

Understanding the Clery Act, VAWA, and Title IX

**Foundational Campus Safety,
Civil Rights, and Compliance
Concepts for Career Institutions
of Higher Education**



Disclaimer

This presentation includes discussion of violent crime and related topics that may be disturbing for some audience members. This session is intended to provide general information about the Clery Act, Title IX, and other related laws. It does not represent a complete recitation of the applicable law or government policies and is for discussion purposes only.

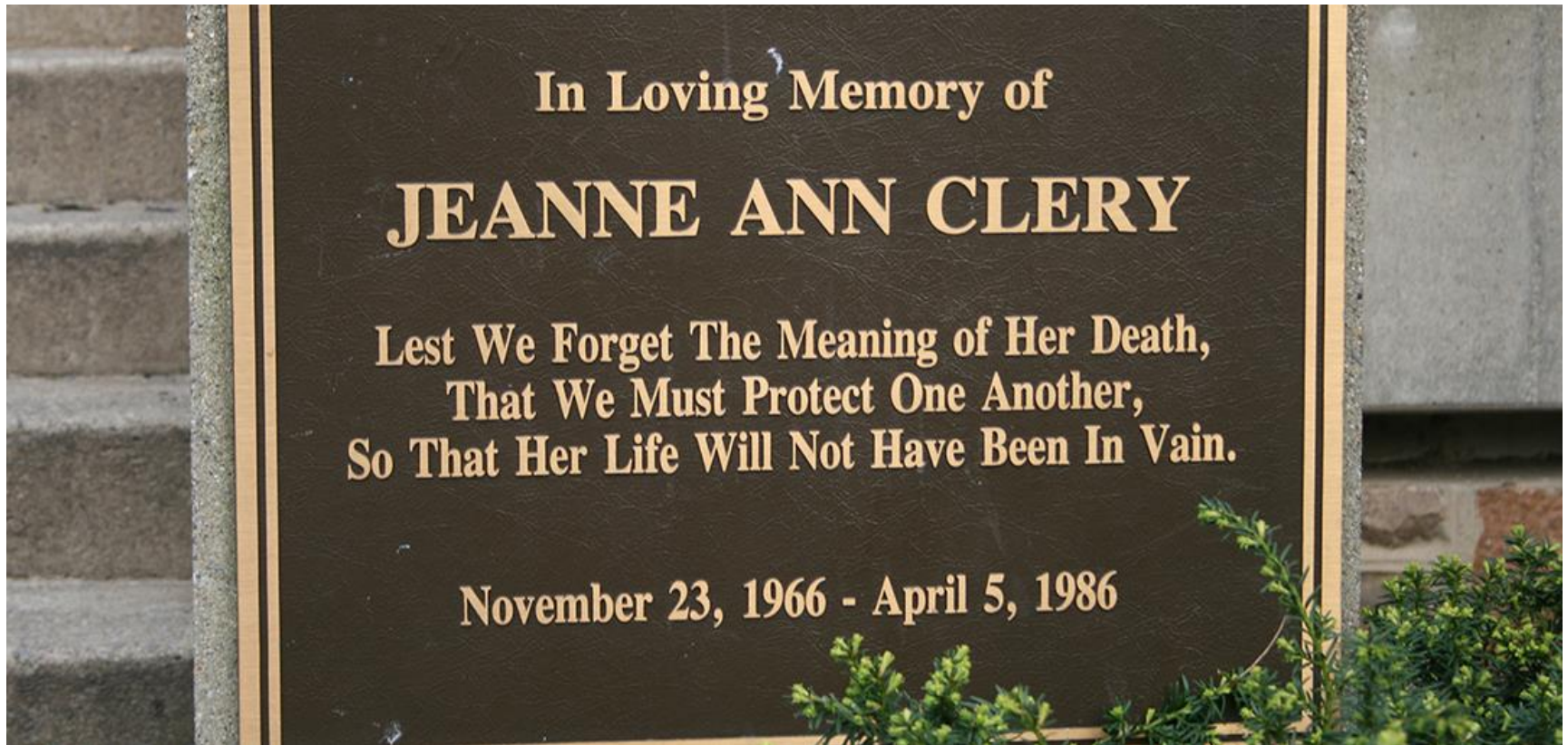
This presentation is intended exclusively for MAACS-affiliated personnel, registered attendees. And invited guests. This material must not be used for any other purpose. Actual compliance determinations must be made only after a careful analysis of specific facts on a case-by-case basis. Comments made during this presentation are for instructional and illustrative purposes only and are not intended for attribution or publication.

