"> Complainant withdraws formal complaint Respondent no longer enrolled/employed Insufficient evidence
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§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

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§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

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§106.45(b)(6) Hearings

- ⚡ Live hearing
- ✗ Cross-examination

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§106.45(b)(6) Hearings

- Advisor
- Relevancy
- Participation consequences
- “Physically present”

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§106.45(b)(7) Determination Regarding Responsibility

- Allegations
- Procedural steps
- Findings of fact
- Conclusion/application
- Rationale
- Appeal procedures

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Sanctions and Remedies



Sanctions



Remedies

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§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**

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§106.45(b)(8) Appeals

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

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§106.45(b)(9) Informal Resolution

-  Notice
-  Voluntary
-  Not allowed for Employee/student

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§106.45(b)(10) Recordkeeping - Investigations

- 7 years
- Investigation
 - Determination
 - Recordings
 - Sanctions and remedies
- Appeal
- Informal resolution
- Training materials

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§106.71 Retaliation Prohibited

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

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Directed 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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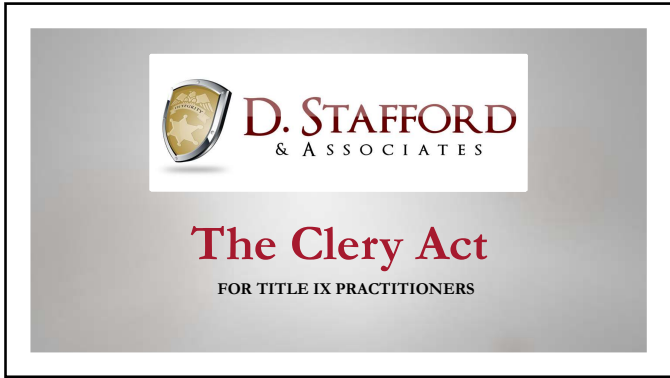
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1

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

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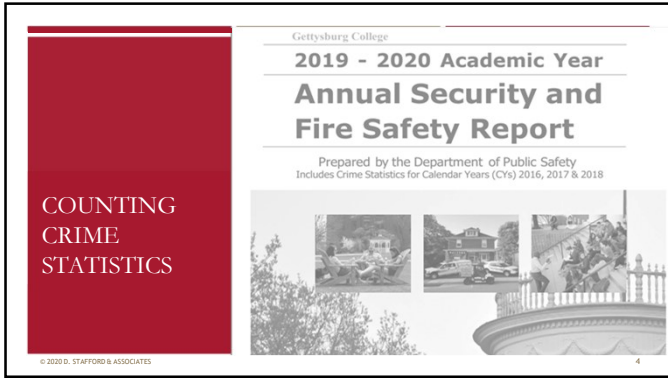
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Key Requirements (part 2)

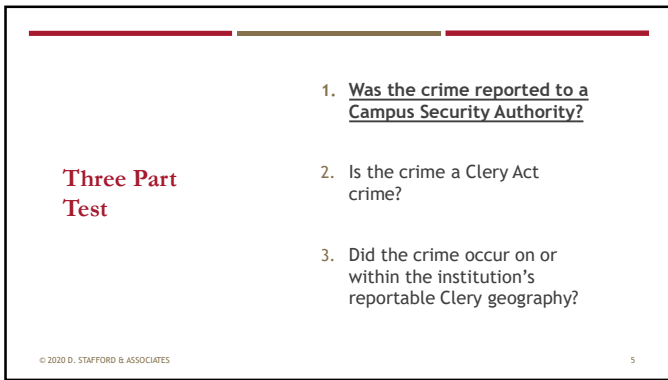
- Provide educational programs and campaigns on Dating/Domestic Violence, Sexual Assault & Stalking
- Have procedures for institutional disciplinary action for DV/DV/SA/S
- If you have a campus police or security department: Publish Daily Crime Log
- If you have residential facilities: Fire log, Fire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

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Reporting Comparisons

Clery CSA

- Campus Law Enforcement and Public Safety
- RAs, RDs, other Housing officials
- Dean of Students Office/Student Conduct
- ADs and Coaches (including Assistant ADs and Coaches)
- Faculty or Staff Advisers to Student Orgs
- Access Monitors/Contract/Event Security Officers
- Safety escorts on campus (including students)
- Student Union/Student Activities Staff
- Greek Affairs staff
- Administrators at Branch/Satellite/Separate Campuses
- 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."

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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

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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 trainee.

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REPORT

CSA FUNCTION

A CSA's function is to report allegations of Clery Act crimes made in good faith.

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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.

