



Policy Synergy: Title IX & the Clery Act

May 22, 2024

Our Mission: Working together with college & university communities to create safer campuses.

Our Values:
Expertise • Mission-driven
Collaborative • Authentic
Inclusive • Innovative



What We Do:

- Education & Training
- Membership
- Policy Advocacy
- Initiatives:
Free topic-specific resources

Welcome & Introduction

Training
Presenters:

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Learning Objectives:

- Understand the relationship between annual security report policy statements and institutional policy.
- Identify the distinctions between statute, regulation, and guidance.
- Analyze the dating and domestic violence, sexual assault, and stalking response and disciplinary procedures requirements under the Clery Act and Title IX.
- Apply the understanding of federal requirements to the development of institutional policy.

Title IX Overview

Who:	Employees with authority to institute corrective measures or have responsibility for administrative leadership, teaching, or advising that are not confidential employees
Where:	Education programs or activities in the United States
What and How:	Federal civil rights law prohibiting discrimination on the basis of sex in any education program or activity receiving Federal financial assistance. Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

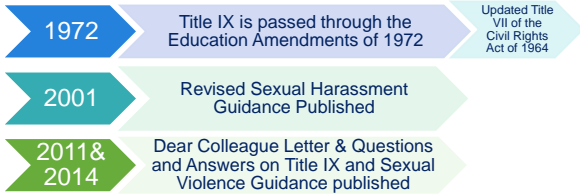
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Title IX Overview *(continued)*

What and How: <i>(continued)</i>	A recipient of federal funds with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively. In response to a complaint, the recipient must initiate grievance procedures.
Enforcement:	U.S. Department of Education (ED) Office of Civil Rights

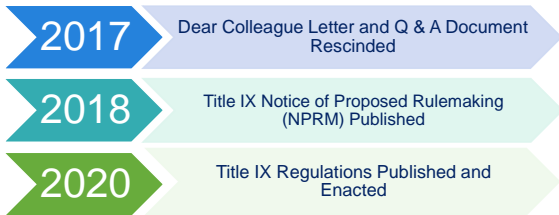
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Title IX Timeline Highlights



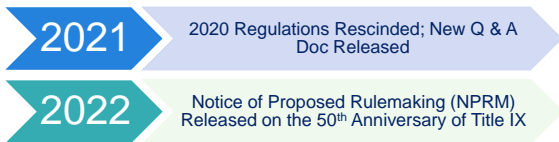
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Title IX Timeline Highlights



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Title IX Timeline Highlights



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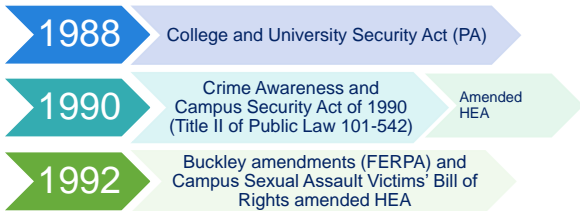
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Clery Act Overview

Who:	Campus security authorities (CSAs) and local law enforcement
Where:	Clery Act geography
What and How:	<p>Annual</p> <ul style="list-style-type: none"> Annual security report (statistics, policy statements) Statistics to Department of Education <p>Ongoing</p> <ul style="list-style-type: none"> Disclosures (timely warnings, emergency notification, daily crime log) Rights and options for victims of dating violence, domestic violence, sexual assault, and stalking
Enforcement:	U.S. Department of Education (ED) Clery Compliance Group

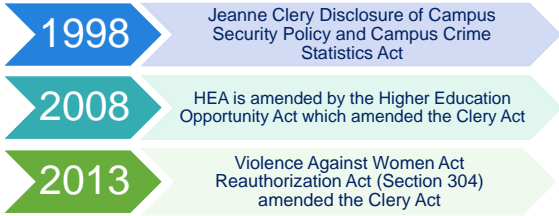
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Clery Act Timeline



