

Title IX Violence Against Women Act (VAWA) Training

Role and Responsibilities
Annual Training

December 2023

Overview

- ◆ Clery Act
- ◆ Violence Against Women Act
- ◆ Title IX



Title IX/VAWA – Why The Discussion?

- ◆ This training is for Campus Presidents to facilitate the understanding of Title IX, the Clery Act (20 U.S.C. Sec. 1092 (f)), and the Violence Against Women Act (VAWA) which is part of the Clery Act.
- ◆ Campus Presidents play a pivotal role to ensure compliance with these laws.



Title IX/VAWA – Why The Discussion?

The U.S Department of Education (Office of Federal Student Aid) enforces the Clery Act. It may initiate an investigation either proactively or in response to a complaint. If a school violates the Clery Act, which requires us to disclose information about crime on or around our campus, fines will be imposed.

Purpose of the Clery Act

The Clery Act requires all postsecondary institutions participating in Title IV student financial assistance programs to disclose campus crime statistics and other security information to students and the public.



Violence Against Women Act

- ◆ VAWA (first passed in 1994) amended the Clery Act (1990) to require schools to compile statistics for incidents of sexual misconduct:
 - Domestic violence
 - Dating violence
 - Sexual assault
 - Stalking

- ◆ Clery Act originally covered such crimes as homicide, aggravated assault, arson, burglary, robbery and MV theft.

- ◆ VAWA requires schools to specifically address any sexual misconduct reported to the Title IX Coordinator, Campus President or responsible employee on campus

Poll

Almost _____ undergraduate women experienced sexual assault or misconduct at 33 of the nation's major universities.

- One in ten
- One in seven
- One in four

Why is it important?

Data from the National Sexual Violence Resource Center

- ◆ 1 in 5 women in the U.S. experience completed or attempted rape during their lifetime.
- ◆ 34% of female homicide victims are killed by an intimate partner (2021 data).
- ◆ Nearly a quarter of men in the U.S. experience some form of contact sexual violence in their lifetime.
- ◆ Almost one in four undergraduate women experienced sexual assault or misconduct at 33 of the nation's major universities.

Responsible Employee on Campus

A Campus Security Authority (CSA) is an individual at the college who has an obligation to notify responsible individuals (e.g. Clery Act coordinator or campus police) of alleged Clery Act crimes for purposes of reporting.

- CSAs include school officials with significant responsibility for student and campus activities.
- Generally, **campus leadership and administrators** are considered CSAs.
- **Security department personnel** (including security guards); individuals or organizations identified in institutional security policies; and individuals with security-related responsibilities **are also CSAs.**
- The U.S. Department of Education will generally defer to an institution's designation of CSAs.

Clery Act

Clery geography: In the Annual Security Report, institutions are required to record crimes by location.

- ◆ On-campus
 - **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.
- ◆ Non-campus building or property
 - 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, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area.
- ◆ 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 Act (Timely Warnings and Emergency Notifications)

Timely Warnings and Emergency Notifications: Institutions **must issue two types of safety alerts** to provide students and employees with important information about significant and/or ongoing threats due to crime or other dangerous conditions:

1. **Timely warnings** must be issued for Clery-reportable **crimes** that may pose a **significant or ongoing threat. (Clery Geography)**
2. **Emergency notifications** must be issued upon the confirmation of any significant emergency or dangerous situation that may pose an immediate threat to student and employee **health or safety. (Campus Only)**

VAWA Challenges

- ◆ The VAWA requirements present particular challenges to non-traditional trade and career schools, such as ours.
- ◆ These schools typically do not have on-campus police or dedicated security forces.
- ◆ Given the size of the student body, lack of residential student housing and limited school sponsored extracurricular activities, incidents of sexual misconduct may be infrequent at these types of institutes.

EA Commitment

Education Affiliates is committed to a campus and work environment in which all individuals are treated with respect and dignity. In compliance with Title IX/VAWA, we have published policies and procedures regarding harassment and sexual assault/violence.

Poll

EA policies are located in:

- Your School Catalog
- Website
- Consumer Information Guide
- EA Employee Handbook

Title IX – What Is It?

Title IX, Education (20 U.S.C. Sec. 1681 – 1688) states:

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

Title IX – Definitions

- “Complainant” “means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.”
- “Respondent” “means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.”

