



D. STAFFORD
& ASSOCIATES

Overview of Title IX and Intersections with the Clery Act

Presented by:

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TITLE IX

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Adrienne Meador Murray, Vice President, Equity Compliance and Civil Rights Services



In January 2014, Adrienne Meador Murray joined D. Stafford & Associates where she currently serves as the Vice President, Equity Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012 and the National Association of Clery Compliance Officers & Professionals (NACCOP) where she currently serves as Director of Training and Compliance Activities. Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson

College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.).

As the Executive Director, Equity Compliance and Civil Rights Services for DSA, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA



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Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



Overview of Title IX and Intersection with Clery
Texas Tech System
March 10, 2022
Presented by Adrienne Meador Murray

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D. Stafford & Associates



- All members of the Title IX Team were practitioners in higher education prior to becoming consultants, representing a range of institution types and financial demographics most commonly interacting with Title IX including human resources, student conduct, threat assessments, residence life, and campus police.
- All persons on the Title IX Team have served as a Title IX Coordinator or Deputy Coordinator in full time, part time or interim basis.
- As of October 2021, our Title IX team has trained over 8,000 civil rights coordinator and investigators.
- DSA has conducted policy reviews for Title IX compliance and investigations for over 350 institutions in the United States.
- The Title IX Team conducts investigations for schools across the country, and has experience covering a broad range of Title IX behaviors including hostile environment and quid pro quo sexual harassment, cyber harassment, rape, fondling, statutory rape, dating violence, domestic violence, stalking, and dating. The cases they have investigated have included multiple complainants and respondents, repeat offenders, including senior leaders, faculty, coaches, police officers, athletes, Greeks, alumni, and graduate students and managed on and off campus cases.
- The Title IX team also conducts investigations of other civil rights violations including Title VI, Title VII, and instances of interfering behaviors. Other investigative work has included grievance and employee misconduct and employee performance issues.

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Adrienne Meador Murray



D. Stafford & Associates, Vice President, Equity Compliance and Civil Rights Services and Director, Training & Compliance Activities-NACCP

- Previous 17-year law enforcement veteran-focus on sex crimes
 - Academy to Patrol through Chief of Police
- Current Title IX Coordinator
- Sexual Misconduct policy and procedure review/rewrites, training, external investigations, expert witness
- Author and lead instructor of DSA national training programs for Title IX Coordinators and Investigators (administrative investigations) and best practice SOP and criminal investigations for police
- Served as an expert witness
- Bachelors' degree-Human Resource Management-University of Richmond
- Master's Degree-Higher Education, Campus Public Safety
- 235th Session, FBI National Academy

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<p>1</p> <p>Pick a partner (preferably someone NOT from your school or who you don't know)</p>	<p>2</p> <p>Tell them your name and job title Ask their name and job title</p>	<p>3</p> <p>Share one thing with each other that you'd like to learn more about today OR challenges you have faced</p>	<p>4</p> <p>Introduce your partner to the class and share the items in number three for our board</p>
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INTRODUCTIONS

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LET'S START WITH TITLE IX...

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2020 Regulation Changes



- **New Subpart A: Introduction**
 - **106.8(a) Designation of responsible-employee coordinator.** Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part employee must be referred to as the "Title IX Coordinator."
 - **106.8(c) Adoption of grievance procedures.** A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30.

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2020 Regulation Changes



- Subpart A: Introduction (106.1 - 106.9)
 - CHANGE: coordinator; publication; grievance procedures; preservation of rights
 - Subpart B: Coverage (106.11 - 106.17)
 - CHANGE: Religious institutions
 - Subpart D: Education Programs/Activities (106.31-106.43)
 - New: 106.30: Definitions of sexual harassment
 - New: 106.44: Recipient's response to sexual harassment
 - New: 106.45: Grievance process formal complaints of sexual harassment
- NO CHANGE
- Subpart C: Admission and Recruitment (106.22 - 106.23)
 - Subpart E: Employment (106.51- 106.61)
 - Subpart F: Procedures (106.71)

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Title IX Overview



Applies to Higher Ed and K-12



Limited regulations pre-2020



Covers wide range of sex discrimination

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2020 Regulations



Preamble



Process For Sexual Harassment ONLY



Technical Assistance

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§106.3 – Remedial Action



Fix it



No monetary damages

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§106.6 – Effect of Other Requirements and Preservation of Rights



Constitutional Rights

FERPA

Title VII

Parents and guardians

State and local laws

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§106.8(a) Designation of Coordinator



Title IX Coordinator



Notification of parties



Contact information



Reporting information

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§106.8(b) Dissemination of Policy



Notification that you do not discriminate



Title IX Coordinator contact information



Grievance procedure



United States

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§106.8(C) Adoption of Grievance Procedure



“grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30.”

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§106.8(d) Application Outside of the United States



Only applies to US (and US territories)

Use other policy

No Clery conflicts

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§106.8(d) Religious Institution



Submit in writing

Specific tenant

Not required

Raise any time

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§106.30 Definitions – Actual Knowledge



“Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient.”

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§106.30 Definitions – Actual Knowledge



Title IX Coordinator



Official with authority



Different K-12 standard



Designation



Not same as CSAs

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**§106.30 Definitions –
Complainant &
Respondent**

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

**§106.30 Definitions –
Formal Complaint**

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- *“... a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient 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 education program or activity of the recipient with which the formal complaint is filed.”*
- *“Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.”*

**§106.30
Definitions - Sexual Harassment**



Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. 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;
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 education program or activity;
3. “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).

