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.

Learning Objectives

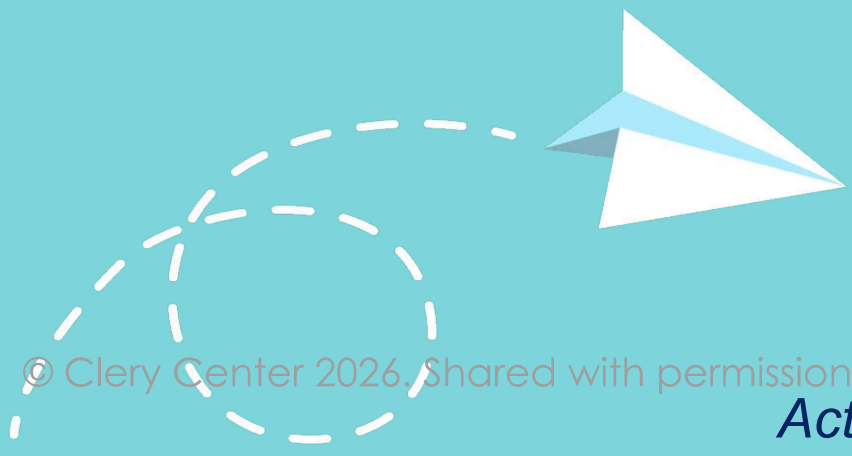
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- Recognize the intersections between Title IX, the Clery Act, and the VAWA Amendments to Clery.
- Identify Clery Act requirements for response to and disciplinary procedures for incidents of dating violence, domestic violence, sexual assault, and stalking (DVSAS).
- Evaluate policy statements for response to DVSAS to identify required content areas under the Clery Act.

DVSAS/ “The Four Crimes”

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Dating Violence, Domestic Violence, Sexual Assault & Stalking



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Activity:

Clery/Title IX Intersections

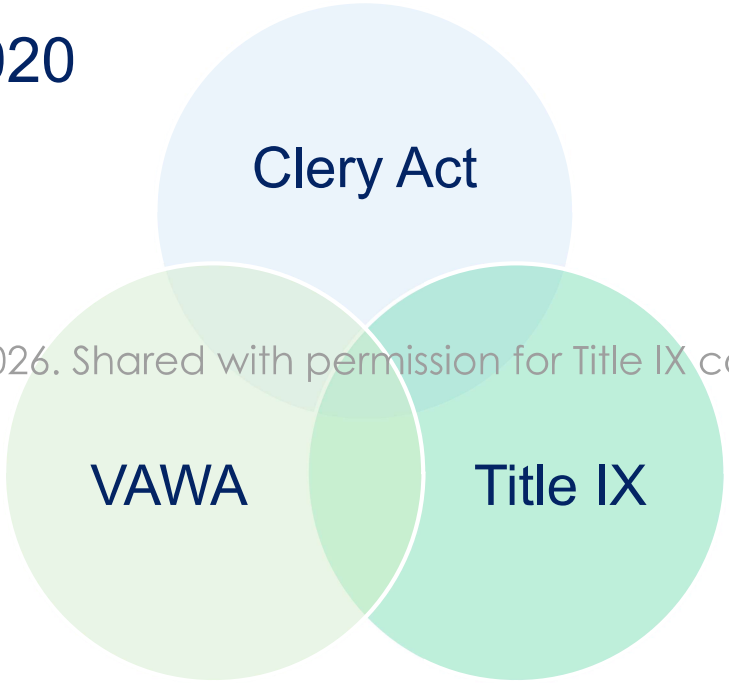
Clery/Title IX Intersections

Open your workbook to the **Clery/Title IX Intersections** activity. At your table, you will have 10 minutes work through the 3 questions provided.

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- You may find it helpful to interact with individuals from other departments and functional areas.
  - Feel free to consult with nearby tables to get input from others.
- Be prepared to share your answers with the other groups.