Title IX – Definitions

- ◆ Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
 - 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 education program or activity; or
 - "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Title IX

“Education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs. (34 C.F.R. § 106.44)

- In determining whether an institution exercised substantial control, courts will look at “whether the [school funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred.”
- An institution may still offer supportive measures to a complainant who reports sexual harassment that occurred outside the school’s program or activity.

Title IX

Education program or activity (cont'd)

- With regard to clinical clerkships or with preceptors located at a separate facility, the institution “must consider whether the [institution exercised substantial control over both the [accused student] and the hospital or medical clinic where the clinical clerkship is held.”



Title IX

Applicability to online platforms:

- ◆ “The factual circumstances of online harassment must be analyzed to determine if it occurred in an education program or activity.”
- ◆ “The definition of education program or activity” in the 2020 [Final Rule] does not create a distinction between sexual harassment occurring in person versus online.”

Title IX Coordinator

- “Each recipient **must designate and authorize** at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the ‘Title IX Coordinator.’” (Section 106.8(a))
- The Title IX Coordinator must be the recipient’s “employee”
- The Title IX Coordinator must serve **without bias or conflicts of interest**, and receive the training specified in that provision. (Section 106.45(b)(1)(iii))

Title IX Coordinator

Suzanne Peters serves as the Title IX Coordinator for Education Affiliates, **including all affiliated institutions**. Her contact information for anyone wishing to report an offense is provided in the Title IX Policy and Annual Security Report (both on your school's website) and the various handouts.

Suzanne will coordinate the process from initial complaint through final resolution.

Title IX Coordinator (cont.)

The Campus President is the “on-campus” contact.

◆ Responsibilities:

- First point of contact at your location
- Contact Suzanne Peters as soon as possible
- Help victim with community resources
- Report offense to law enforcement, when appropriate
- Oversee annual training for campus employees, all new employees (LEARN) and ensure all new students are receiving Victim Bill of Rights during orientation.
- Maintain careful documentation of any incidents in a Title IX/VAWA binder

Poll

True or False: The definition of sexual harassment does not include dating violence.

Title IX

Sexual harassment:

- Includes any of three types of misconduct on the basis of sex:
 - ◆ Any unwelcome conduct that a reasonable person would find so **severe, pervasive, and objectively offensive** that it denies a person equal educational access;
 - ◆ Any instance of a **quid pro quo** harassment by a school's employee; and
 - ◆ Any instance of **sexual assault, dating violence, domestic violence, or stalking** (as defined in the Clery Act).

Title IX

Reporting sexual harassment

- Any person (**students, staff, and third-parties**) may report sex discrimination or sexual harassment at any time, including during non-business hours, by using the telephone number, regular mail or e-mail address of the Title IX Coordinator or the Campus President, or by meeting with or sending a written complaint to the Title IX Coordinator or the Campus President.
- The campus website has an anonymous tool if a person wants to make a report anonymously.

Title IX

- An institution **must respond promptly** to Title IX **sexual harassment** in a manner that is **not deliberately indifferent** when:
 - The institution **has actual knowledge** of sexual harassment;
 - That **occurred within the institution's education program** or activity; and
 - Against a person in **the United States**.
- An institution is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.
- “An institution has **actual knowledge** of sexual harassment when a school has notice that a person may have been victimized by sexual harassment.”

Title IX

The Title IX Coordinator must promptly contact the complainant confidentially to discuss:

- The availability of supportive measures;
- The right to file a complaint; and
- How to file a complaint.

Title IX

Formal complaint:

- A formal complaint is an official document alleging sexual harassment.
- Institutions **must investigate every formal complaint** (which may be filed by a complainant or by a school's Title IX Coordinator).
- It's filed by the student or in some cases the Title IX Coordinator.
- In cases where an alleged victim doesn't file a formal complaint, a Title IX Coordinator may initiate grievance procedures where discipline is appropriate.

Title IX

Formal complaint (cont'd)

- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.
- Under the school's Title IX Policy, "a "formal complaint" is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the Institution investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the educational program or activity of Institution."

Poll

True or false: A formal complaint is required before supportive measures need to be provided by the campus.