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On the Basis of Sex

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“Under *Bostock*’s reasoning, laws that prohibit sex discrimination – including Title IX of the Education Amendments of 1972 – prohibit discrimination on the basis of gender identity or sexual orientation, so long as the laws do not contain sufficient indications to the contrary.”
Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, January 21, 2021

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PRONG 1: Quid Pro Quo



-  Must be an employee respondent (not volunteer, visitor, student)
-  “This for that” harassment
-  When favorable professional or educational treatment is conditioned on a sexual activity




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PRONG 2: Hostile Environment+ (The *Davis* Standard)



-  No definition of consent required
-  Not the same Title VII “hostile environment” or 2001 Guidance
-  First Amendment protections

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PRONG 3: The VAWA Offenses



Sexual Assault	Rape Fondling Incest Statutory Rape
Intimate Partner Violence	Dating Violence Domestic Violence
Stalking	

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§106.30 Definitions – 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.”

“Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment.”

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§106.30 Definitions – Supportive Measures



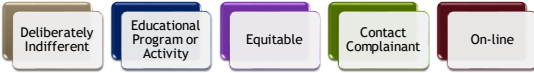
- Non-disciplinary, non-punitive
- Both parties
- Academic, housing, and athletic impact
- “Mutual restrictions on contact”

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§106.44 Recipient's Response



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§106.44 (c) Emergency Removal;
(d) Administrative Leave



Emergency removal



Administrative leave

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§106.45 Grievance Process



"A recipient's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX."

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§106.45 Grievance Process 



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§106.45 Grievance Process 



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§106.45 Grievance Process 



Notice requirements

Additional allegations

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Training
§106.44(b)(1)(iii)

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- **All Title IX Personnel**
 - Definition of sexual harassment
 - Scope of the recipient's education program or activity
 - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- **Decision-makers**
 - Technology to be used at a live hearing
 - Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- **Investigators**
 - Issues of relevance to create an investigative report that fairly summarizes relevant evidence

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§106.45(b)(3) Dismissal of a Formal Complaint



Must dismiss:

- Behavior does not constitute sexual harassment
- Did not occur in educational program or activity, not in the United States

May dismiss:

- Complainant withdraws formal complaint
- Respondent no longer enrolled/employed
- Insufficient evidence

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§106.45(b)(4) Consolidation of a Formal Complaint



Multiple respondents

More than one complainant against one or more respondent

One party against other party

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§106.45 Grievance Process 



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§106.45(b)(6) Hearings 



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§106.45(b)(6) Hearings 



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§106.45(b)(7) Determination Regarding Responsibility



- Allegations
- Procedural steps
- Findings of fact
- Conclusion/application
- Rationale
- Appeal procedures

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Sanctions and Remedies



Sanctions



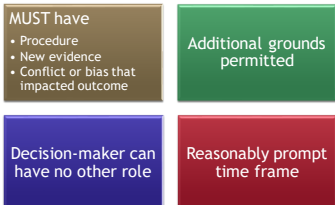
Remedies

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§106.45(b)(8) Appeals



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§106.45(b)(8) Appeals



Notification of appeal

Equal opportunity to respond

Written outcome - rationale

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§106.45(b)(9) Informal Resolution



Notice



Voluntary



Not allowed for Employee/student

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§106.45(b)(10) Recordkeeping (seven years)



Case Materials



Training materials

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§106.71 Retaliation Prohibited



Intimidation, threats, coercions, discrimination

May use same grievance procedure

1st Amendment

False reports

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Title IX Resources



Website

<https://www2.ed.gov/about/offices/list/ocr/index.html?src=oc>



Blog

<https://www2.ed.gov/about/offices/list/ocr/blog/index.html>

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OCR Enforcement



Resolves Complaints

Compliance Reviews

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OCR Enforcement



Evaluation



Opening the
Complaint
for
Investigation



Investigation



Resolution
After
Determination
of Non-
Compliance



Resolution
Prior to
Conclusion
of the
Investigation

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Case Processing Manual



- Provides OCR with procedures to promptly and effectively investigate complaints and compliance reviews, issue findings, and secure resolution agreements that remedy discriminatory policies or practices identified by OCR.
- Evaluations
- Facilitated Resolution
- Case planning, investigation, and resolution
- Compliance reviews and directed investigations
- Monitoring resolution agreements
- Initiation of enforcement
- Recent Changes

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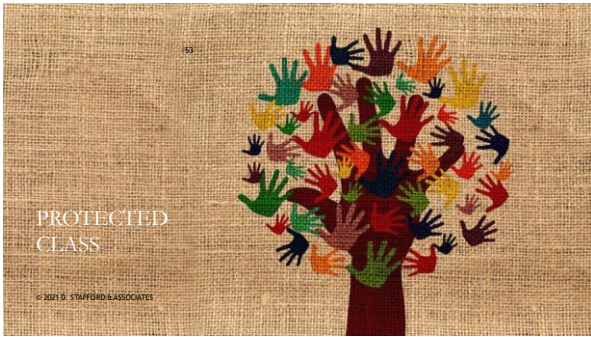
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Different Groups



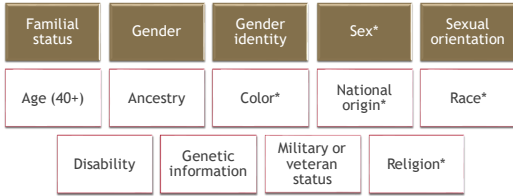
Different Laws

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Protected Classes



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* As defined by Title VII

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Law	Who	What	Enforcement
Title VI of the Civil Rights Act of 1964	Students	Race, color, or national origin	OCR
Title VII of the Civil Rights Act of 1964	Employees	Race, color, religion, or sex	EEOC
Title IX of the Education Amendments of 1972	Students; Employees	Basis of sex	OCR
503 and 504 of the Rehabilitation Act of 1973	Students	Disabilities	OCR
ADA/ADAA - Americans with Disabilities Act/Amendments	Employees (Title I); Students (Title II/III)	Disabilities	EEOC/DOJ
ADEA - Age Discrimination in Employment Act	Employees	Age (40+)	EEOC
PDA - Pregnancy Discrimination Act	Employees	Pregnancy/Title VII	EEOC
USERRA - Uniformed Services Employment and Reemployment Rights Act	Employees	Veterans	DOL/DOJ