As of May 2020



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Intersections Overview

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- Addressed Behaviors and Crimes
- Reporting Requirements
- Accommodations and Supportive Measures
- Disciplinary/ Grievance Procedures
- Training for Employees
- Anti-retaliation Responsibilities

Addressed Behaviors and Crimes

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The Clery Act

- Criminal Offenses
  - **Sexual Assault**
- Hate Crimes
- Arrests & Referrals
- Hazing
- VAWA Crimes
  - **Dating Violence**
  - **Domestic Violence**
  - **Stalking**

Title IX

- Discrimination on the basis of Sex
- Sex-based Harassment
  - Quid Pro Quo
  - Hostile Environment
  - **Sexual Assault, Dating Violence, Domestic Violence & Stalking**

Clery Geography vs. Title IX Application

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The Clery Act	Title IX

• **Geography**, broken down into 4 categories:
  • On-campus
  • On-campus student housing
  • Noncampus
  • Public property
• Expands to "on and off campus" for response to DVSAS
	• **Educational programs and activities**
	• Substantial control of respondent and context
	  • May be on or off campus
	• Includes properties owned or controlled by recognized student organizations
	• Must be in the United States

Identity of Involved Parties

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The Clery Act	Title IX

• Any individual within an institution's Clery Act Geography
  ○ Regardless of their relationship to the institution
	• Requires a relationship to the institution.
	  ○ Both parties must be participating or attempting to participate in an educational program or activity
	  ○ *Ex: students, faculty, staff, other employees, or third-party contractors.*

Reporting

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The Clery Act

- Brought to the attention of:
  - Campus Law Enforcement/ Security
  - Local Law Enforcement
  - Campus Security Authority
- May come from:
  - Victim, Witness, Offender, or Third Party

Title IX

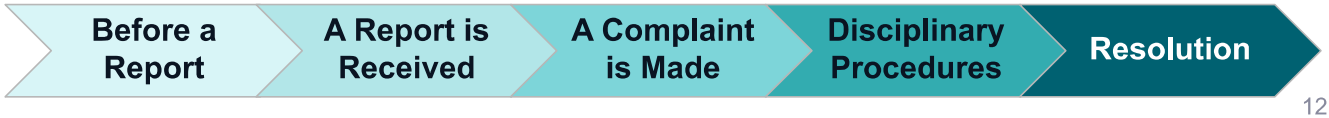
- Requires **Actual Knowledge**
- Individuals who create Actual Knowledge include:
  - The Title IX Coordinator
  - **Officials with Authority** to institute corrective measures.

Response to Reports of DVSAS

- The next slides will review Clery Act and Title IX requirements in response to reports of DVSAS.

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- The timeline below will show which part of the process we are considering as we walk through the response and disciplinary proceedings for a report of DVSAS.



Before a Report: Title IX

- Publish prominently on the institution's website:
  - Non-discrimination policy based on sex

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  - Training materials used in training all Title IX Coordinators, administrators, hearing officials and investigators.
  - Title IX Coordinator contact information; and distribute their info in handbooks and catalogs



A Report is Received: Title IX

When a report is received under Title IX, the institution must respond promptly and in a manner that is not Deliberately Indifferent.

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- **Deliberately Indifferent** is when an institution's "response to sexual harassment is clearly unreasonable in light of the known circumstances."



A Report: Title IX

- Ensure complainant and respondent are treated equitably
- Contact the complainant to discuss:
  - the availability of supportive measures
  - the availability of measures regardless of a complaint
  - the complainant's wishes regarding implementing
  - the process for filing a formal complaint under Title IX

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- If no complaint filed, determine if fact pattern should lead Title IX Coordinator to sign a formal complaint.



Accommodations vs. Supportive Measures

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The Clery Act	Title IX
Accommodations	**Supportive Measures**
• Must be provided in writing • Options for, available assistance in, and how to request changes to: • Academic, Living, Transportation, Working and Protective Measures	• Must be offered to complainant and respondent • Before, after or no filing of a formal complaint • Designed to restore or preserve equal access to educational program and activity.



Accommodations vs. Supportive Measures

The Clery Act	Title IX

Accommodations
• If requested by the victim and reasonably available
• Doesn't matter if the victim reports to campus police or local law enforcement
	Supportive Measures
	• Non-disciplinary, non-punitive individualized and offered as appropriate.
	  • Reasonably available.
	  • Without Fee or Charge
	• Doesn't require a formal complaint for complainant to receive support.

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A Report is Received

Comparing In-Text Examples

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The Clery Act	Title IX
• Academic • Living • Transportation • Working • Protective Measures	• Counseling; • Deadline extensions or other course-related adjustments; • Modifications of work or class schedules; • Campus escort services; • Contact restrictions between the parties; • Changes in work or housing locations; • Leaves of absence; • Increased security and monitoring; • Other similar measures.