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

This means that CSAs are not responsible for investigating or reporting incidents:

- they overhear students talking about in a hallway conversation
- that a classmate or student mentions during an in-class discussion
- that a victim mentions during a speech, workshop, or any other form of group presentation
- that the CSA otherwise learns about in an indirect manner

Reporting Crimes

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DISCUSSION: INTERSECTION WITH TITLE IX

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

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COUNTING CRIME STATISTICS: CLERY CRIMES

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(Adapted: Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act)
Calendar Years (CY) 2016 – 2018

Criminal Offenses or Primary Crimes (Crimes Reported By Hierarchy)	Calendar Year	On Campus (Including Residential)	Non-Campus	Public Property	Totals	On Campus (Residential Only)
Murder & Non-Negligent Manslaughter	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Manslaughter by Negligence	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Rape	2016	11	2	0	13	11
	2017	25	2	0	27	18
	2018	14	2	0	16	10
Forcible Fondling	2016	11	1	0	12	8
	2017	4	1	0	5	4
	2018	0	0	0	0	0
Incest	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Statutory Rape	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0
Robbery	2016	0	0	0	0	0
	2017	0	0	1	1	0
	2018	0	0	0	0	0
Aggravated Assault	2016	4	0	0	4	4
	2017	3	0	0	3	3
	2018	3	0	0	3	3
Burglary	2016	32	3	0	35	33
	2017	7	1	0	8	7
	2018	3	1	0	4	3
Motor Vehicle Theft	2016	0	0	0	0	0
	2017	0	0	0	0	0
	2018	0	0	0	0	0

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Three Part Test

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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?

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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

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Counting Clery Crimes

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

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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)

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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.

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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.

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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



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“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**.

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Unfounded Crimes

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 official.

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 this full investigation and evidence, have made a formal determination that the crime report is false or baseless and therefore "unfounded."

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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?

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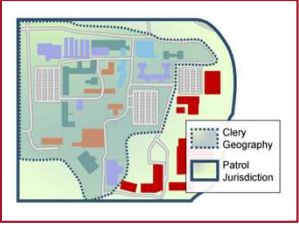
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COUNTING CRIME STATISTICS: CLERY GEOGRAPHY

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CLERY GEOGRAPHY



- On Campus
 - Residential Facilities
- Non-campus building or property
- Public Property

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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 occurs
 - 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/controls
 - May include some study abroad programs
 - For VAWA crimes, must use processes even if occurs off-campus

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**CLERY REPORTING:
CAMPUS ALERTS**



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Clery Reporting Obligations

- Daily Crime Log
- Annual Security Report
- Emergency Notifications/Timely Warnings

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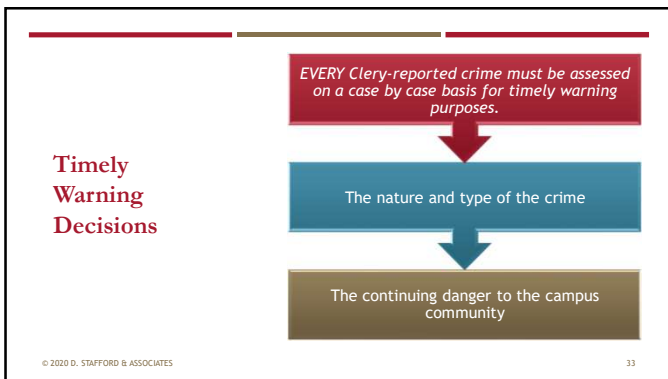
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Timely Warning/Emergency Notification

	TIMELY WARNING (TWN)	EMERGENCY NOTIFICATION (EN)
Legal Standard:	Serious or continuing threat	Immediate threat to health and safety
Circumstance:	Clery-reportable crimes that have been reported (occurred in past)	Clery-reportable crimes as well as other types of emergencies (happening right now or about to happen)
Audience:	Community-wide	Can send to a segment of the community, if appropriate
When Issued:	As soon as pertinent information is available	Upon confirmation of emergency (when possible)
Follow-Up:	Not Required	Required

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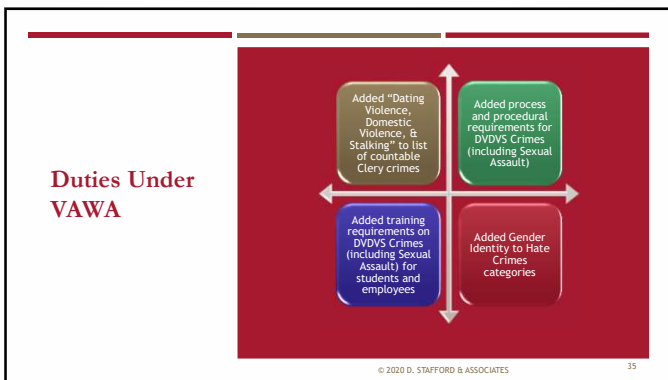
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Domestic Violence



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 OR
- 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

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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.