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Title VII of the Civil Rights Act of 1964



Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin

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History



- Civil Rights Act of 1964
- Proposed by Kennedy
- Signed by Johnson
- Race, color, religion, national origin, sex
- Original drafts did not include sex

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42 U.S.C. § 2000e-2 – Unlawful Employment Practices



- Fail or refuse to hire
- Discharge
- Discrimination with respect to compensation, terms, conditions, or privileges of employment
- Limit, segregate, or classify “his” employees
- Harassment is not defined in the statute



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The Regulations 29 C.F.R. §1604



- §1604.1 General principles
- §1604.2 Occupational qualification
- §1604.3 Separate lines of progression and seniority systems
- §1604.4 Discrimination against married women
- §1604.5 Job opportunities and advertising
- §1604.6 Employment agencies
- §1604.7 Pre-employment inquiries as to sex
- §1604.8 Relationship to Title VII of the Equal Pay Act
- §1604.9 Fringe benefits
- §1604.10 Employment opportunities related to sex
- §1604.11 Sexual harassment

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29 C.F.R. § 1604 DISCRIMINATION BECAUSE OF SEX

- Sex-based discrimination
- Sex discrimination harassment
- Retaliation
- Pregnancy
- Disparate impact
- 3rd party harassment



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Basis of Sex



Pregnancy-related protections

Sexual orientation/Gender identity (Bostock)

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DISCRIMINATION
AN ADVERSE ACTION IS TAKEN AND IS BASED ON A PROTECTED CLASS

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Disparate Treatment

When a person, or a group of people, are treated less favorably than another person or group of people on the basis of a protected class.



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Disparate Impact

When a policy, practice, or decision is based on neutral factors that have an adverse impact on a protected class



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29 C.F.R. § 1604.11(a) Sexual Harassment



Harassment on the basis of sex violates Title VII. Unwelcome conduct of a sexual nature that:

- 1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; OR
- 2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; OR
- 3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment


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29 C.F.R. § 1604.11 Sexual Harassment



- 
Totality of Circumstances
- 
Notice
- 
3rd party
- 
Prevention
- 
Related

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Quid Pro Quo



- 
Tangible employment action
- 
Punish for refusing to engage
- 
Submission due to conditions

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Severe or Pervasive

- Complainant belongs to a protected category
- Conduct was unwelcome
- Conduct based on complainant's protected category
- Plaintiff subjectively viewed the harassment as creating a hostile environment
- A reasonable person would objectively view the work environment as abusive

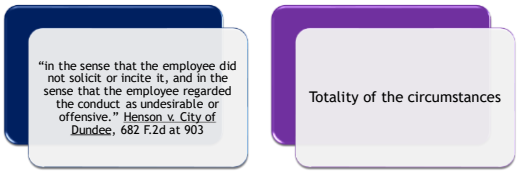
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Severe and Pervasive Examples



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Unwelcome Conduct



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Reasonable Person



More than petty slights



Conduct applications

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Retaliation



Protected activity



Adverse impact

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Employer Liable Unless They Can Show:



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	Title IX	Title VII
Protected Class	Sex	Sex, race, color, religion, national origin...age, or disability
Activities Covered	Academic opportunities and activities	Employment
Retaliation?	Prohibition on retaliation	Prohibition on retaliation
LGBTQ	Protections for gender identity and sexual orientation	Protections for gender identity and sexual orientation
Enforcement	OCR	EEOC and/or state agency
Training?	Training requirements	No training requirements
Standard	Preponderance/clear and convincing	Probable cause/Preponderance
Notice?	Notice requirements	No notice requirements
3rd Party?	It depends . . .	Yes

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Amorous Relationship Policies



- 7 Title VII
- 9 Title IX
- Separate policy?

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Microaggressions 

"Mansplaining"	Suggestive photographs	You are such an . . .	Representation	Looking at chest
"The Spokesperson"	You should smile more	I would never have known you are/were . . .	That's so gay	You will never be a real man

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First Amendment Limitations 

Obscenity	Defamation	Incitement
True threats	Integral to criminal conduct	

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Academic Freedom



College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

■ AAUP, Policy Documents & Reports 3-4 (9th ed. 2001)

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Academic Freedom



YES:

- Debate
- Pedagogical philosophy
- Compare, contrast, and challenge
- Express view
- Research
- Free from others' beliefs
- Grievance and due process
- Grade
- Teach

NO:

- Harass/threaten
- Protect incompetency
- Protect from abiding by law or regulations
- Protect from disciplinary or sanctions
- Allow disruption of speakers

Waters, C. (2016, December 21). Defining Academic Freedom. Retrieved November 7, 2019, from <http://www.insidehighered.com/views/2016/12/21/defining-academic-freedom>

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1st Amendment and Academic Freedom



As noted above, OCR interprets its regulations consistent with the requirements of the First Amendment. Some speech may be used to communicate ideas or emotions that nevertheless implicate First Amendment protections. However, this case presents extraordinary factual circumstances: The Dean's reported years of sexual comments were just a portion of the ongoing alleged sexually harassing conduct the Dean was reported to have engaged in during his long tenure at the College, including asking for sexual favors from a student in exchange for assistance with a certification examination. The University therefore had an obligation under Title IX to investigate and, if warranted, take steps necessary to determine whether a hostile environment based on sex had been created.

Office For Civil Rights, Michigan State University Letter of Finding (2019)

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**The Clery Act for Title IX
Coordinators**

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- Key Requirements
- Counting Crime Statistics
- Clery Reporting: Public Disclosures
- VAWA Offenses
- VAWA Procedural Requirements

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KEY REQUIREMENTS

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Key Requirements of the Clery Act



Collect, classify, and count crime reports/statistics



Public disclosures-Timely Warning Notices and Emergency Notifications



Publish Annual Security Report

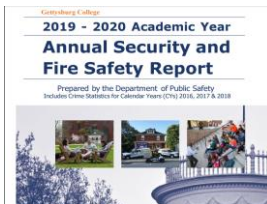


Submit crime statistics to the Department

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COUNTING CRIME STATISTICS

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Three Part Test

1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution's reportable Clery geography?