A Report is Received

Moving from Report to Complaint

- A report is information being disclosed that an incident, crime or behavior occurred; whereas:

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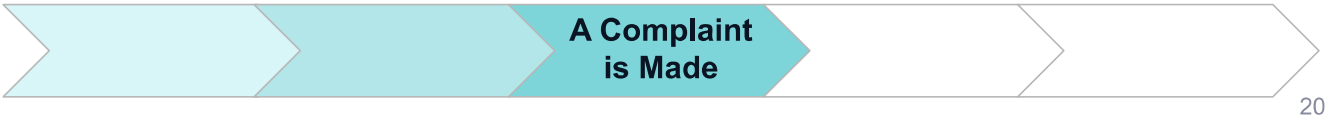
- A formal complaint under **Title IX** is a "formal document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment…and requesting that the receipient investigate the allegation".



A Complaint is Made: Title IX

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- Under Title IX, a formal complaint is a written and signed document by:
  - **a complainant** who is participating or attempting to participate in an educational program or activity; or
  - **the Title IX Coordinator**, if the nature of the alleged behavior is severe enough to warrant investigation to prevent deliberate indifference in response.
- It may be filed in-person, by mail, or electronically

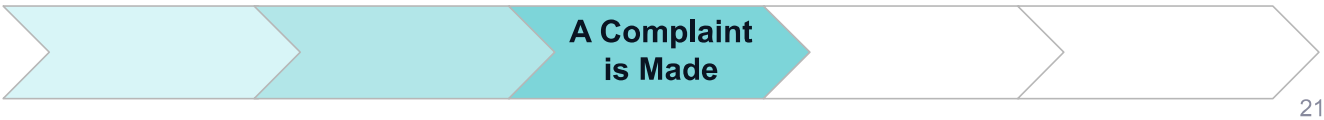


A Complaint: Title IX

- TIXC must offer Supportive Measures to the Respondent.

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- Provide written notice to the both parties that includes:
  1. Grievance Procedures & Informal Resolution Processes
  2. Notice of the alleged behavior constituting harassment, including date, time and location of alleged behaviors if known
  3. Identities of known parties
  4. Statement of presumed innocence of respondent
  5. Notice of an advisor of choice, who may be an attorney
  6. Notice of right to inspect and review evidence
  7. Notice that false statements or evidence is prohibited



Assessing for Dismissal: Title IX

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Must be dismissed

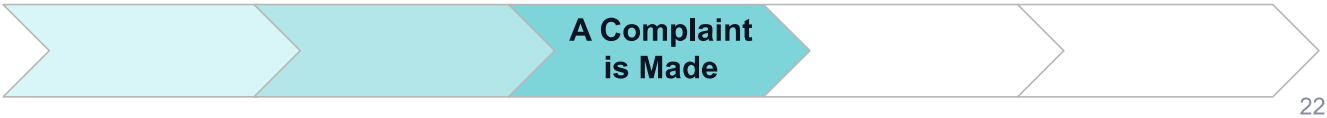
- is not sexual harassment
- did not occur in an educational program or activity
- did not occur against a person in the United States

Dismissing does not prohibit addressing the behavior under other codes of conduct.

May be dismissed

at **any point** prior to the resolution if:

- the complainant notifies the TIXC they would like to withdraw
- the respondent is no longer enrolled or employed by the institution
- gathering sufficient evidence to reach a determination becomes impossible



Disciplinary Procedures: Title IX

- Could be formal grievance procedures or informal resolutions
- May consolidate multiple complaints
- Must be prompt and equitable
  - Equal Opportunity to present witnesses, inspect and provide evidence, and have an advisor of choice.

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Disciplinary Procedures Under Title IX

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- Requires minimum time for parties and advisor to review and respond to investigation report before the live hearing.
- Hearings must allow for live cross examination of parties and witnesses by the advisor
- Live hearings may use technology to allow individuals to appear virtually.



Advisor of Choice

- Both Title IX and the Clery Act allow for an advisor of choice.
  - Clery Act: Cannot limit who is selected, but can limit how they are allowed to participate

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  - Title IX: "may be, but is not required to be, an attorney"



The Outcome Notice: Title IX

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- Provide a simultaneous written notification of outcome, including:
  - The allegations potentially constituting harassment
  - The procedural steps taken
  - Findings of fact supporting the determination
  - Conclusions regarding the application of the code of conduct
  - Statement and supporting rationale of results to each allegation
  - Appeal procedures



Standard of Evidence

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The Clery Act	Title IX
• Must describe the standard of evidence that will be used	• "**Preponderance of the evidence**" or "**clear and convincing**"; and • Same for all formal complaints of sexual harassment, regardless of respondent's role (faculty, staff, student, etc.)



