

 **CLERY CENTER**
FOR SECURITY ON CAMPUS


Where Clery and Title IX Meet


Understanding the Intersections of the Clery Act and Title IX

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 **Who is the Clery Center?** 



 **CLERY CENTER**
FOR SECURITY ON CAMPUS

Policy
↓
Education →  ← Training
↑
Advocacy

 **Clery Act: The Spirit** 





 **Jeanne Clery Act: More on the Law** 



Originally passed in 1990 as part of the Student Right-to-Know and Campus Security Act.

Amended in 1992, 1998, and 2008 by the Higher Education Amendments. [VAWA amendments to Clery 2013](#).


Codified at 20 USC 1092f



Regulations appear at 34 CFR 668.46

The most recent Final Rules were published in **Oct. 29, 2009 *Federal Register* (pp. 55902-55969)**, Oct. 31, 2002 *Federal Register* (pp. 66519-66521), and Nov. 1, 1999 *Federal Register* (pp. 59060-59073).


 **Jeanne Clery Act** 

- **Annual Security Report**
 - Statements of policy
 - Campus crime statistics
 - Campus Sexual Assault Victim Bill of Rights
- **Ongoing Disclosures**
 - Emergency notification
 - Timely warning
 - Public Crime Log
- **U.S. Department of Education Enforces**




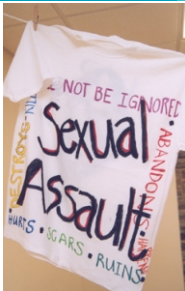
 **Jeanne Clery Act Crime Statistics** 

- **Criminal homicide**
 - Murder/non-negligent manslaughter
 - Negligent Manslaughter
- **Sex offenses**
 - Forcible
 - Non-forcible
- **Robbery**
- **Aggravated Assault**
- **Burglary**
- **Motor Vehicle Theft**
- **Arson**
- **VAWA amendments to Clery**
 - Dating Violence
 - Domestic Violence
 - Stalking
- **Arrests & disciplinary referrals**
 - Liquor law violations
 - Drug law violations
 - Illegal weapons possession
- **Hate Crimes**
 - + larceny-theft, simple assaults, intimidation, & destruction, damage, vandalism of property




Clery Act: Sexual Assault Victims' Bill of Rights







- Reasonable changes to academic and living situations
- Referrals to counseling, assistance in notifying law enforcement
- Same opportunity as accused to have others present at disciplinary hearing
- Unconditionally notified of outcome of hearing, sanctions and terms of sanctions in place
- Speak (or choose not to speak) to anyone regarding the outcome
- Name and identifying information kept confidential (FERPA)




Violence Against Women Act Sec. 304 Highlights






- Addition of domestic violence, dating violence, and stalking
- Prevention and awareness programs (primary prevention)
- Procedures to follow
- Information in writing
- Change in academic/living/transportation/working situation
- Option to notify law enforcement
- Campus disciplinary procedures
- Sanctions following a final determination



Title IX Restrictions





Who is required to comply with Title IX?

- All public & private educational institutions that receive federal funds.
 - What is *receive federal funds* under Title IX?
 - Qualifying federal financial assistance can be in the form of: an award or grant of money; use of rent of federal land or property; and federal training.
 - Federal financial assistance can also be received indirectly
 - » Ex: Accepting students who receive federal financial aid (FAFSA)

What does Title IX say?



- General mandate: Prohibits recipients of federal financial assistance from discriminating on the basis of sex in education programs or activities. ***Sexual harassment of students, which includes acts of sexual violence, can be a form of sex discrimination prohibited by Title IX.***

 **Title IX Overview** 



How does Title IX protect students?

- Protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school.
- Also protects students who may have been sexually harassed off school grounds, outside a school's education program or activity, if the harasser was a fellow student.


Advocacy Tip: Remember that Title IX applies to K-12 schools, as well as colleges. Keep this in mind when working with minor survivors.

 **What is required of schools even before a report of sexual violence?** 


- Publish a notice of non-discrimination.
- Designate an employee to coordinate Title IX compliance.
 - (4) Responsibilities:
 - ✓ Disseminate notice of nondiscrimination
 - ✓ Identify and address systemic patterns of discrimination
 - ✓ Educate parties about the policy and answer procedural questions about the logistics of the disciplinary process
 - ✓ Oversee the investigation of a complaint
- Adopt and publish grievance procedures.