Quotable Quotes

**“It Ain’t What You Don’t Know That Gets You Into
Trouble. It’s What You Know for Certain That Just Ain’t
Necessarily So.”**

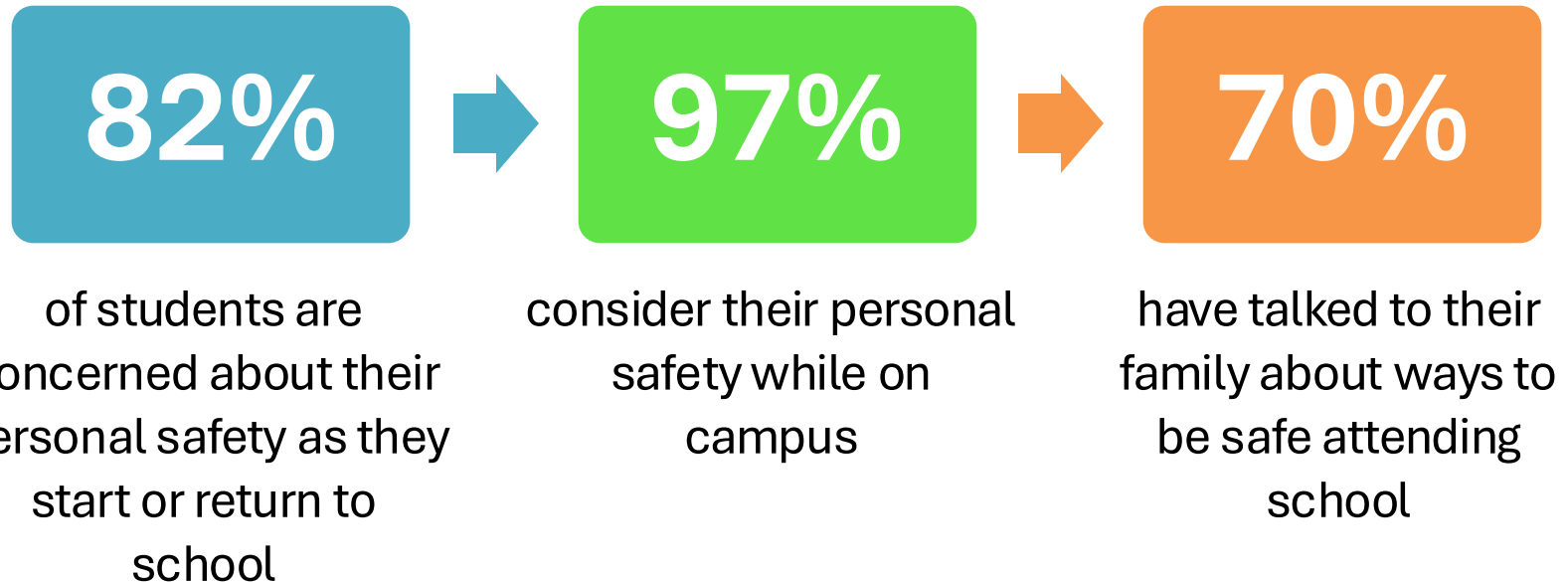
Walt Whitman

How It All Started



What Students Are Telling Us

- Student perceptions – College Safety Survey conducted by Clery Center and ADT





74%

- said they tend to initially trust their institution to properly respond to incidents in most cases

Primary Learning Objectives

At the end of this session, you should understand:

- the basic requirements of the Clery Act focusing on the VAWA provisions
- the basic requirements of Title IX
- the “Incorporation” of VAWA & Title IX
- How to develop & implement institutional policies
- How to implement effective prevention and awareness programming
- Ensure fair, prompt, & impartial investigations and adjudication processes for students and employees

Strategies for Success (and Risk Avoidance)

- Think People, Not Paper
- Understand the current focus on Student Wellness - Anti-Hazing; Mental Health
- Beware of “special rules for special talents”
- Resolve complaints quickly and fairly
- Creating an environment that fosters a “Culture of Transparency”
- Understand the various elements of RISK facing your institution – Legal, Compliance, Oversight, Insurance, and Reputational, especially given the use of and reliance on social media by current, former, and prospective students

Good News/Bad News

VAWA & Title IX can present unique challenges for career schools and cosmetology schools in particular:

- You already wear many hats – Outsiders just don't understand
- Small but mighty teams in close quarters
- Everyone knows everyone else...and their business
- Potentially complex gender dynamics
- Students tend to be somewhat less socialized in navigating higher education and professional settings – High percentage of 1st generation postsecondary students
- Usually, no dedicated campus safety presence
- Usually, no full-time Title IX Coordinator – Use it or lose it

Good News/Bad News

- Manageable number of students at a time
- No residence halls, sports, or Greek life
- Fewer places and opportunities for offenses to occur
- Less infrastructure to address them when they do
- Less dedicated expertise (but should be knowledgeable on the school's own codes of conduct, policies, and procedures)
- Fewer options for granting accommodations, protective measures, and support services
- Remember, the Department has been clear and consistent that the rights of all students and employees are important regardless of the size, type, or location of a school
- It's just a "touchy" profession

“Do What You Do Well”

- If you receive a complaint, get mad and get over it
- Consider partnering with trusted experts
- Seek quality advice and follow it
- Insist on getting “value” from your professional advisors
- Stay involved but don’t get in the weeds
- Develop partnerships with local domestic violence and rape crisis centers, women and family shelters, and other family service organizations
- Gives you an option to provide immediate and ongoing service and support, including legal, medical, and counseling

Remember: “There is no money to be made in clarity.”