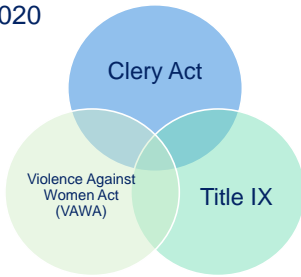
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Clery Act Timeline



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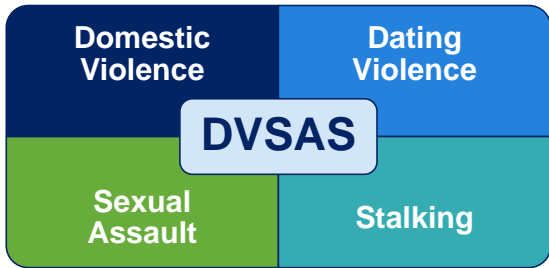
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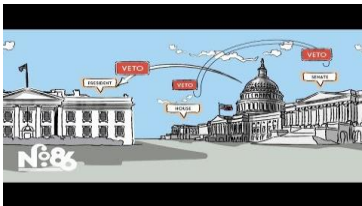
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PART I:
Statute vs. Regulation vs. Guidance

Statute vs. Regulations



<https://www.youtube.com/watch?v=hDy25BfGTjQ>

Terms Explained

Law: Principles and rules governing the affairs or behavior of society or a community. Often passed by the dominant socio-economic, ethnic group in an area.

*May have underlying bias or promote inequity

Statute: A written law passed by a legislative body

Regulations: Official rules made by an agency responsible for enforcing a law

Terms Explained

Guidance: Administrative guidance is non-binding advice given by an administrative agency to the public regarding how best to comply with a law.

Policy: Guiding principles that dictate the parameters for how your institution interprets and implements regulations, laws, or a course of action.

- May be informed by the institution's culture, goals, mission, size, location, or other factors.

Procedures: How policies are carried out by responsible divisions, departments, or offices. Where policy often serves as the "Why," procedures serve as the "How".

TITLE IX

- Title IX of the Education Amendments of 1972 federal **statute** codified at [20 U.S.C. §1681 – 1688](#)
- Implementing **regulations** in the U.S. Code of Federal Regulations at [34 C.F. R. Part 106](#)
- **Guidance:** Nothing official yet but OCR released fact sheets and a sample policy as resources

The Clery Act

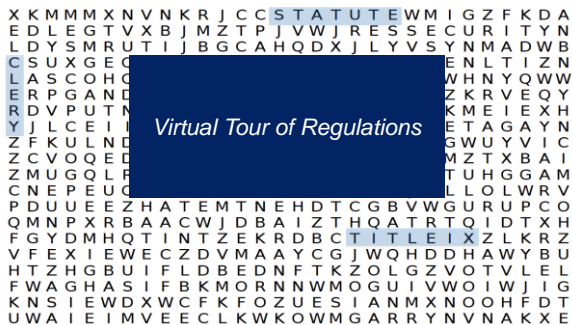
- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) federal **statute** codified at [20 U.S.C. § 1092](#)
- With implementing **regulations** in the U.S. Code of Federal Regulations at [34 C.F.R. 668.46](#)
- **Guidance:** Currently the Clery Act Appendix for the Federal Student Aid Handbook; formerly the Handbook for Campus Safety and Security Reporting

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Intent of Guidance

- Departmental interpretation to assist with implementation
- Used by Department program reviewers responsible for evaluating compliance
- Statute and regulations take precedence if there are any differences between them and guidance
- Institutions are never found out of compliance for not adhering to actions only found in guidance

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Large Group Activity: Seek and Find

Using the regs find answers to the following questions:

- Does the Clery Act dating violence definition include emotional or psychological abuse?
 Yes No
- What explanation did you find to support your answer?
- Does the Clery Act define what is meant by business day?
 Yes No
- If yes, what does does it say?