Title IX

- ◆ Supportive measures are free, individualized services designed to restore or preserve equal access to education, protect safety, or deter sexual harassment.
- ◆ Supportive measures support a student, and they are not disciplinary or punitive with respect to another student.
- ◆ There does not need to be a formal complaint for the person alleges to be the victim to receive supportive measures.
- ◆ Examples of supportive measures include counseling, extension of deadlines, modifications of class schedules, leaves of absence, and mutual restrictions on contact between individuals.

Title IX

- Title IX does not preclude a recipient from removing a respondent from the recipient's education program or activity on an emergency basis:
 - The school must undertake an individualized safety and risk analysis,
 - Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and
 - Provides the respondent with notice and an opportunity to challenge the decision immediately following the removal."
- Nothing in Title IX "precludes a recipient from placing a **non-student employee respondent** on administrative leave during the pendency of a grievance process that complies with § 106.45."

Investigations

- ◆ The school must investigate the allegations in any formal complaint and send written notice to both parties of the allegations upon receipt of a formal complaint.
- ◆ During the grievance process and when investigating:
 - The burden of gathering evidence and burden of proof must remain on schools, not on the parties.
 - Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.

Title IX Coordinator

General requirements;

- Require **objective evaluation** of all relevant evidence, whether inculpatory or exculpatory;
- **Avoid credibility determinations** based on a person's status as a complainant, respondent, or witness;
- The school's grievance process must include **reasonably prompt timeframes** for resolving formal complaints of sexual harassment;
- Require Title IX personnel to be free from **conflicts of interest** or bias for or against complainants or respondents;
 - ◆ Temporary delays can only be granted for good cause.
- Not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no "gag orders"); and
- **Keep confidential** the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.

Title IX Coordinator

- ◆ An institution must dismiss allegations of conduct that do not meet the definition of sexual harassment (under Title IX) or did not occur in an institution's education program or activity against a person in the U.S.
 - However, an institution may address allegations through the student code of conduct process.
- ◆ An institution may dismiss the formal complaint or any allegations in the formal complaint if at any time during the investigation or hearing:
 - The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any specific allegations in the formal complaint;
 - The respondent is no longer enrolled or employed by Institution; or
 - The specific circumstances prevent Institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations in the formal complaint.

Title IX Coordinator

◆ Informal Resolution

- At any time prior to reaching a determination, an institution may choose to offer and facilitate an informal resolution.
 - An institution, however, may not:
 - Require a student to waive the right to an investigation and adjudication of a formal complaint;
 - Require the parties to participate in an informal resolution process; or
 - Offer an informal resolution process unless a formal complaint has been filed.

Title IX

◆ Hearings

- If the complaint cannot be resolved informally or dismissed, the institution must hold a live hearing.
- The parties' may be accompanied by an advisor of choice.
- The parties' advisors are permitted to cross-examine other parties and witnesses.
- Either party may appeal a determination regarding responsibility, or from Institution's dismissal of a formal complaint or any allegations.
 - ◆ Grounds for an appeal include: Procedural irregularity, newly discovered evidence, conflict of interest or bias.

Title IX

- ◆ Written determination
 - ◆ Following the live hearing, decisionmaker[s] must issue a written determination regarding:
 - Responsibility with findings of fact, conclusions about whether the alleged conduct occurred and the rationale for the result as to each allegation,
 - Any disciplinary sanctions imposed on the respondent, and
 - Whether remedies will be provided to the complainant.
 - The written determination must be sent simultaneously to the parties along with information about how to file an appeal.

Title IX

- ◆ Disciplinary sanctions
 - Responsibility with findings of fact, conclusions about whether the alleged conduct occurred, **rationale for the result** as to each allegation,
 - Any **disciplinary sanctions** imposed on the respondent, and
 - Whether **remedies** will be provided to the complainant.
- The written determination must be sent simultaneously to the parties along with information about how to file an appeal.

Title IX

- ◆ Available disciplinary sanctions:
 - Written warning
 - No-contact orders
 - Removal from specific courses or activities
 - Disciplinary probation
 - Suspension
 - Expulsion
 - Transcript notation
 - Other sanctions as appropriate

Title IX - Remedies

When a school finds a respondent responsible for sexual harassment under the Title IX grievance process, the school must provide remedies to the complainant that are “designed to restore or preserve equal access to the [school’s] education program or activity.

