



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

## NOTICE OF APPROVED USE

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

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





## **Virtual Clery Act Training Seminar (VCATS)**

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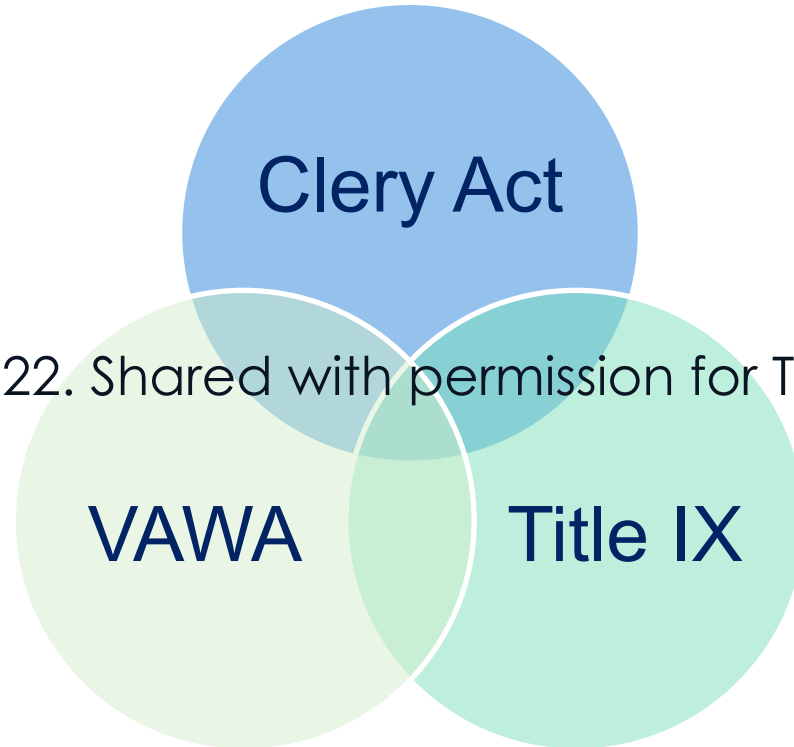
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## Intersections

All the requirements in this lesson are for dating violence, domestic violence, sexual assault, and stalking.

Sexual assault is an offense that meets the definition of rape, fondling, incest, or statutory rape.

AS OF MAY 2020



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# TITLE IX DEFINES SEXUAL HARASSMENT AS

- Conduct on the basis of sex that satisfies one or more of the following:
  - (1) An employee of the recipient (institution) conditioning the provision of aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
  - (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's (institution's) education program or activity;  
or....

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

# INTERSECTIONS BETWEEN THE CLERY ACT AND TITLE IX

## THE CLERY ACT

- Reporting requirements
- All Clery crimes\*
- Accommodations
- Disciplinary procedures

## TITLE IX

- Reporting requirements
- Sexual harassment
  - Including dating violence, domestic violence, sexual assault, and stalking (DVSAS) as defined in the Clery Act
- Measures
- Grievance procedures

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## WORKBOOK ACTIVITY:



WB 50

- Go to the *Clery/Title IX Intersections* Workbook activity.
- Answer the questions independently.
- Reference your answers as we move through today's content.

# GEOGRAPHY/JURISDICTION

## THE CLERY ACT

- Four geographic locations for reporting
  - On-campus
  - On-campus student housing
  - Noncampus
  - Public property
- For response: on and off campus

## TITLE IX

- Educational programs and activities
- May be on campus or off campus plus owned or controlled by recognized student organizations

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# REPORTING REQUIREMENTS

## THE CLERY ACT

- Broader scope of reporting responsibility
- Non-personally identifiable information (nature, date, time, general location, current disposition)
- All Clery crimes

## TITLE IX

- Higher threshold for a reported incident to be considered “actual knowledge”
- Sexual harassment – one category being DVSA as defined under Clery

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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?

- Institutions must respond when the institution has *actual knowledge*, meaning a notice of or allegations of sexual harassment (as previously defined) to:
  - The institution's Title IX Coordinator; or
  - Any official...who has the authority to institute corrective measures on behalf of the recipient

# WHAT MUST AN INSTITUTION DO WHEN IT RECEIVES A REPORT?

## THE CLERY ACT

- A report of a Clery crime to a CSA leads to institutional actions required under Clery, including:
  - Determining whether there is a serious or ongoing threat that would require **a timely warning**

## TITLE IX

- The institution must respond promptly in a manner that is not deliberately indifferent:
  - The Title IX Coordinator must promptly contact the complainant to discuss:
    - The availability of supportive measures
    - The individual's wishes with respect to supportive measures