“Fair Warning”



Strongly recommend signage in facilities, especially clinical spaces, and statements in all student & employee publications that emphasize the organization’s commitment to the highest levels of legal compliance, individual respect, and personal safety and comfort for students, employees, and guests



Also recommend posting advisory notices or “warnings” about the details of any sensitive or highly personal services, such as waxing; etc.



Such notices can help to protect the institution against allegations of inappropriate touching or other violations of criminal law or civil rights standards

Foundational Principle #1: Enterprise Risk Management

Enterprise Risk Management (ERM) – A comprehensive integrated approach that helps organizations identify, assess, and manage potential risks **across an entire organization** to achieve strategic objectives and create, preserve, and realize tangible benefits and mitigate vulnerabilities. To achieve optimum effectiveness, ERM principles and practices must be **applied across an entity, not just within specific departments**, to proactively address potential events and incidents that could impact the realization of the institution's mission, vision, and values and other organizational goals

Foundational Principle #2:

Administrative Capability - Meeting the Mark

To participate in any Title IV program, an institution must demonstrate that it is capable of adequately administering the program under the standards established by the Secretary, including:

- employing “an adequate number of qualified persons”
- Ensuring that programs are administered with appropriate “checks and balances in a system of “internal controls”
- Implementing written procedures that document the responsibilities of institutional officials with respect to the “preparation and submission of reports to the Secretary”

Foundational Principle #3: Fiduciary Responsibility in Campus Safety

A fiduciary is a **person who is required to act for the benefit of another person**, and who **owes duties of good faith, trust, confidence, and candor**. It refers to someone **entrusted with duties on behalf of another, with the highest level of good faith, loyalty, and diligence**. A fiduciary duty is the obligation to act for someone else's benefit, **subordinating one's personal interests** to that of the other person

CURRENT LAW

The Clery Act campus safety and crime prevention provisions require all participating schools to:

- Classify crime reports and compile and disclose accurate crime statistics
- Publish and actively distribute an Annual Security Report (ASR) that contains all required statistical and policy disclosures (50+)
- Submit required crime statistics to ED
- Issue timely warnings and emergency notifications
- Maintain a Daily Crime Log
- Emergency evacuation and response procedures
- Housing: Missing person notifications and fire safety

Violence Against Women Reauthorization Act of 2013

- Requires expanded reporting for incidents of sexual assault, dating violence, domestic violence and stalking (including cyber stalking)
- Requires that the ASR include additional information about policies, procedures and training programs aimed at sexual assault prevention and response
- Expands accommodations and protective measures requirements
- Provide detailed information on Primary Prevention, Risk Reduction, and Bystander Intervention
- **Immediate notice of Rights and Options**

Clery-Reportable Crimes



- Crime is everywhere & Crime moves
- “Reported” means that an incident was brought to the attention of a campus security authority or to local law enforcement. An incident cannot be “unreported” but can be “unfounded” by law enforcement under certain conditions
- Hazing is a crime for Clery Act purposes
- Schools are required to request crime statistics from local law enforcement

Criminal Offenses

Primary Offenses

- Rape
- Fondling
- Statutory Rape
- Incest

VAWA Offenses

- Domestic Violence
- Dating Violence
- Stalking

Domestic Violence Defined

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim
- By a person with whom the victim shares a child in common
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

For the purposes of complying with the requirements of this section, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting

Dating Violence Defined

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim

- The existence of such a relationship shall be determined 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

For the purposes of this definition:

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
- Dating violence does not include acts covered under the definition of domestic violence

For the purposes of complying with the requirements of this section, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting

Stalking Defined

Stalking occurs when the offender engages in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress

For the purposes of this definition—

- **Course of conduct** means two or more acts, including, but not limited to, acts in 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
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

For the purposes of complying with the requirements of this section, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting

Campus Security Authorities



Any members of a campus law enforcement or public safety entity



Any individual who has responsibility for campus safety but is not part of a campus law enforcement or public safety entity (e.g., hall monitors, parking attendants)



An institutional official with significant responsibility for student and campus activities



Any other individual to whom students and employees are directed to report crimes

Most Common CSA Categories

**Campus Leadership and
Administrators**

**Residence Life Staff,
including RAs**

**Athletic Directors and
Coaches**

**Study-Aboard Program
and Foreign Campus
Administrators**

**Campus Law
Enforcement and Public
Safety Professionals**

**Student Life and Student
Organizations Staff,
including Student
Leaders**

**Title IX Coordinators
and Staff**

CSA Knowledge Check

01

How many CSAs does your school have?