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Campus Security Authorities (CSA)

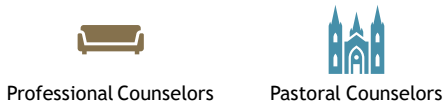


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Who is never a CSA?



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REPORT

A CSA'S FUNCTION IS TO REPORT ALLEGATIONS OF CLERY ACT CRIMES MADE IN GOOD FAITH.



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Reporting Considerations



Title IX - "Officials with authority"

- Title IX Coordinator
- Official(s) who can institute corrective measures on behalf of the school
- Any other person who is designated by the institution as a person who shall report

Clery Act - CSAs

- Campus police department
- Responsible for security
- Individuals to whom crimes should be reported
- "Officials with significant responsibility for student and campus activities"
- Local law enforcement

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Source: Data Provided by Campus Security Policy and Campus Crime Statistics Act

Calendar Years (CY) 2018 - 2019

Category	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Offenses Reported by Members	0	0	0	0	0	0	0	0	0	0	0	0	0
Offenses Reported by Non-Members	0	0	0	0	0	0	0	0	0	0	0	0	0
Offenses Reported by Anonymous	0	0	0	0	0	0	0	0	0	0	0	0	0
Sex	0	0	0	0	0	0	0	0	0	0	0	0	0
Sexual Assault	0	0	0	0	0	0	0	0	0	0	0	0	0
Sexual Assault - Unlawful Sexual Intercourse	0	0	0	0	0	0	0	0	0	0	0	0	0
Sexual Assault - Unlawful Sexual Contact	0	0	0	0	0	0	0	0	0	0	0	0	0
Sexual Assault - Unlawful Sexual Intercourse or Unlawful Sexual Contact	0	0	0	0	0	0	0	0	0	0	0	0	0
Sexual Assault - Unlawful Sexual Intercourse or Unlawful Sexual Contact - Aggravated Assault	0	0	0	0	0	0	0	0	0	0	0	0	0
Sexual Assault - Unlawful Sexual Intercourse or Unlawful Sexual Contact - Rape	0	0	0	0	0	0	0	0	0	0	0	0	0
Sexual Assault - Unlawful Sexual Intercourse or Unlawful Sexual Contact - Rape or Aggravated Assault	0	0	0	0	0	0	0	0	0	0	0	0	0
Sexual Assault - Unlawful Sexual Intercourse or Unlawful Sexual Contact - Rape or Aggravated Assault - Aggravated Assault	0	0	0	0	0	0	0	0	0	0	0	0	0
Sexual Assault - Unlawful Sexual Intercourse or Unlawful Sexual Contact - Rape or Aggravated Assault - Rape	0	0	0	0	0	0	0	0	0	0	0	0	0
Sexual Assault - Unlawful Sexual Intercourse or Unlawful Sexual Contact - Rape or Aggravated Assault - Rape or Aggravated Assault - Rape	0	0	0	0	0	0	0	0	0	0	0	0	0
Sexual Assault - Unlawful Sexual Intercourse or Unlawful Sexual Contact - Rape or Aggravated Assault - Rape or Aggravated Assault - Rape or Aggravated Assault	0	0	0	0	0	0	0	0	0	0	0	0	0
Sexual Assault - Unlawful Sexual Intercourse or Unlawful Sexual Contact - Rape or Aggravated Assault - Rape or Aggravated Assault - Rape or Aggravated Assault - Rape or Aggravated Assault	0	0	0	0	0	0	0	0	0	0	0	0	0

COUNTING CRIME STATISTICS: CLERY CRIMES

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Three Part Test

1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution's reportable Clery geography?

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Clery Crime Categories



- Primary Crimes
- Hate Crimes
- Arrests and Referrals for Drug, Liquor, and Weapon Violations
- Dating Violence, Domestic Violence, and Stalking Incidents (VAWA Offenses)

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Clery Reportable Crime Categories



- Murder/Non-negligent Manslaughter*
- Manslaughter by Negligence*
- Sex Assault*
 - Rape
 - Fondling
 - Incest
 - Statutory Rape
- Robbery*
- Aggravated Assault*
- Burglary*
- Motor Vehicle Theft*
- Arson*
- Arrests and Disciplinary Referrals for:
 - Liquor
 - Drugs
 - Weapons
- Domestic Violence
- Dating Violence
- Stalking
- Hate Crimes for *, plus
 - Larceny-Theft
 - Simple Assault
 - Intimidation
 - Destruction/Damage/Vandalism of Property

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Counting Clery Crimes

If a crime is reported (and otherwise meets the three-part test) it is counted.

Includes attempts

Includes cases a DA would reject

Includes cases of "not responsible"

Does NOT include every conduct code violation

It is not the word used but the facts of the case that determine how it gets counted

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COUNTING CRIME STATISTICS:

CLERY GEOGRAPHY

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Three Part Test

Was the crime reported to a Campus Security Authority?

Is the crime a Clery Act crime?

Did the crime occur on or within the institution's reportable Clery geography?