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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.

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Stalking

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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.

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Stalking



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- a) *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, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
- b) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
- c) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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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)

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VAWA Procedural Requirements

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Process Requirements under VAWA

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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.

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“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

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“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




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

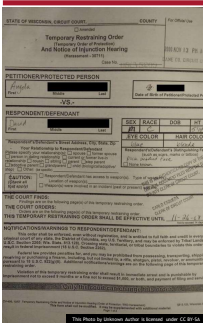
- “Notification of the victim’s option to
- Notify proper law enforcement authorities, including on-campus and local police;
- Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
- Decline to notify such authorities”



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“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?

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“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)

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“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



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“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

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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."*



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"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

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"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



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“Completed within reasonably prompt timeframes designated by the institution’s policy”



- 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

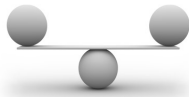
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“fair, and impartial proceeding...”



- 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

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**DISCUSSION:
CLERY AND
TITLE IX**


- What does a report “Trigger” under the respective laws?

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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"

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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)



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"Provide the accuser and the accused with the same opportunities to have others present ... including the opportunity to be accompanied ... by the advisor of their choice"



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)

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“Simultaneous notification, in writing...of the results”

- Results = initial, interim, and final decisions by any official
- 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

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Education and Prevention


- 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

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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

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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

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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

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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



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Drafting the Policy

1





Agenda

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

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Policy and Procedure

 <p>Policy</p> <p>What are the rules, why they exist, when they apply</p>	 <p>Internal Procedures</p> <p>Step by step actions for the staff</p>	 <p>External Process Information</p> <p>Information through a notice letter or information sheet explaining the process and steps for the involved parties</p>
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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 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 and provide a written response to the investigator. To provide the written response, use the following link: [submission link]."

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Example

Policy statement

- Either party may request, no later than three business days prior to the hearing, for the hearing to occur with the parties located in separate rooms with technology enabling the hearing body and parties to simultaneously see and hear the party or the witness answering questions.

Internal procedure

- Upon receiving a request for a virtual hearing, contact each party to see if they would like a designated space to use the technology.
- Book the space and technology.
- Send login information to the hearing bodies and parties.
- Include an instruction sheet on using the technology.

External process information

- "Either the Complainant or Respondent may request to have the parties located in separate rooms and the hearing will be held using Zoom technology. If you wish to utilize this option, you must notify [NAME] at [EMAIL] no later than [DATE]."

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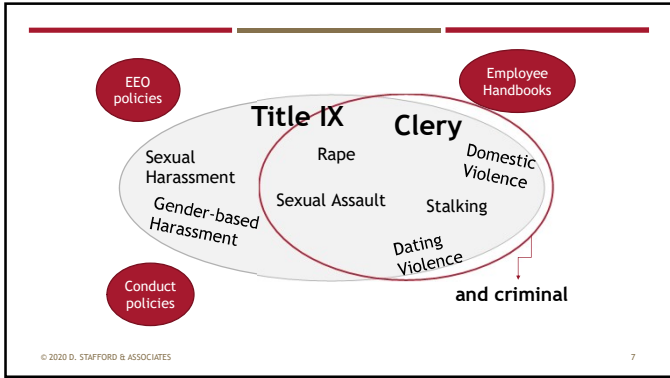
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Important Considerations

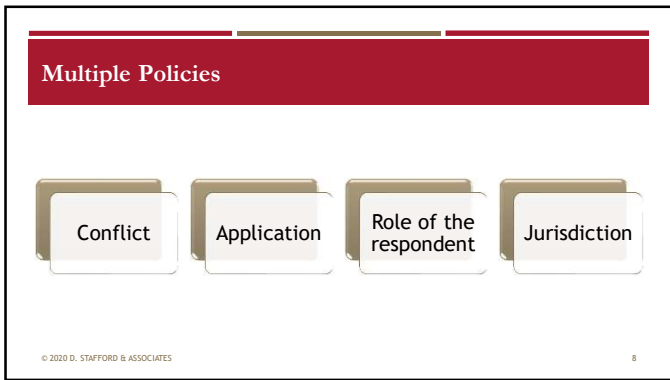
- Scope
- Related policies
- MOUs
- Multiple campuses
- Jurisdiction
- Minors