Remember, every school has to have at least one!

02

How does your school notify CSAs of their reporting responsibilities?

03

What documentation does your school keep to show CSAs were notified of their duties?

04

Do CSAs at your school receive any training?

“CLERY GEOGRAPHY” Defined



CAMPUS I

Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and is used by the institution in direct support of, or in a manner related to, its educational purposes, including residence halls



CAMPUS II

Any building or property that is within or reasonably contiguous to the area identified above that is owned by the institution but is controlled by another person or entity, is frequently used by students, and supports institutional purposes (such as food or other retail vendor)

“CLERY GEOGRAPHY” Defined



NON-CAMPUS BUILDING OR PROPERTY

(Any building or property owned or controlled by a student organization that is officially recognized by the institution; or

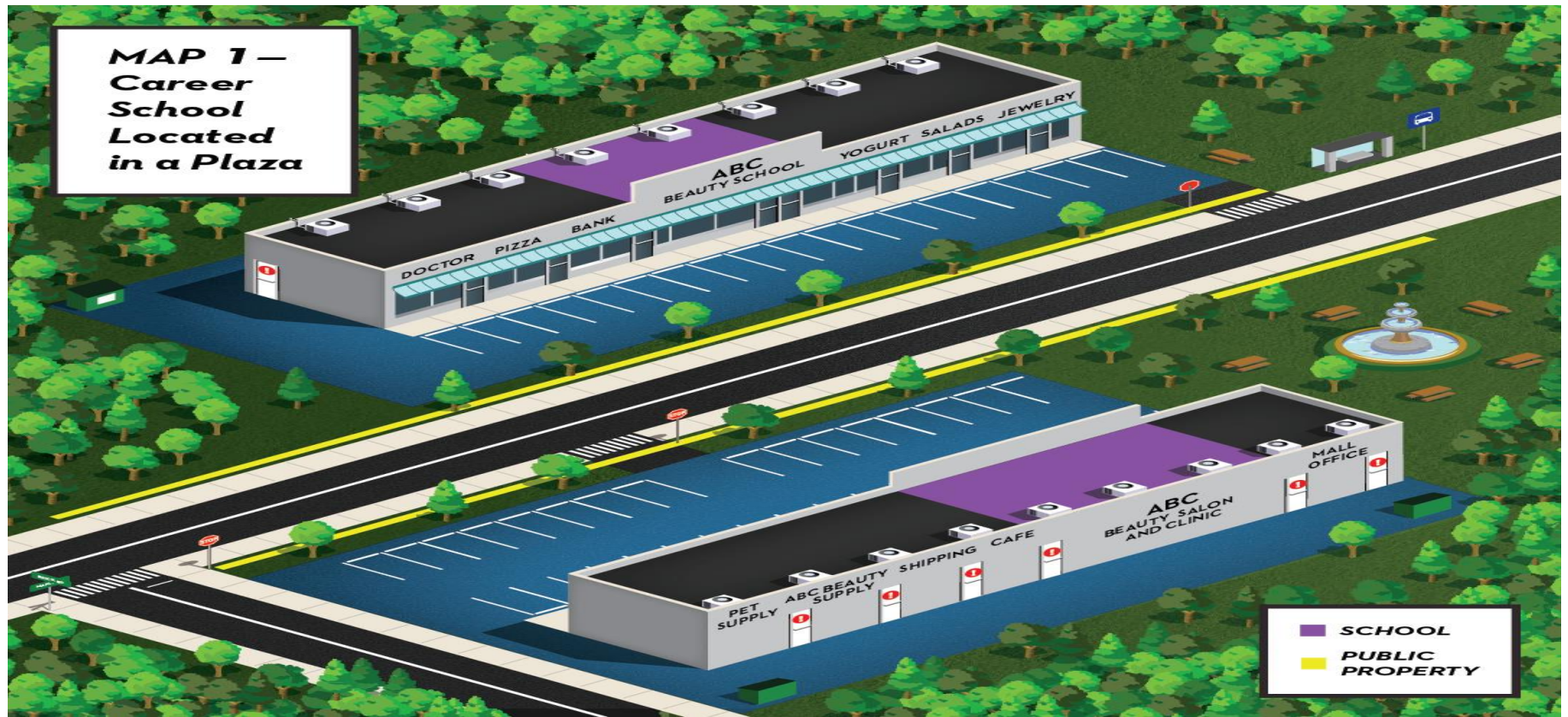
(Any building or property (other than a separate campus) owned or controlled by an institution that is used in direct support of, or in relation to, its educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area - “mobile” campuses and sea-faring vessels



PUBLIC PROPERTY

All public property including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to or accessible from the campus