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On Campus (& On-Campus Residential)

Public Property

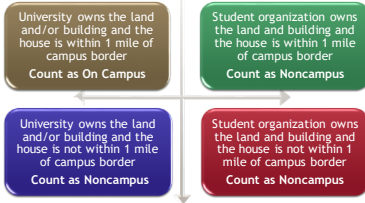
Non-campus building or property

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Student Organization Houses



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Impact of Location & Party

2020 Title IX Regulations

- Conduct that occurs within its "education program or activity"
- Against a person within the United States
- School must have exercised substantial control over both the respondent and the context in which the sexual harassment occurs
- Also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution

Clery Act

- On campus; on public property within or immediately adjacent to and accessible from the campus; in or on non-campus buildings or property that your institution (or a recognized student organization) owns/controls
- May include some study abroad programs
- For NWA offenses, must use processes even if occurs off-campus

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Geography versus Jurisdiction



Geography is the defined physical area in which the Clery Act attaches. A crime **MUST** occur within the institution's physical Clery geography to be captured.

Jurisdiction generally describes authority to apply law to a certain area and/or to certain persons. For example, under Title IX, an act may not physically occur on campus, but if it occurs within certain programs between certain people, Title IX attaches.

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Public Disclosures



 Daily Crime Log

 Annual Security Report (ASR)

 Emergency Notifications/Timely Warning Notices

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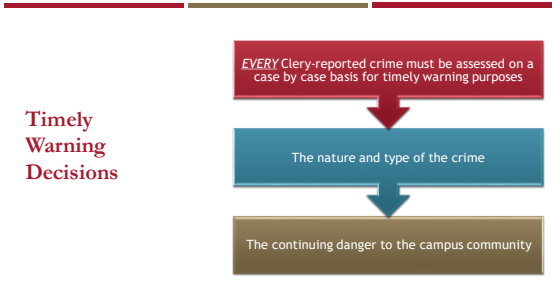
Timely Warning/Emergency Notification



	TIMELY WARNING (TWN)	EMERGENCY NOTIFICATION (EN)
Legal Standard:	Serious or continuing threat	Immediate threat to health and safety
Circumstance:	Clery-reportable crimes that have been reported (occurred in past)	Clery-reportable crimes as well as other types of emergencies (happening right now or about to happen)
Audience:	Community-wide	Can send to a segment of the community, if appropriate
When Issued:	As soon as pertinent information is available	Upon confirmation of emergency (when possible)
Follow-Up:	Not Required	Required

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Sample ASR Language: Issuance



Who writes it? Who distributes it?

The alerts are generally written by the Chief of Police or a designee, and they are approved and distributed to the community by the Office of External Relations. Updates to the Campus community about any particular case resulting in a Timely Warning may be distributed via blast email, may be posted on the Campus Advisories web site or may be shared with The Student Newspaper for a follow-up story. Posters may also be posted by the Campus PD in campus buildings when deemed necessary.

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- Police versus Residential College Master
- Lesson: Follow the procedures written in the ASR!

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In light of the recent fines imposed on Michigan State University by the DOE, my institution has been looking at the Clery Act guidance in section 6 of the Clery handbook on issuing timely warnings for Clery crimes, specifically sexual misconduct.

Are other institutions sending out timely warnings to their campus community regarding sexual predators that are currently being investigated for sexual misconduct?

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Response from Former CACD Director

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As the former head of ED's Clery Act Compliance Division (one of the two offices that investigated MSU), I can attest the Department, for obvious reasons, considers Timely Warnings, and their proper dissemination, VERY important, and scrutinizes them VERY closely. Generally speaking, if a "sexual predator" has caused a threat to your campus community, the Department would expect to see a Timely Warning. If that threat is ongoing, more than one Timely Warning is likely in order. You will want to keep copies of those warnings, as well as records of how they were sent, to whom, and when (date/time).

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Response from Former CACD Director

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If, for some reason, you decided not to send a Timely Warning despite that threat, you will definitely want to maintain a record of the discussions that were had, with whom they were had, and the reason(s) why a Timely Warning was decided against. While there is some subjectivity involved in these decisions, it will be difficult to convince the Department that the presence of a "sexual predator" on campus didn't warrant a warning to your community. That being said, there are times when a show of good faith deliberation - even one that results in the decision not to issue a Timely Warning when the Department would have done so - can be enough to ward off a violation.

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LaSalle University (2006)



- Failed to issue TW for 2 reported sexual assaults and failed to have an adequate policy on issuing such warnings. (Fined \$27,500)
- LaSalle conceded that there was never official consideration of whether to issue a warning b/c the coach did not report the incident.
- The Fine Letter states: A warning should be issued as soon as pertinent information is available to alert the campus community of potential threats and thereby enabling the community to protect itself and assist in preventing similar crimes. The Department does not agree that suspending the accused students achieves this requirement. The potential of a serious threat continued and should have been disseminated to the campus community.

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Removal of Suspect from Campus



- Is a Timely Warning necessary for a sex offense such as a date rape, when the suspect has been identified and removed from the campus?
 - A "date" or "acquaintance" rape is a **Sexual Assault**.
 - Timely warnings should be made when it has been determined that the nature of the offense creates a threat of continuing danger to the campus community. The apprehension of the offender typically removes that threat.
 - However, specific circumstances such as the use of a date-rape drug may merit a general alert to the campus community to encourage crime-prevention precautions.
 - Follow your institutional policy

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The Possible Risk of Compromising Law Enforcement Efforts

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- This factor does not mean that in the event of a serious or continuing threat to your students or employees, you should decide not to issue a timely warning.
- It means that the institution should consider the potential impact on various law enforcement operations as it issues these warnings.
- For example, you should warn students if there is a serial rapist preying on female joggers along the bike paths running through campus; you should not compromise law enforcement efforts by disclosing that 2 undercover female officers are being assigned to patrol the bike path.

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Content of the Timely Warning



- Issuing a warning that cautions the campus community to be careful or to avoid certain practices or places is not sufficient.
- You must include information about the crime that triggered the warning.
- Your institution's policy regarding timely warnings should specify what types of information will be included.

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Handbook Cautions...

- Timely warnings are not limited to violent crimes or crimes against persons so you should not have a timely warning policy that contains this restriction. Timely warnings can be issued for threats to persons or to property.
- Institutions cannot outsource the requirement to issue timely warnings to local law enforcement agencies and must not enter into agreements that prohibit the issuance of such warnings.