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Large Group Activity: Seek and Find

Using the regs find answers to the following questions

- Does Title IX define sex-based harassment?
 Yes No
- What explanation did you find to support your answer?
- Does Title IX require a certain standard of proof or evidence for grievance procedures?
 Yes No
- What explanation did you find to support your answer?

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PART II:

Response & Disciplinary
Procedures Requirements

Clery Act and Title IX Intersections

The Clery Act	Title IX
<ul style="list-style-type: none"> • Geography • Prohibited Conduct • Reporting Requirements • Accommodations • Disciplinary procedures 	<ul style="list-style-type: none"> • Scope/Jurisdiction • Prohibited Conduct • Reporting Requirements • Supportive measures • Grievance procedures

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Clery Geography vs. Title IX Application

The Clery Act	Title IX
<ul style="list-style-type: none"> • Geography, for classifying statistics, broken down into 4 categories: <ul style="list-style-type: none"> ○ On-campus ○ On-campus student housing ○ Noncampus ○ Public property • Expands for response to DVSAS to "on and off campus" 	<ul style="list-style-type: none"> • Bound by "educational programs and activities" <ul style="list-style-type: none"> ○ Includes properties owned or controlled by recognized student organizations ○ Includes conduct that is subject to an institution's "disciplinary authority"

Exceptions to Geography & Application

The Clery Act	Title IX
<ul style="list-style-type: none"> • Requires institutions to provide written explanation of rights and options to students and employees whether the offense occurred on or off campus • Off campus is broader and not the same as noncampus 	<ul style="list-style-type: none"> • Obligated to address sex-based hostile environment harassment under its education program or activity, even when some conduct ... occurred outside the recipient's education program or activity or outside the United States.

Prohibited Conduct

The Clery Act

- Criminal Offenses
 - **Sex Offenses**
- Hate Crimes
- Arrests & Referrals
- VAWA Crimes
 - **Dating Violence**
 - **Domestic Violence**
 - **Stalking**

Title IX

- Discrimination on the basis of Sex (including pregnancy, sexual orientation & gender identity)
- Sex-based harassment
 - Quid Pro Quo
 - Hostile Environment
 - **Specific Offenses**

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Differences in Definitions: Sexual Assault

The Clery Act

- Sexual assault is **reported** in four categories:
 - Rape
 - Fondling
 - Incest
 - Statutory Rape

Title IX

- Sexual Assault is **defined** under 6 forcible and non-forcible sex offenses:
 - Rape
 - Sodomy
 - Sexual Assault w/ an object
 - Fondling
 - Incest
 - Statutory Rape

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Differences in Definitions: Domestic Violence

Clery Act

- “A felony or misdemeanor crime **of violence**...”

Title IX

- “A felony or misdemeanor crime....”

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The definitions of dating violence and stalking in Title IX are the same as within the Clery Act regulations

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Under the Clery Act a crime is "reported" when it is brought to the attention of a campus security authority, the institution's police department or campus safety office, or local law enforcement personnel by a victim, witness, other third party or even the offender.

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What is considered a report to the institution under Title IX?

- A non-confidential employee notifying the Title IX Coordinator of sex-based harassment

Reporting

The Clery Act	Title IX
<ul style="list-style-type: none">• Brought to the attention of:<ul style="list-style-type: none">◦ Campus Law Enforcement/ Security◦ Local Law Enforcement◦ Campus Security Authority• May come from:<ul style="list-style-type: none">◦ Victim, Witness, Offender, or Third Party	<ul style="list-style-type: none">• Non-confidential employee who:<ul style="list-style-type: none">◦ has institutional authority to institute corrective measures; or◦ responsibilities in administrative leadership, teaching, or advisingmust report to Title IX Coordinator

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Reporting Under Title IX

All other employees who are not confidential must either:

- Notify the Title IX Coordinator when they have information about conduct that may reasonably constitute sex discrimination; or
- Provide the contact information of the Title IX Coordinator and information about how to make a complaint.