Clery Geography Simplified



Time's Up/Me Too Era



Clery & The Violence Against Women Act

Key Provisions of VAWA 2013

- Enhanced rights and options for students and employees (reporting options, accommodations, protective measures, support services) - The Survivor's Brochure
- Fair, prompt, and impartial process
- Requires annual training for investigators and hearing officials (and external "experts")
- Reforms to Sexual Misconduct Proceeding process
- Description of all conduct systems for students and employees
- List of all possible sanctions (Example of a disclosure rule changing school behavior)
- Description of available resources and how to access them
- Explicit right to access relevant documents & timely notice of all meetings (including appeals)
- Advisor of choice – Do not overburden the process with NDAs or written agreements
- Equal opportunities to be heard, present evidence, and have others present
- Unconditional and simultaneous notice of outcomes reached and sanctions imposed

Violence Against Women Act

Supplements & enhances
the Campus Sexual Assault
Victim's Bill of Rights

Expanded reporting for
incidents of dating
violence, domestic
violence, and stalking
(including cyber-stalking)

Additional information
about policies, procedures,
and programs focused on
sexual assault prevention
and response

Awareness campaigns and
expanded training on
primary prevention, risk
reduction and bystander
intervention

**ED & Federal partners (not
schools) are primarily
responsible for Clery
action items in VAWA
2022**

VAWA Odds & Ends



Here, I am using the Department's slide to emphasize points made in ED trainings

Review your school's campus safety and crime prevention policies and procedures – Apply the “3-pronged test”

It's time to (finally) get into compliance with VAWA

- Understand the intersection of Title IX and the VAWA provisions of the Clery Act
- Elevate/Equalize Clery & Title IX
- Sync new policies and procedures with existing ones
- Give victims and witnesses multiple reporting options
- Make everyone aware of their rights and options (Survivor's Brochure)
- Accommodations, Protective Measures, Support Services
- Career schools need to leverage community partners to deliver services and protections
- Don't forget about accessibility – special needs
- Be on the lookout for regulatory changes that may affect Clery/Title IX compliance
- Don't think Domestic and Dating Violence cannot happen in career school settings

Key VAWA Findings

- University of Florida (2020) – UF violated the Clery Act when it changed the sexual misconduct policy that applied to open cases. Emphasized that an institution can only have one policy at a time and that policy is the INSTITUTION'S only applicable policy
- Arizona State University (2021) – ASU violated the Clery Act by not providing simultaneous written notification to both parties in a disciplinary case arising from an alleged act of sexual violence
- Salisbury University (2022) – SU violated the Clery Act by excluding a party in a case of alleged sexual violence from fully participating in all aspects of the appellate process. (Initial complaint to final result)
- Liberty University (2024) – Liberty violated the Clery Act and the VAWA provisions in particular as noted in a final investigative report that included 11 sustained findings. The settlement included fines and other expenditures of \$16 million

“A Little Light Reading”

- **“The Second Report of the White House Task Force to Protect Students from Sexual Assault”**

<https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Documents/1.4.17.VAW%20Event.TF%20Report.PDF>

“37 Words”

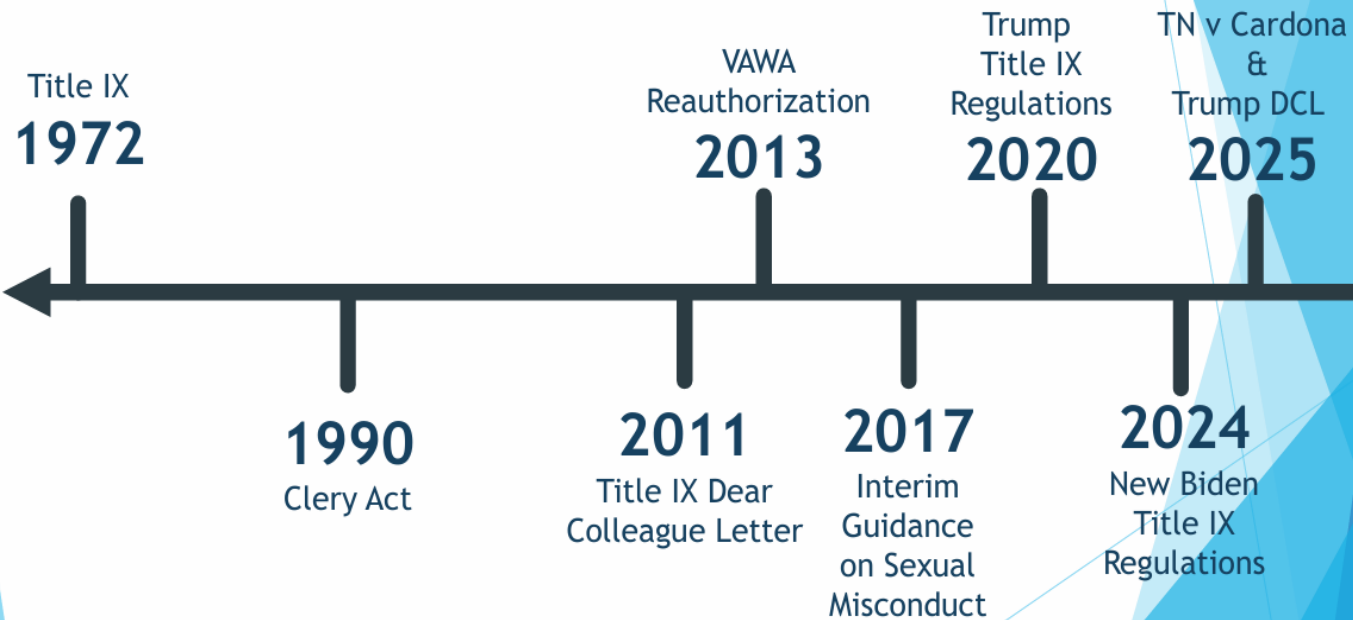
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Title IX Basics