 **Title IX Enforcement** 


- Department of Education's Office of Civil Rights (OCR)
 - 12 regional offices nationwide
 - Enforces a number of federal laws
 - Provides free technical assistance
 - Handles complaints from K-12 and higher education
 - "Prompt and equitable" standard




Clery Act Enforcement



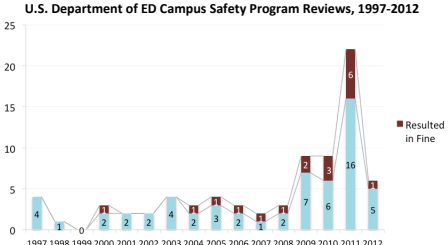
- United States Department of Education Clery Compliance Team (past of Office of Federal Student Aid- FSA)
- Administrative complaint filed with the Department of Education by any party
- Fine per violation of \$35,000 per violation



Evolving Compliance Landscape




U.S. Department of ED Campus Safety Program Reviews, 1997-2012




Year	Reviews	Resulted in Fine
1997	4	0
1998	1	0
1999	0	0
2000	2	0
2001	2	0
2002	2	0
2003	4	0
2004	2	0
2005	3	0
2006	2	0
2007	2	0
2008	2	0
2009	7	0
2010	6	0
2011	16	6
2012	5	1

- Ongoing/pending ED program reviews
- Increase in student-led Clery Act complaints





Enforcement Mechanisms




- Title IX
- Penalty for Violating Statute
 - No fee, potential revoking of federal aid
- Private right of action against school
 - Applies to private and public schools for student-on-student and teacher-on-student harassment

- The Clery Act
- Penalty for Violating Statute
 - If DOE finds that the institution is in violation, it can issue civil fines of up to \$35,000 per violation.
 - No private right to sue or receive compensation
 - The individual must write a grievance to DOE and **only DOE can bring action against the institution.**


*Technical Assistance Guide & Resource Kit for Primary Prevention, The Pennsylvania Coalition Against Rape, 21 January 2014. Retrieved from http://www.pccr.org/pdf/TAGuide_and_Resource_Kit_for_Primary_Prevention_and_Evaluation.pdf



Intersections between Title IX and The Clery Act




Topics to Cover




- Relation to Institution
- Comparing Campus Security Authorities and Responsible Employees
 - Confidentiality and Timely Warnings
- Policy Requirement Changes due to VAWA Amendments to Clery and Title IX Guidance




Relation to Institution




What is covered under Title IX?




- Relation to the institution relevant
 - Title IX protects male and female students from sexual harassment by a school employee, another student or a non-employee third party (e.g. visiting speaker or visiting athletics).
 - 2001 DOE Guidance Letter pg. 3
- Geography
 - Can be off campus, as long as the activity is related to the institution




What is covered under Clery?



- Relation to the institution irrelevant
 - The institution should count all Clery Act crimes within the Clery geography even if they involve individuals not associated with the institution.
 - » (Handbook for Clery Reporting pg. 54)
 - Clery Crimes: Include sexual assault offenses, both forcible and non forcible.
 - » (Handbook for Clery Reporting pg. 33; 34 CRF 668. 46(c))
 - VAWA expands Clery crimes to include intimate partner violence, including stalking, dating violence and domestic violence offenses.

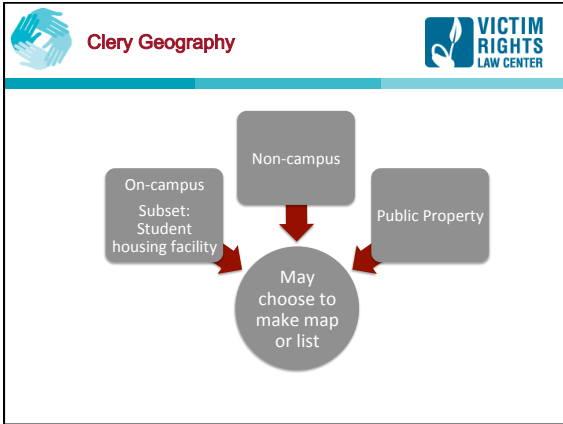


What is covered under Clery?




Geography

- A covered institution must only disclose statistics for reported Clery crimes that occur:
 - (1) on campus,
 - (2) on public property within or immediately adjacent to the campus, and
 - (3) in or on non-campus buildings or property that your institution owns or controls.
 - (Handbook for Clery Reporting pg. 54).




Comparing Campus Security Authorities with Responsible Employees


Title IX	Clery Act
<p>Responsible Employee standard</p> <ul style="list-style-type: none"> A school has notice if a responsible employee "knew or in the exercise of reasonable care should have known" about the harassment. Includes "any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility." 	<p>Must be reported to a campus security authority (CSA), which includes:</p> <ul style="list-style-type: none"> A campus police department or a campus security department of an institution. Those responsible for campus security but who does not constitute a campus police department or a campus security department (gate monitor) Those specified in an institution's statement of campus security policy as source to which students and employees should report criminal offenses An official of an institution with significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings If someone has significant responsibility for student and campus activities, he or she is a campus security authority. (<i>Handbook for Clery, pgs. 74-75</i>)




Comparing Reporters



Responsible Employee	Campus Security Authority
<ul style="list-style-type: none"> Title IX Coordinator is a responsible employee Faculty are permissible Persons with privilege do not have to report Persons designated by campus as confidential do not have to provide identifying information 	<ul style="list-style-type: none"> Faculty are not included (unless specified by the institution) Timely warning requirement An institution has the discretion to appoint anyone as a CSA




Title IX Reporting Structure



Responsible Employees

Persons with Statutory Privilege

Persons with Confidentiality



CSA Training at the University of Pennsylvania


WHO IS A... CAMPUS SECURITY AUTHORITY?