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Confidential Employees Under Title IX

- An employee with recognized privilege or confidential under State or Federal law.
- An employee who is designated as confidential by the institution
 - Must be for the purpose of providing services to persons related to sex discrimination
 - Only when functioning in that role
- An employee conducting an Institutional Review Board-approved human-subjects research study
 - Only applies to information received from the study

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Initial Response to a Report of DVSA

The Clery Act

- Provide written information on procedures to follow:
 - importance of preserving evidence,
 - reporting options,
 - confidentiality assurances
 - accommodations
 - disciplinary procedures

Title IX

- Treat the parties equitably
- Offer and coordinate supportive measures for the complainant
- Notify the complainant of grievance procedures and informal resolution process (and respondent if a complaint is made)
- Initiate grievance procedures in response to a complaint or determine whether the institution should initiate a complaint

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Complaint Under Title IX

- A complaint means an oral or written request to the institution that objectively can be understood as a request for the institution to investigate and make a determination about alleged discrimination under Title IX or this part.

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Procedures Victims Should Follow in Cases of DVSA



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Procedures to Follow: Preserving Evidence

Importance of Preserving Evidence

- **Proof in a criminal or campus disciplinary proceeding**
- **May be helpful in obtaining a protection order**
- Knowledgeable of what may be preserved and for how long
- Recent/fresh complaints
- Basic preservation instructions/tips

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Procedures to Follow: Reporting Options



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Procedures to Follow: Reporting Options (Cont'd.)

Involvement of law enforcement and campus authorities, including notification of the victim's option to:

- **Notify** proper law enforcement authorities, including on-campus and local police
- **Be assisted** in notifying law enforcement authorities if victim so chooses
- **Decline** to notify authorities
- **Rights of victim and institution's responsibilities** for orders of protection, no contact orders, restraining orders, or similar lawful orders issued by criminal, civil, or tribal court or by the institution

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Procedures to Follow: Confidentiality

Information about how the institution will protect the confidentiality of victims and other necessary parties

- Publicly available record-keeping (ex: timely warnings, daily crime log)
- Without the inclusion of personally identifying information about the victim
- **Any accommodations or protective measures provided to the victim (to the extent it will not impair institution's ability to provide them)**

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Accommodations and Supportive 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**
- Individualized measures offered as appropriate
 - As reasonably available
 - Without unreasonably burdening a complainant or respondent
 - Not for punitive or disciplinary reasons
 - Without fee or charge to the complainant or respondent

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Written Information vs. Written Explanation of Rights & Options

- To Students & Employees**
- Notification of on- and off- campus services
 - Counseling
 - Health
 - Mental Health
 - Victim Advocacy
 - Legal assistance
 - Visa and immigration assistance
 - Student financial aid
 - Other services available for victims

- To Victims After a Report**
- Accommodations
 - Rights & options

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WRITTEN NOTIFICATION

Guide to Creating a Written Notification

- Use this resource to carefully assess processes and consider how a network of people, offices, and activities all come together to support survivors
- Look at this guidance, as well as other samples from other colleges and universities as you create your own

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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 written notification of results

Title IX

- Prompt and equitable
- Regulations inform standard of evidence
- Training requirements
- Advisor of choice (may have role in cross-examination)
- Simultaneous written 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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Informal Resolution

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How to File a Disciplinary Complaint

The Clery Act

- Communicate how to file a disciplinary complaint
- If processes or contacts vary based on type of proceedings, make sure to include all relevant procedures
- Ex: contact information, forms, links, etc.

Title IX

- *Under new regulations:*
 - A complaint means an oral or written request to the institution that objectively can be understood as a request for the institution to investigate and make a determination about alleged discrimination under Title IX or this part.

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How The Institution Determines Which Type of Proceeding to Use

Under the Clery Act, your policy has to be clear on how the institution determines which proceedings apply under what circumstances

Questions to Consider:

What is the jurisdiction of your policy?