- Prohibits sex-based discrimination in education
- Applies to all operations and people in the school
- Requires designation of a Title IX Coordinator
- Also protects against sexual harassment, sexual violence, and retaliation

Please be aware that ED OCR refers to schools as “recipients” in the Title IX regulations and guidance. I find that many career schools are confused by that usage because Title IV financial aid rules often refer to students as recipients. As such, I choose to use the more common term “schools” in this regard

Title IX Timeline



Title IX Today

- There is only ONE Title IX rule in place today.
- And that rule is the so-called “Trump Rule” implemented in 2020
- The so-called “Biden Rule” from 2024 was vacated and ultimately declared unconstitutional
- For all of the consternation, many provisions are generally consistent in intent but differ significantly in certain matters of emphasis, such as jurisdiction, and protection of respondents; etc.

What is an Education Program or Activity”

Education program or activity” includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs

- Conferences
- Hair shows or competitions
- Business meetings
- Recruitment events
- Other official activities – even Holiday parties

Title IX Coordinator

- Every school must have (at least one) “Title IX Coordinator”
- Dedicated professional is ideal, but may be an additional duty
- Preferably onsite, but not required – Corporate office
- Implements Title IX requirements and institutional policy and oversees compliance
- Education, training, and support
- Manages the intake and coordination of complaints
- Performs case management functions
- Possibly conducting investigations
- Implements corrective actions

Title IX Coordinator Information

Make it easy for every student and employee to know who serves as the Title IX Coordinator, the best way to make contact, and what steps to follow to file a complaint

- Schools must notify all applicants for admission and employment and all enrolled students and current employees of the Title IX Coordinator's name or title, office address, email address, and telephone number
- Make clear that any person may report sex discrimination, including sexual harassment, in person, by mail, by telephone, or by email, using the contact information provided in the policy disclosures
- Emphasize that a report may be filed at any time (including during no-business hours) by using the contact information provided in the policy disclosures

Responsible Employees

- A Responsible Employee is an institutional official with the authority to address acts of sexual discrimination, including sexual harassment and sexual violence
- Responsible Employees are required to report incidents to the Title IX Coordinator to ensure that all reported incidents are fully documented and addressed appropriately in accordance with Federal law and institutional policy
- This designation typically includes most administrators, faculty, and staff
- Also includes any official so designated by the institution as a person to whom such incidents are to be reported
- Also includes any official whom a student or other person reasonably believes has this authority or duty conferred upon them
- Does not include confidential source or medical practitioner
 - Promptly report to the Title IX Coordinator
 - Immediately inform a reporting party of their mandatory reporting obligation
 - Advise the individual about the availability of confidential resources both at the school and/or in the nearby community

“Actual Knowledge”

- **Biden Rule:** Schools were responsible for what they “knew or should have known” regarding sex discrimination in its educational programs or related events
- **Trump Rule:** A school must have “actual knowledge” of sexual discrimination in its educational program or related events in the United States
- **Trump Rule:** A school is deemed to be “deliberately indifferent” only if its response to sexual harassment is clearly unreasonable in light of the known circumstances

“Actual Knowledge”


Actual knowledge means notice of allegations of sexual discrimination or harassment was brought to the attention of the school’s Title IX Coordinator or another official of the school who has authority to institute corrective measures on behalf of the school - This standard is not met when the only official school with actual knowledge is the respondent

The Title IX Coordinator and officials with authority to institute corrective measures on behalf of the school may receive notice through an oral report of sexual harassment by a complainant or anyone else, a written report, through personal observation, media coverage, anonymous report, or various other means

Recommendation: Make it easy for students and employees report and make regular diligent and intentional inquiries to identify indications of sexual discrimination

A large red circle on the left side of the slide, partially cut off by the edge.