Officials with significant responsibility for student and campus activities

A campus police or a campus security department


Individuals or offices designated to receive crime reports

Individuals who have responsibility for campus security




Examples of CSAs


- Professional staff in a dean of students office (including leaders in student affairs/housing)
- Staff in student center building
- Student Activities Staff
- Faculty or staff advisors to student organizations
- Resident Assistants
- Coaches




Reporting Obligations: Clery




- **Timely Warning Policy**
 - Timely warnings must be issued to the campus community regarding any Clery crime that occurs on your Clery geography that is:
 - Reported to campus security authorities or local police agencies; and
 - Is considered by the institution to represent a serious or continuing threat to students and employees.
 - **When to issue a timely warning?**
 - Case-by-case basis
 - Handbook for Clery Reporting 11; 34 CRF 668.46(e)




Circumstances that Trigger Warning





- ✓ **Clery Act crimes**
 - Included in annual statistics
- ✓ **Reported to CSA or local law enforcement**
- ✓ **Occurred in the specified geographic areas:**
 - On-campus
 - Public property
 - Non-campus
- ✓ **Represents a serious or continuing threat**
 - Students
 - Employees





Contents of Timely Warnings



- The Clery Act requires disclosure of whether or not you have a confidential or anonymous reporting structure
- Timely warnings should withhold the names of victims as confidential
- Could include:
 - Description of perpetrator's race/clothing
 - Where assault occurred
 - Time of assault
 - Brief description of assault



 **Timely Warning Concerns** 

- Determination of “serious or continuing threat” when there is a:
 - Victim requests confidentiality
 - Victim not pursuing criminal or formal disciplinary complaint
 - Continuing threat is to one person (i.e. domestic violence)

 **What to Include in a Timely Warning** 

Timely Warnings Include:


- Information that promotes safety
- Allows individuals to protect themselves
- Time, location and type of crime
- *Should not identify a victim*

 **Exempt Cases** 


- Crimes Reported to:
 - Pastoral or professional counselor
- Privileged Information Protected by State Law:
 - Medical doctor
 - Attorney/client




Policy Requirements




Points of Difference: Advisors




- VAWA Amendments will require that both parties be able to choose any person as their advisor
 - Advisor may be an attorney (based on draft regulations and statute), "advisor or choice"
 - Advisor may attend ANY meeting, informal or formal
 - Consideration of whether or not to limit participation




Points of Difference: Outcomes




- Notice of outcome – Title IX
 - Both parties must be notified concurrently about the outcome of both the complaint and any appeal
 - *Must be related to the case:* Disclosures about *unrelated* sanctions may result in a violation of FERPA
- Non-disclosure agreements
 - Postsecondary institutions may not require a complainant to abide by a nondisclosure agreement




Outcomes: Clery Act





- Notice of outcome
 - Victims and perpetrator must be simultaneously informed of campus court proceedings results
- Non-disclosure agreements
 - Institution cannot require victim to sign non-disclosure agreement
- Identity of victim and perpetrator
 - Prohibits personally identifiable information from being included in institution's disclosure of crime statistics



Points of Difference: Policy Name



- VAWA Amendments will require either three separate policies for DV, SA and Stalking or the entire policy will be broadly named
 - i.e. Gender Based Misconduct

Intersections and Questions



Conference on the Intersections






Intersections in Compliance:
Exploring Title IX & the Clery Act
October 13-14, 2014 | Philadelphia, PA




- Philadelphia, PA – October 13-14, 2014
- Two-day Conference- Intersections in Compliance

<http://clerycenter.org/event/2014-10-13-000000-2014-10-14-000000/intersections-compliance-two-day-conference-title-ix-and>



Resources



VRLC, *Know Your Rights: Understanding Title IX for Campus Sexual Violence Victims*, available at: <http://victimrights.org/sites/default/files/VRLC%20Know%20Your%20Rights-%20Title%20IX%20.pdf>

January 2001, Office for Civil Rights Guidance, available at: <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>

April 2011, Dear Colleague letter, available at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

April 2014, Questions and Answers on Title IX and Sexual Violence, available at: <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

Nancy Chi Cantalupo, *Campus Violence: Understanding the Extraordinary Through the Ordinary*, 35 J.C. & U.L. 613-690 (2009).

Nancy Chi Cantalupo, *Burying Our Heads in the Sand: Lack of Knowledge, Knowledge Avoidance, and the Persistent Problem of Campus Peer Sexual Assault*, 43 Loy. U. Chi. L.J. 205 (2011).



Resources



- National Campus Safety Awareness Month (Free)

<http://clerycenter.org/national-campus-safety-awareness-month>