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- **VAWA REQUIREMENT:** TW reports shall be provided to students and employees in a manner that is timely, that withholds the names of victims as confidential.
- There is no requirement to withhold the perpetrator's identity.

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USC ADMITS TO 'TROUBLING DELAY' IN WARNING ABOUT FRATERNITY DRUGGING, SEXUAL ASSAULT REPORTS

USC freshman Blake Walters, 18, right, marches out in front of a group of USC faculty, students and area residents as they chant slogans and carry signs during a demonstration on the USC campus on Friday. The demonstration comes one week after sexual misconduct allegations against Sigma Nu fraternity members surfaced. (Brian van der Brug/Los Angeles Times)

BY TERESA WATANABE, COLLEEN SHALBY
OCT. 29, 2021 UPDATED 9:02 PM PT



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USC admits to 'troubling delay' in warning about fraternity drugging, sexual assault reports

USC acknowledged Friday a "troubling delay" in warning the campus community about allegations of drugging and sexual assault by a fraternity last month as a rare faculty protest added to mounting criticism about the university's handling of the crisis.

In a message to the campus community Friday night, USC President Carol Folt said that a university confidential reporting program received five to seven disclosures of possible drugging and possible sexual assault at a fraternity **in late September. The information, however, was not shared with the campus community until Oct. 28,** when the Department of Public Safety posted an alert that the university had received a report of sexual assault and reports of drugs being placed into drinks at the Sigma Nu fraternity house, "leading to possible drug-facilitated sexual assaults."

Six students reported that the alleged drugging and assault took place at Sigma Nu on Sept. 24 and one student reported she was drugged Sept. 27 at an unknown location, according to the department's daily crime log posted Oct. 21. The university subsequently announced it had suspended the fraternity.

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MSU TW Noncompliance Finding



Finding #2: Failure to Issue Timely Warnings in Accordance with Federal Regulations

"As noted throughout this report, and particularly in Finding #1, several of Nassar's victims reported sex crimes to Michigan State employees, most of whom clearly met the definition of CSAs. These crimes occurred over a period of nearly 20 years.

In each of the identified case, the University also failed to issue Timely Warnings in response to the sex offenses reported by these survivors." (Michigan State Campus Crime Program Review Report, 2018, p.13).

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Occidental College (2017)



Finding #4: Timely Warning Issuance and Policy Violations

- Occidental did not issue timely warnings for reports of Clery-reportable crimes that did in fact pose a serious or ongoing threat to students, employees, and the broader campus community.
- Moreover, the College did not include accurate and/or essential details about such threats in some of the warnings that were issued...the contents...were often so vague as to constitute a failure to provide actual notice of the dangerous condition.

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Montgomery College (2015)

- Finding 1: Failure to Comply with the Timely Warning Requirements
 - MC failed to issue a timely warning in accordance with its own policy, which stipulated that alerts would be sent within 24 hours of receiving a report of a crime against a person on campus
 - MC distributed a TWN 2 days after the report, which was judged by ED not to be "timely" and furthermore not reasonably calculated to prevent the occurrence of similar crimes
- Referred to Administrative Action and Appeals Service Group for possible adverse action

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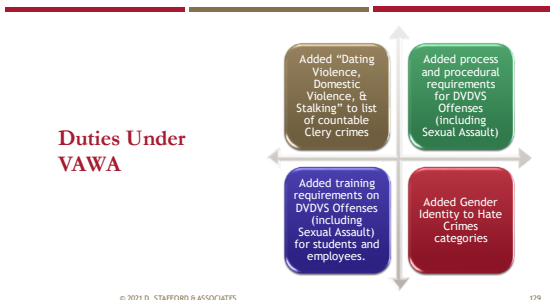
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VAWA Offenses



- Rape
- Fondling
- Incest
- Statutory Rape
- Dating Violence
- Domestic Violence
- Stalking

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Consent



- The Clery Act does not require any particular definition of consent
- ASR must include definition of consent as defined by jurisdiction (state law)
- Institution should have a definition in their institutional sexual misconduct policy

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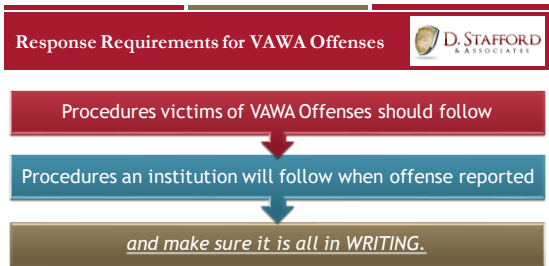
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Written Explanation of Student or Employee's Rights 

(b)(11)(vii) "When a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section. . ."

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Written Explanation of Rights and Options 



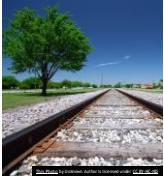
1. **The importance of preserving evidence** that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order
 - Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide later
2. **How and to whom the alleged offense should be reported**
 - List any person or organization that can assist the victim
 - Recommended: Also include community organizations

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Written Explanation of Rights and Options



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- 3. **Notification of the victim's option to**
 - Notify proper law enforcement authorities, including on-campus and local police
 - Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses
 - Decline to notify such authorities
- 4. **The rights of victims and the institution's responsibilities for**
 - Orders of protection
 - "No contact" orders
 - Restraining orders
 - Similar lawful orders issued by a criminal, civil, tribal, or institutional

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Written Explanation of Rights and Options



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- 5. **To students AND employees about existing:**
 - Counseling, health, mental health services
 - Victim Advocacy
 - Legal Assistance
 - Visa and Immigration Assistance
 - Student Financial Aid
 - Other services available for victims
- 6. **Options for, available assistance in, and how to request changes to (if requested and reasonably available)**
 - Academic, living, transportation, working