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LAW	WHO	WHAT	ENFORCEMENT
TITLE VI	STUDENTS	RACE, COLOR, OR NATIONAL ORIGIN	OCR
TITLE VII	EMPLOYEES	RACE, COLOR, RELIGION, SEX	EEOC
TITLE IX	STUDENTS/EMPLOYEES	BASIS OF SEX	OCR
504	STUDENTS	DISABILITIES	OCR
ADA/ADAA	EMPLOYEES (TITLE I) STUDENTS (TITLE II/III)	DISABILITIES	EEOC/DOJ
ADEA	EMPLOYEES	AGE (40+)	EEOC
PDA	EMPLOYEES	PREGNANCY/TITLE VII	EEOC
USERRA	EMPLOYEES	VETERANS	DOL/DOJ

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MULTIPLE VOICES TO CONSIDER

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Competencies

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

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Policy Sections

- Statement of policy
- Related policies
- Applicability/ Jurisdiction
- Grievance procedures
- Title IX Coordinator
- Employee responsibilities
- Definitions
- Prohibited conduct
- Reporting options
- Resources and supportive measures
- Interim Action
- Education and prevention
- Record management

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Additional Considerations

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


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Statement of Policy




Mission of the institution




Intent of the policy




Behaviors



Presumption of responsibility



Equity



Other

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Related Policies

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

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Applicability/Jurisdiction



Who



Location



Educational program
or activity

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Grievance Procedures (more on this later)

Title IX Grievance
Procedure:
Formal
Informal

Referrals:
Students
Employee

Academic Medical
Centers

High School
Programs

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Title IX Coordinator



Role



Contact information



Additional
coordinators/deputies?

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Employee Responsibilities



Reporting



Participation in the process

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Definitions

Actual knowledge	Advisor	Appellate administrator	Business Day	Complainant
Conduct file	Contractor	Decision maker	Designee	Employee
		Evidence - Inculpatory	Exculpatory	Formal complaint

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Definitions

Incident database	Investigator	Program or activity	Remedies	Respondent
Sanctions	Standard of evidence	Student	Supportive measures	Third party
		Vendor	Volunteer	Witness

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Prohibited Conduct

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

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Prohibited Conduct

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

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Prohibited Conduct

- Retaliation
- Assist and encourage
- Amnesty for other violations

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Reporting Options

- Preservation of evidence
- Law Enforcement
- Institution
- Confidentiality
- Amnesty

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Resources and Supportive Measures

- On and off campus
- Clery requirements
- Orders of protection
- Supportive measures

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Interim Action

- Emergency Removal
- Administrative Leave

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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

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Inappropriate Relationships

Employee/student relationship

Employment context

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Minors on Campus

Definitions Reporting procedures High school programs

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1ST AMENDMENT


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Accommodation and Interpretation Requests



Disability resources



Interpretive services




Student responsibility


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Interpretation and Revision




FINAL DECISION MAKER



REVIEW PROCESS




DATE OF APPROVAL




REPORTS IN PROGRESS

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Potential conflicts



Preemption

State and Local Laws

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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

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Grievance Procedure

- Notice**
 - Requirements
- Dismissal**
 - Intake process
 - Referrals
- Consolidation of complaints**
 - Multiple parties, complaints, cross-claims
- Investigation**
 - Requirements

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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

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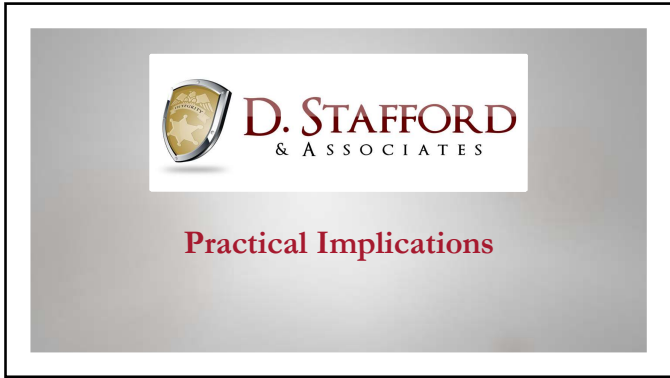
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Topics	Assignment	Questions
<ol style="list-style-type: none"> 1. Hostile Environment+ 2. Intersection of Title IX policy with employee/student code processes 3. Title IX personnel 4. Investigators 5. Live hearings 6. Advisors 	<ol style="list-style-type: none"> 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? 	<p>You can send questions to the chat while you work, and we will discuss them in the reporting out phase.</p>

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Report out

 <small>HOSTILE ENVIRONMENT+</small>	 <small>EMPLOYEE/STUDENT PROCESSES</small>	 <small>TITLE IX PERSONNEL</small>
 <small>INVESTIGATORS</small>	 <small>LIVE HEARINGS</small>	 <small>ADVISORS</small>

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QUESTIONS



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