Sexual Harassment Defined

- The Trump rule defines Sexual Harassment as 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 school's education program or activity
 - Includes "Quid Pro Quo" sexual harassment
 - Notice the absence of the phrase, "hostile environment" in this definition
- 
- Several short, curved purple lines of varying lengths and orientations in the bottom right corner of the slide.

Burden of Proof

You have a choice on the standard of evidence that will be applied in disciplinary proceedings:

- Preponderance of the Evidence - 50.1%
- Clear and Convincing – Higher standard than Preponderance but not “beyond a reasonable doubt” standard used in criminal cases
- Please take some friendly advice – Use the preponderance standard

Other Considerations

- Any sexual misconduct directed at a student by an employee will almost always meet the definition of sexual harassment even if the offending conduct occurs away from school property
- Title IX applies to all academic, educational, extra curricular, athletic, and other programs of the school, whether they take place on school property, during travel or regular transit, and even at events and activities at another institution; etc.
- In the 21st Century educational environment, the “school” will likely be broadly construed to include the school’s computer systems, online networks, digital platforms and portals, and other computer hardware or software owned or operated by the institution

Consent & Relevance: Odd But True

- Title IX does not include an explicit definition of Consent
- Schools need to establish a definition of Consent in their policies
- At minimum, the definition should recognize that Consent is a voluntary agreement to engage in sexual activity
- Incapacitation makes Consent impossible
- Prior Consent does not imply future consent
- Silence or an absence of resistance does not imply Consent
- Consent to engage in sexual activity with one person does not imply Consent to engage in sexual activity with another
- Consent can be withdrawn at any time
- No explicit definition of Relevance – Factors to consider - Some other time, some other place, Rape Shield laws, Rumor, Innuendo, False or misleading impressions
- Understand trauma response: Victims may not act as expected following an incident
- Questions and evidence about the complainant's sexual conduct are not relevant, unless such questions and evidence are offered solely to prove that someone other than the respondent committed the offense or to prove prior sexual relations with respondent, if relevant

The Title IX Process

Overview of Formal Investigative Process



THE COLLEGE OF NEW JERSEY
OFFICE OF TITLE IX
& SEXUAL MISCONDUCT

Step 1:

Formal Complaint

Formal Complaint signed by the Reporter or the Title IX Coordinator.

Step 2:

Notice of Allegations

Notice sent to both Reporter & Respondent with sufficient time and detail for parties to prepare for an initial interview and adequately respond.

Step 3:

Investigation

Thorough search for relevant facts/evidence. Involves interviewing both parties to gather relevant information/documentation regarding the allegations & identify relevant witnesses. Anyone interviewed has the chance to review/request edits to their documented statement to ensure its accuracy & completeness.

Step 4:

Compilation of Preliminary Report

Investigator(s) compile a preliminary report which includes, as applicable, statements from both parties, witnesses, & a summary of any other information/documentation obtained. Any evidence shared that is directly related to the allegations, but not relevant, is included in a separate document.

Step 5:

Evidence Review & Response

Parties & their Advisor receive access to the **preliminary** report & all evidence directly related to the allegations obtained during the investigation & have 10-days to inspect the information and submit a written response.

Step 6:

Finalize Investigative Report

Investigator(s) will shift evidence between the investigation report & directly related evidence document based on party feedback & as appropriate, pursue any other necessary investigative steps, & issue a final investigation report, which fairly summarizes all relevant information received throughout the investigation.

Step 7:

Evidence Review & Response

Parties & their Advisor receive access to the **final** report & all evidence directly related to the allegations obtained during the investigation & have 10-days to inspect the information and submit a written response.

Step 8:

Finalizing & Sharing of Report

Investigator(s) will consider the parties' responses and will revise the investigation report and/or directly related evidence document as needed. The finalized investigation report & the directly related evidence document is then shared with both parties, their Advisors, & the Hearing Administrator (if applicable).

For more information, contact the Office of Title IX & Sexual Misconduct:



titleix.tcnj.edu



titleix@tcnj.edu



(609) 771-3112



@tcnj_titleix

Dismissals – Tread Lightly (and Carefully)

The school should only dismiss a complaint if:

- the conduct alleged would not constitute sexual discrimination under Title IX, even if proved
- The conduct did not occur at the school or during a related activity
- Did not occur in the United States
- if complainant withdraws the complaint
- if the respondent is no longer enrolled or employed by the school
- There is insignificant evidence to reach a determination as to the formal complaint or allegations therein

Investigations and Adjudication

If the case cannot be dismissed and is to go forward:

- Appoint a competent, neutral, and detached person to conduct the investigation
- Require the investigator to produce a detailed and fully documented investigative report of the findings of fact – avoid conclusions
- Permit the parties to review and comment on the draft report
- Appoint a competent hearing official: Single Adjudicator or Hearing Panel
- The decisionmaker cannot be the same person as the Title IX Coordinator or the investigator
- Ensure that the process provides for a clear documentation of all key phases of the process, including a statement of the alleged infractions, a detailed description of the procedural steps used to investigate and adjudicate, a clear recitation of the findings of fact and the evidence that supports the determination, the conclusions resulting from the application of the school's codes of conduct to the facts, a detailed rationale for the result, and information on the appeal rights of the parties