Remedies may include:

- ◆ Counseling;
- ◆ Academic accommodations;
- ◆ Academic support;
- ◆ Employment accommodations; or
- ◆ Other individualized services provided as a supportive measure.

Remedies may will be decided on a case-by-case basis.

Title IX Personnel Training

The individuals involved in the process like the Title IX Coordinator, investigators, decision-makers, or facilitators of informal, voluntary resolution efforts must not have any bias of or conflict of interest.

- ◆ Training of Title IX personnel must include training on:
 - The definition of sexual harassment in the Final Rule;
 - The scope of an institution's education program or activity;
 - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes; and
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Poll

How long should schools **retain appropriate records** including records relating to any reports of sexual harassment?

- ◆ 1 year
- ◆ 3 years
- ◆ 5 years
- ◆ 7 years

Title IX

Other Title IX provisions:

- **Retaliation against** any person who files a complaint, participates in an investigation, or opposes a discriminatory employment or educational practice or policy is prohibited.
- Schools shall **retain appropriate records** for a period of seven (7) years, including records relating to any reports of sexual harassment.
- Schools must make training materials **publicly available** on its website.
- Schools **must publish** a grievance procedures.

Title IX Policy Changes

Changes to Title IX are expected in 2024 and we will be updating our Title IX Policy.

- ◆ Some changes include:
 - Title IX Investigations are required for all forms of sex discrimination, not just sexual harassment.
 - Title IX will apply to any hostile environment occurring within the educational program or activity regardless of where it occurs. Even outside the US.
 - Harassment would have to be severe, pervasive **or** offensive. (or added and removed).
 - Schools must “promptly and effectively remedy” discrimination.
 - Complaint need not be put in writing.

Title IX Policy Changes

- ◆ Current Title IX regulations do not specifically address sexual orientation or gender identity. The revised regulation specifically prohibits discrimination based on sexual orientation and/or gender identity.
- ◆ Title IX will specifically state federal regulations supersede any state laws to the contrary.

Title IX/VAWA Compliance Policy

- ◆ All Campus Presidents, and employees should be familiar with the EA Title IX/VAWA policy/guidelines.

- ◆ Where is the Title IX policy located?
 - The updated policy can be located on your school's website (consumer information page)

Employee Training

- ◆ Title IX/VAWA Training developed for all employees to learn what it is and understand how to handle an incident
 - Located in LEARN

- ◆ Annual training required for all employees
 - First time within 60 days of hire
 - Annually for all current employees in October – Domestic Violence Awareness Month

- ◆ Certificates of Completion

- ◆ Campus President responsible for managing

Student Training

- ◆ Student Awareness Fact Sheet which includes Victim's Bill of Rights should be distributed to new students at orientation
- ◆ No sign off required for students
- ◆ Fact Sheet will be distributed to current students annually in October (Domestic Violence Awareness Month) as part of our ongoing campaign.

Ongoing Campaign

- ◆ All schools are required under VAWA to participate in annual “ongoing campaigns”.
- ◆ As a company, we have chosen October as this is Domestic Violence Awareness Month.
- ◆ For all employees and students, we will have available the Student Fact Sheet and the updated Title IX/VAWA brochure (Similar to how your school promotes Constitution Day).
- ◆ Outside speakers are optional
- ◆ Coordinators **MUST** maintain supporting documentation that this campaign took place (sign off sheet, signed attestation, pictures, etc.)

Next Steps:

- ◆ Familiarize yourself with Title IX/VAWA policy and the Clery Act Requirements.
- ◆ Remind all current employees to recertify their training and provide the details for LEARN login (Give current employees 60 days to complete the training).
- ◆ Ensure the student fact sheet is being distributed to new students at orientation.
- ◆ Double check that the flyer/poster is up to date and personalized with your local phone numbers and post in all break rooms
- ◆ Prepare for ongoing campaign
- ◆ Continuous management of the process to ensure current and new staff are completing the training
- ◆ Review your campus website to ensure the Title IX Policy is available

Next steps (continued)

- ◆ EA Internal Audit will begin asking for an attestation from all schools to ensure compliance in all areas discussed above is completed prior to June 30,2023.
- ◆ Supporting documentation may be subject to testing in your school's annual Student Financial Aid Compliance Audit, Clery Act report, Federal Program Review, or a review by the Office of Civil Rights.

Questions?

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