- Does it extend to incidents that occur off-campus? Now that Title IX accounts for behaviors that constitute sex harassment that occurred, in part, outside of the United States or education programs or activities if they result in a hostile environment on campus, will you move back to a single set of procedures?
- If so, do you use the same proceedings or are there different proceedings?
- Does the identity of the respondent influence which type of proceeding the institution uses?

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Standard of Evidence

The Clery Act

- Must describe the standard of evidence that will be used

Title IX

- Use preponderance of the evidence standard *unless* the institution uses the clear and convincing standard of proof in all other comparable proceedings

Sanctions and 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

Provide that Proceedings Will

The Clery Act

- Include a prompt, fair, and impartial process from the initial investigation to the final result

Title IX

- Be adequate, reliable and impartial

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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

- Must provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney
- If live hearing, policy may require advisor to conduct questioning
- If so, and no advisor, institution must provide one to conduct cross-examination

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

Title IX

- Must train all investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or terminate supportive measures on
 - Title IX requirements
 - Grievance procedures
 - How to serve impartially
 - Meaning and application of the term "relevant" in relation to questions and evidence

Officials Who Conduct Disciplinary Proceedings

under Clery likely include:

- o Investigators;
- o Decisionmakers;
- o Persons involved with grievance procedures;
- o Persons involved with informal resolutions;
- o Title IX Coordinators

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Training Under Title IX

All Employees	Investigators/Decisionmakers
<ul style="list-style-type: none">• The obligation of the institution to address sex discrimination• The scope of conduct that constitutes sex discrimination, including the definition of sexual harassment• Their notification and info providing requirements	<ul style="list-style-type: none">• Training for all employees; as well as training on:<ul style="list-style-type: none">• The institution's obligations to respond to reports of sexual harassment• Grievance procedures• Impartiality and avoiding bias• Appropriate terms and application of evidence

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Training Under Title IX

Resolution Facilitators	Title IX Coordinators
<ul style="list-style-type: none">• Training for all employees as well as training on:<ul style="list-style-type: none">• Rules and practices of the institution's informal resolution practices• Impartiality and avoiding bias	<ul style="list-style-type: none">• Training for all previous categories as well as:<ul style="list-style-type: none">• Specific responsibilities of Title IX Coordinators• The institution's recordkeeping system• any other necessary training to coordinate compliance with Title IX

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Training materials must be available upon request for inspection by members of the public

Other Possible Training Components

- Effects of trauma
- Cultural responsiveness training
- Any others to highlight here?

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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

Let's Check In

- Provision of response procedures in writing?
 - To students who report they are a victim?
 - To employees who report they are a victim?
- Provision of disciplinary procedures in writing?
 - To student complainants?
 - To employee complainants?

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PART III: Policy Analysis

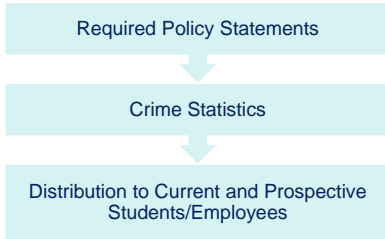
Annual Security Report

The institution's annual security report includes policy statements of an institution's campus safety and security policies (including domestic violence, dating violence, sexual assault, and stalking policies)



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Annual Security Report Overview

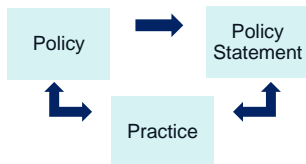


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ASR: Things to Remember

- Summary of current, existing policies and procedures as well as three previous calendar years of Clery crime statistics
- Creation of ASR ensures policies and processes are in place
- “Say what you do; do what you say.”
- Ask: “Who is at the table?” “Is it a useful document?”

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Clery Act Policy Statement Requirements for DVSAS

- Requires a description of all procedures used to address cases of DVSAS
- All required policy statement elements must be in place for all proceedings used to address cases of DVSAS

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Policies as They Exist Right Now

- Currently, campuses may have in place multiple policies and procedures to address DVSAS
 - One that captures all Title IX requirements
 - One or more that address DVSAS that fell outside of the jurisdiction of Title IX (outside of education programs or activities in the U.S.) in order to avoid subjecting individuals to a live hearing with cross-examination

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As a Result...