Sanctions & Remedies

The Clery Act	Title IX
• Must list all possible sanctions • Must describe range of protective measures	• Must describe range of sanctions, **but...** • Must describe range of remedies

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Appeals: Title IX

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- Must allow appeals for: procedural irregularities, new evidence, or conflicts of interest/bias from TIXC, investigators, or decision-makers
- Notify the other party in writing when an appeal is filed
- Have a decision-maker who was not the hearing decision-maker, dismissal decision-maker, the investigator, or the Title IX Coordinator
- Give both parties the change to submit a written statement
- Provide written notice of the decision simultaneously to both parties



Who Must Be Trained?

The Clery Act

- Officials who conduct disciplinary proceedings to address crimes of:
  - Dating Violence
  - Domestic Violence
  - Sexual Assault
  - Stalking

Title IX

1. Title IX Coordinators
2. Investigators
3. Decision-makers (hearings & appeals)
4. Any person who facilitates an informal resolution process

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"Officials who conduct disciplinary proceedings" includes all individuals who also must be trained under Title IX requirements.

Annual Training Components

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The Clery Act & Title IX

- Relevant evidence and how it should be used during a proceeding
- Proper techniques for interviewing witnesses
- How to serve impartially
- Avoiding actual and perceived conflicts of interest

Just Title IX

- Definitions in policy and scope of programs
- Procedures for investigations, informal resolutions, and hearings
- Technology used in hearings
- Training materials may not rely on sex stereotypes
- Must publish all training materials for public online

Anti-Retaliation Responsibilities

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The Clery Act

- Must protect from retaliation for:
  - exercising one's rights, or
  - carrying out any portion of Clery Act responsibilities
- Does not create a mechanism for how to address this retaliation

Title IX

- May not retaliate for anyone for participating or refusing to participate
  - Includes complainants, respondents, witnesses, advisors, etc.
- Retaliation filed under the same grievance procedures for sex discrimination.

Policy Statements: Disciplinary Procedures

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1. Description of all types of disciplinary proceedings including steps, anticipated timelines, and decision-making processes
2. How to file a disciplinary complaint
3. How the institution determines which proceeding is used based on the complaint
4. Describes the standard of evidence used
5. Lists all possible sanctions and outcomes
6. Describes the range of protective measures available for victims

Policy Statements: Conducting Proceedings

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1. Prompt, fair and impartial process from initial investigation to final result
2. Conducted by officials receiving annual training
   - issues related to DVSAS
   - conducting investigations and hearings that protect safety and promote accountability
3. Allow for an advisor of choice for both parties

Policy Statements: Simultaneous Written Notification of Outcome

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- Simultaneous written notification of outcome to both parties for any disciplinary proceeding for DVSAS
  - Rights and procedures for appealing the outcome, if available
  - When results of any proceeding are changed
  - When results of a proceeding become final

Programs to prevent dating violence, domestic violence, sexual assault, and stalking	(i) Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that— (A) are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and (B) consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels. (ii) Programs to prevent dating violence, domestic violence, sexual assault, and stalking include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees.
Referred for campus disciplinary action	The referral of any person to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.
Risk reduction	Options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.
Security awareness programs	Programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others
Title IX	A federal civil rights law that prohibits discrimination on the basis of sex in any federally funded education program or activity in the United States. The U.S. Department of Education Office for Civil Rights (OCR) enforces Title IX. Many Title IX requirements intersect with requirements under the Clery Act; these intersections will be addressed in the training.
Uniform Crime Reporting (UCR)	Federal Bureau of Investigation's (FBI) Uniform Crime Reporting Program.
U.S. Department of Education (ED)	Responsible for implementing and enforcing the federal Jeanne Clery Act.

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CLERY/TITLE IX INTERSECTIONS

Answer the questions below. You can use the questions/answers to create your own reference sheet on intersections between Title IX and Clery.

Support for Victims

1. What are steps that victims may choose to take after an incident of dating violence, domestic violence, sexual assault, or stalking that might immediately impact their health or safety?

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2. What are examples of Clery accommodations or Title IX measures available to victims of dating violence, domestic violence, sexual assault, and stalking?

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Campus Disciplinary Processes

3. What are examples of the types of disciplinary procedures that could take place in response to an incident of dating violence, domestic violence, sexual assault, or stalking?

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REMINDERS: INTERSECTIONS

Message To Your Campus

When you return to your daily work, what key points will you share with students and employees related to campus response to dating violence, domestic violence, sexual assault, and stalking? What about a broader prevention and response effort?

Networking Reminders?

(Who/for what/what follow-up)

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Remaining Questions?

For each question, indicate who you will seek out/what you will do to get answers.

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