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Written Explanation of Rights and Options



- 7. **Confidentiality**
 - Publicly available recordkeeping has no personally identifying information about the victim (not required for respondent but best practice in most cases)
 - Accommodations and protective measures are confidential (to the extent they can be without impairing the ability to provide them)
- 8. **Disciplinary Procedures**
 - An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required

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Response to “Actual Knowledge”

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2020 Title IX Regulations
 Contact the complainant
 Offer and/or implement supportive measures
 Explain the process for filing a formal complaint

Clery Act
 Written explanation of victim's rights and options including:
 procedures to follow (preserve evidence, where report)
 information about confidentiality
 existing counseling, mental health, assistance, etc.
 access to law enforcement and no contacts, etc.
 charges to academic, living, transportation, and working situations, institutional procedures
 process for institutional disciplinary process
 Assess for Timely Warning Notice OR Emergency Notification

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Clery Requirements for Disciplinary Proceedings




- Anticipated timelines (“reasonably prompt”)
- Decision-making process
- How to and options for filing a school complaint (with contact info)
- How school determines which process to use
- Who makes decisions
- Include employee procedures
- Use procedures regardless of Clery geography

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Advisors Per Clery




- Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice
- Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties

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Standard of Evidence



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- **2020 Title IX Regulations**
 - Either the preponderance of the evidence standard or the clear and convincing standard
 - Must be the same for all sexual misconduct
- **Clery Act**
 - Any standard of evidence ... must include in policy
 - Would not prohibit using different standards for different groups

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2020 Title IX Regulations

- Can offer, but may not require
- Not allowed for “employee on student” sexual harassment
- Party may withdraw up to a point

Clery Act

- Written information about procedures the institution will follow for VAWA offenses (does not differentiate between formal vs informal)

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Formal Complaint Rights



2020 Title IX Regulations

- Treat equitably with goal to restore/preserve access to education; due process for respondent
- Include presumption of not responsible
- Include any discipline for false statements
- Reasonably prompt time-frames*
 - Describe the range of sanctions
 - Describe range of supportive measures

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Clery Act

- Prompt, fair and impartial investigation and resolution
 - Anticipated timeframes
 - List all possible sanctions for each offense (employees and students)
 - Consistent with policy and transparent
 - Not required to list all protective measures

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Formal (Live Hearing)



2020 Title IX Regulations

Requires live hearing with cross examination by advisor



Clery Act

Clery is silent regarding live hearing

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Written Determination



Title IX

- Identification of the allegations
- Procedural steps taken from receipt through determination
- Findings of fact supporting the determination
- Conclusions regarding the application of code of conduct to the facts
- Result (responsibility, rationale, sanctions, remedies for each allegation)
- Appeals procedures
- When results become final (post appeal)

Clery Act

- Result (include any sanctions and rationale for results and sanction)
- Appeals procedures
- Any change to the result
- When such results become final

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Bias Free and Training for "Officials"



Annual training on the issues related to dating violence, domestic violence, sexual assault and stalking and on how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability

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Clery Requirements for Officials



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- Training must be described in ASR
- Annual
- Should include (at a minimum):
 - Relevant evidence and how it should be used
 - Proper interview techniques
 - Basic procedural rules for conducting a proceeding
 - Avoiding actual/perceived conflicts
- Can be in person or electronic (webinar or video)

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Appeals



2020 Title IX Regulations

- Must offer both parties an appeal
- Based on specific grounds

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Clery Act

- Not required (but must provide notice if allowed along with appeal procedures)
- Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final

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Recordkeeping



2020 Title IX Regulations

- 7 years

Clery Act

- Retain all records used in compiling ASR for three years from the latest publication of the report to which they apply (in effect 7 years)

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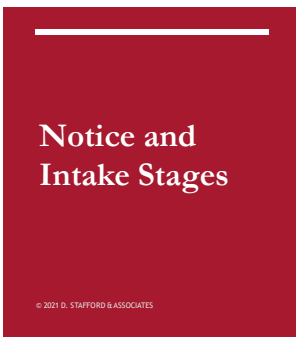
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- Trauma Informed
- Intake
- Written Notice to the Parties
- Party Rights
- Supportive Measures
- Emergency Removal and Administrative Leave
- Consolidation
- Dismissal

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- Understanding Stress and Trauma
 - During the Traumatic Event: Neurobiology
 - After the Traumatic Event: Memory
 - Long-Term Response: Impact

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Let's Talk Stress and Anxiety 



- What makes you stressed/anxious?
- How does your body respond when you are stressed/anxious?
- How does your mind respond?

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What Is Trauma?



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Comparison



Stress



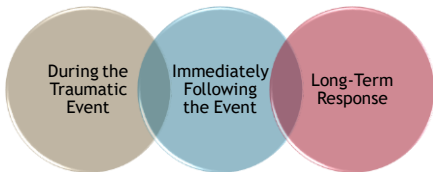
Trauma

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Impact of Trauma



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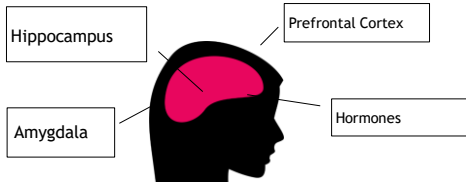
DURING THE
TRAUMATIC
EVENT:
NEUROBIOLOGY

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The Limbic System and Stress



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The Body's Response to Fear



- | | | | |
|---|---|---|---|
|  |  |  |  |
| Heart | Lungs | Muscles | Brain |
|  |  |  |  |
| Eyes | Stomach | Skin | Nerves |