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# WHAT MUST AN INSTITUTION DO WHEN IT RECEIVES A REPORT? (cont'd)

## THE CLERY ACT

- Providing the individual with a written explanation of their rights and options, regardless of whether the incident took place on or off campus
- Determining whether information must be added to the daily crime log or in next year's annual security report

## TITLE IX

- The availability of supportive measures with or without the filing of a formal complaint
- The process for filing a formal complaint

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# FORMAL COMPLAINT UNDER TITLE IX

**Formal Complaint** (document filed by complainant or signed by Title IX Coordinator (TIXC) alleging harassment and requesting investigation)

- Complainant must be participating in or attempting to participate in education program or activity at time of complaint
- Filed with TIXC in person, by mail, e-mail, or other methods of contact
- Physical or digital signature or otherwise indicates complainant is person filing

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# ACCOMMODATIONS & MEASURES



WB 51

What are examples of Clery accommodations or Title IX measures available to victims of DV/SAS?

# ACCOMMODATIONS & MEASURES

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## 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

## TITLE IX

- Supportive Measures
- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge
- To the complainant or the respondent
- Before or after the filing of a formal complaint or where no formal complaint has been filed

# DISCIPLINARY PROCESS

## THE CLERY ACT

- Prompt, fair, and impartial
- Describe the standard of evidence
- Be conducted by officials who receive annual training
- Advisor of choice
- Simultaneous notification of results

## TITLE IX

- Prompt and equitable
- Regulations inform standard of evidence
- Annual training requirements
- Advisor of choice with role in cross-examination
- Simultaneous notification of results

# PROCEDURES TO FOLLOW: INSTITUTIONAL DISCIPLINARY ACTION

- Explanation of procedures, including:
  - Type of **proceeding**
  - Steps involved
  - How institution determines which type to use
- How to file a disciplinary complaint



WB 53

Go to the *Title IX Required Process Flow Chart* in the Workbook. Reflect upon your institution's disciplinary procedures.

# PROCEDURES TO FOLLOW: INSTITUTIONAL DISCIPLINARY ACTION

- Range of protective measures institution may offer following an allegation
- Proceedings will
  - Include a prompt, fair, and impartial process from the initial investigation to the final result

WB 55

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# PROCEEDING UNDER CLERY

## **INCLUDES:**

- Fact-finding investigations
- Formal or informal meetings
- Hearings

## **DOES NOT INCLUDE:**

- Communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim

# STANDARD OF EVIDENCE

## THE CLERY ACT

- Must describe the standard of evidence that will be used

## TITLE IX

- Must state whether institution uses preponderance of the evidence or clear and convincing
- Must be same standard for formal complaints against students as for formal complaints against employees
- Must apply same standard of evidence to all formal complaints of sexual harassment

# SANCTIONS & REMEDIES

## THE CLERY ACT

- Must list all possible sanctions
- Must describe range of protective measures

## TITLE IX

- Must describe range of sanctions, but...
- Must describe range of remedies



# 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

- Individuals involved in process must receive training on specific topics listed in regulations
- Must make training materials publicly available on the institution's website (or if no website, available upon request for inspection)

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# ANNUAL TRAINING COMPONENTS

- Definitions in policy and scope of educational program or activity
- **Relevant evidence and how it should be used during a proceeding**
- **Proper techniques for interviewing witnesses**
- How to serve impartially
- **Basic procedural rules for conducting a proceeding**
- Training on technology to be used at a live hearing
- **Avoiding actual and perceived conflicts of interest**

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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

- Both parties notified that they may have an advisor of choice who may, but is not required to be, an attorney
- Responsible for conducting cross-examination (directly, orally, and in real time)
- Must be included in party's receipt of evidence and investigator's report
- May also serve as witness
- If no advisor, institution must provide one (cross-examination in person, choice, does not have to be an attorney, but...)

# NOTICE OF OUTCOME

## THE CLERY ACT

- Simultaneous notification in writing of:
  - Result of any institutional disciplinary proceeding
  - Procedures for accused and victim to appeal the result, if such procedures are available
  - Any change to the result
  - When such results become final
- Must include rationale for the results

## 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

# MESSAGING TO YOUR CAMPUS



Take a minute on your own to note reminders that you would like to share with your campus community:

- [Reminders: Community Education](#) page: a few key messages about prevention requirements.
- [Reminders: Intersections](#) page: a few key messages about intersections between Title IX and Clery Act requirements for dating violence, domestic violence, sexual assault, and stalking.
- [Reminders: Putting it all Together](#) page: a few key messages about annual security report requirements.



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