- Campuses had to describe multiple disciplinary proceedings within their ASRs in order to represent all the different procedures that take place and meet Clery requirements

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Title IX 2024 Regulations Impact On Policy Structure

- Could keep as is
- Could revert to a one policy and two or more processes model
- Could revert to one policy as the broadened scope of IX allows more easily for one policy to guide all procedures
- Could keep procedures separate based on the identity of the parties involved

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Regardless...

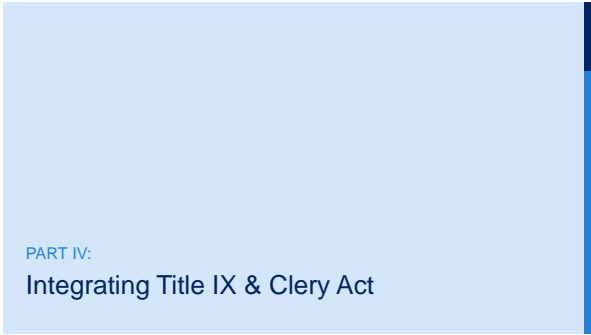
- Campuses still have to ensure all disciplinary proceedings used to address student and employee instances of dating violence, domestic violence, sexual assault, and stalking include all of the Clery Act requirements we've reviewed today
- ASR policy statements about disciplinary procedures have to represent all procedures used to address those four crimes

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This. Is. (Still). Hard.

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On Top of All This

- Clery-required response and prevention programming requirements could be incorporated - OR -
- Separate policies could exist for just prevention, just response, or prevention and response

Benefits/Drawbacks of Policy Structures

- + One overall Title IX policy and one overall non-Title IX policy streamlines practices
- Administering two policies can be difficult to manage and also explain to the campus community

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Benefits/Drawbacks of Policy Structures

- + Having separate student and employee Title IX and non-Title IX policies allows for the most intentional development and application of strategies that apply to each type of situation and role
- Administering four policies can be difficult to manage and also explain to the campus community

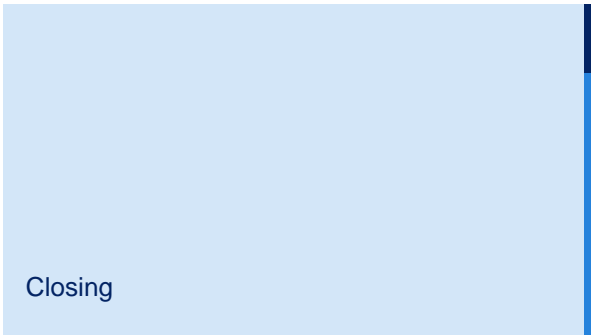
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Best Practices for Policy Creation

- Remember that each of the Clery requirements must be in place for each and every policy that guides procedures for disciplinary action for DVSAS cases
- Ensure that the policy and resulting policy statement in an ASR accounts for each of these elements
- Consider utilizing visuals like charts or infographics to show the relationship between policies or to demonstrate the qualities each policy has or shares
- Focus on creating the most equitable procedures and the most clear, streamlined descriptions of those procedures

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Become a Member!

Clery Center offers two Membership tiers, each providing resources, strategies, and unparalleled expertise to support you in understanding and implementing the provisions of the Clery Act.

Institutional

- ASR review
- Free training
- In-depth compliance calls
- CSA training video
- Welcome kit
- All Individual Membership benefits
- and more!

Individual

- Unlimited technical assistance & support
- Discounted training
- Member Portal access
- Exclusive Member resources
- Member-only webinars
- and more!

Learn more at clerycenter.org/membership

Clery Center Institutional Membership Can Help With Common Compliance Challenges



Clery Center *Training On Request* Options



Learn more: clerycenter.org/on-demand-training

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