Appeals

Schools must offer both parties an opportunity to appeal a determination regarding findings of responsibility, if one of the following conditions is met: 1) procedural error, 2) new evidence, or 3) a known conflict of interest on the part of any official with a significant role in the case

Major Cases: Davis v. Monroe County Board of Education (1999)

One of the most important Title IX cases on key matters including the deliberate indifference standard and institutional liability

- Supreme Court held schools are liable for student-on-student harassment if they are deliberately indifferent after becoming aware of the conduct
- Established the 'deliberate indifference' and 'substantial control' standards
- Further established that harassment must be severe, pervasive, and objectively offensive

Major Cases: Doe v. University of Cincinnati (6th Cir. 2017)

This case helped to shape the 2020 Trump Rule and its focus on protecting Respondent's rights

- The court found that the school violated due process requirements by suspending a student without a hearing
- Reinforced requirement for a fair hearing in cases of disputed credibility
- Established a foundational due process precedent later expanded in Doe v. Baum

Major Cases: Doe v. Baum (6th Cir. 2018)

This case added additional process to Title IX proceedings thereby continuing the gradual transformation of an institutional conduct process into more of a quasi-legal process

- Sixth Circuit ruled schools must permit some form of cross-examination anytime issues of credibility is central to the case
- Required live hearings in certain Title IX cases
- Very influential to the formation of the 2020 Title IX regulations

Major Cases: Haidak v. University of Massachusetts-Amherst (1st Cir. 2019)

In this pivotal case, the Court determined that the school's Title IX processes were fair and reasonable and that both parties were treated fairly

- Has become a model for schools to evaluate the relative fairness of their own policies, procedures, and processes
- Reaffirmed institutions must provide procedural parity for both parties
- Reinforced the need for fair notice and opportunity to respond

Major Cases: Doe v. University of the Sciences (3rd Cir. 2020)

Of particular importance to career institutions, this case established that private schools are (essentially) required to develop and implement policies, procedures, and practice that will assure a fair process, just like any other school

- Emphasized that fairness obligations apply even to private institutions
- Noted that any failure to do so make constitute a breach of contract
- Reaffirmed that cross-examination (or meaningful questioning) is part of that fairness

Major Cases: Hall v. Millersville University (3rd Cir. 2022)

In this case, the Court reaffirmed that schools can be held liable for dangerous conduct, criminal or otherwise, by non-affiliated persons

- A school may be potentially liable for criminal offenses or conduct violations by a non-student guest because of deliberate indifference
- Clarified that 'substantial control' can extend to non-students and campus guests
- Expands understanding of who may be a 'harasser' under Title IX

Major Cases: Cummings v. Premier Rehab Keller (U.S. Sup. Ct. 2022)

This case significantly limited the ability of some complainants to recover money damages under Title IX, reinforcing the point that the financial consequences of noncompliance can be more severe under Clery than Title IX in some cases

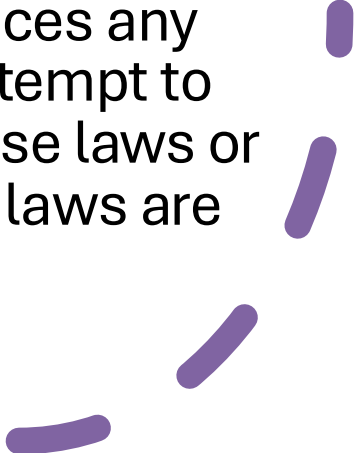
- Established that damages based on emotional distress are not available under Spending Clause laws (including Title IX)
- Limited monetary exposure for Title IX claims
- Complainants may continue to seek injunctive and declaratory relief

“No Fear”

The Clery Act and Title IX prohibit all acts of retaliation

An institution, or an officer, employee, or agent of an institution, may not retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities

All schools should take intentional steps to ensure that no one experiences any form of retaliation due to an attempt to vindicate their rights under these laws or any effort to ensure that these laws are properly followed or enforced



Fundamental Fairness

In the US, the entirety of our notion of fair process is embodied in the Federal Rule of Civil Procedure. While these processes are not legal proceedings, some adherence to basic standards of the right to notice and to hearing should be generally observed whenever possible.

- Right to Notice of Charges
- Right to Confront Accuser
- Right to Cross-Examine Witnesses
- Right to Examine Evidence and Witness Statements
- Right to be assisted by an Advisor of Choice
- Right to Timely Appeal

Any Questions???

Need more help?

Jim Moore

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(Ret.)**

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THANK YOU!