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Degraded Prefrontal Cortex



Alcohol



Age



Prolonged stress exposure

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Response



Reflex



Habit

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IMMEDIATELY
AFTER THE
TRAUMATIC EVENT:
MEMORY

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Memory 



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Memory Encoding 



Central Details



Peripheral Details



Time and Context

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Trauma Memory Encoding 



Sensory



Emotional



Flashbulb memories

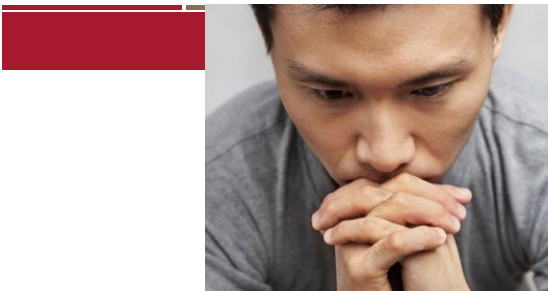
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- Self-mutilation
- Eating disorders
- Promiscuity/disinterest in sex
- Substance use/abuse
- Depression
- Counterintuitive behaviors
- Suicide attempts/completions
- Sleep disorders

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Safety and well-being



Maintain privacy and confidentiality



Kept up to date



Empathy and respect

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Multi-Pronged Approach



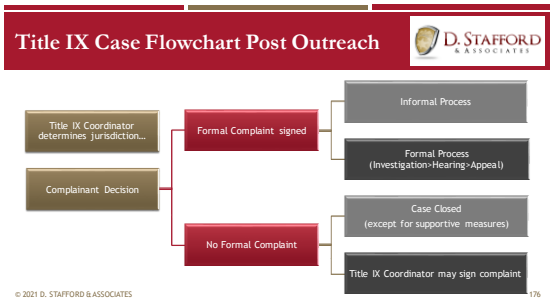
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DETERMINING JURISDICTION

A employee reports being stalked by a coworker with whom they had an intimate relationship. The employee reporter, PK, states that the relationship ended about six weeks ago due to threats of violence and since that time, the coworker keeps "showing up" off campus at various places the complainant is at. Further, while on campus, the coworker has texted and posted things on social media about PK. PK states that they want the behavior to stop and are fearful for their safety. The two do not have any children in common.

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Group Work-Jurisdiction



1. Take out your institutional policies and procedures.
2. Review the case synopsis.
3. Using the definitions in your policy, determine what has been reported. Specifically, what offenses?
4. Next, determine:
 1. if the offenses fall under the jurisdiction of Title IX.
 2. If you have jurisdiction over the persons.
 3. If the behavior reportedly occurred in the context of the institution's education program or associated activities.
5. Finally, determine what should be reported to your institution's Clergy Compliance Officer.

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Group Activity-Intake

Break into your groups.
Engage in the breakout exercise on intake.

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Investigation and Resolution Stages



Informal Resolution



Investigation Stage



Formal Resolution:

Hearing
Appeals

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Group Work-Resolution

- In your groups, open your policy/procedure to investigation and then resolution.
- Discuss the process regarding the following:
 - How investigations are assigned at your institution.
 - How the complainant and respondent are notified of the initial report's availability and offered the opportunity to provide feedback. Additionally, with regard to the investigative reports, discuss timelines, rights and options of the parties, and the role of the advisor.
 - How and when the final report is generated and provided to the parties.
 - How your institution prepares for the hearing process.
 - How the prehearing process works.
 - How decisions are reached.

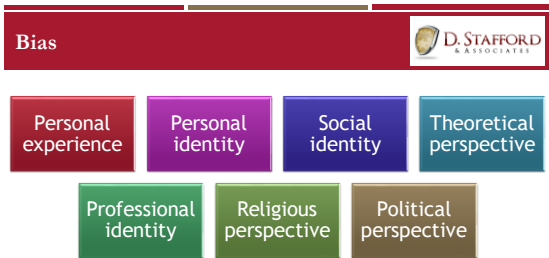
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WHAT IS BIAS?

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Identity Bias



Bias, Data, Impact

Gender Identity Sexual Orientation BIPOC National Origin Individuals with disabilities

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REPRESENTATION MATTERS

Title IX Coordinator Deputy Investigator Investigator Board Chair Board Member Board Member

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Types of Bias



Confirmation Bias	Confirmed preconceived opinion
Availability Bias	Most important to the memory immediately recalled
Hindsight Bias	See things as more predictable than they were
Foresight Bias	Ability to predict future events
Identity Bias	More likely to believe one group over another
Personal Experience Bias	Believe similar experience (or disbelieve the dissimilar)

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Organizational Integrity

“Organizational Integrity is the term we use to describe the foundational value that is the engine behind getting things done in the organization. It is the collective version of individual integrity where ‘I will do what I say I will do’ becomes ‘We will do what we say we will do.’”

- Partners in Leadership, 2009.

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FOLLOW YOUR
PROCESS

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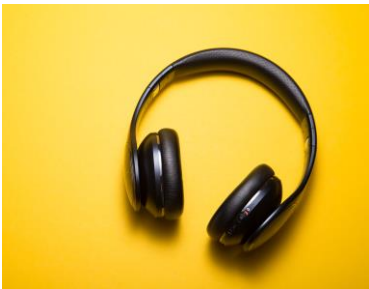
Everyone
stay in your
own lane...



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MANAGE
THE "NOISE"

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Rushworth Kidder, Moral Courage (2006).

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Final Note 

- 1**

Run a fair, thorough, and impartial process
- 2**

Let your morale compass guide you
- 3**

Do what your policy says you will do
- 4**

Do what the regulations tell you to do

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Overview of Title IX and Intersection with Clery

Texas Tech System

March 10, 2022

Presented by Adrienne Meador Murray

D. Stafford & Associates



- All members of the Title IX Team were practitioners in higher education prior to becoming consultants, representing a range of institution types and from the departments most commonly intersecting with Title IX including human resources, student conduct, threat assessment, residence life, and campus police.
- All persons on the Title IX Team have served as a Title IX Coordinator or Deputy Coordinator in a full time, part-time or interim basis.
- As of October 2021, our Title IX team has trained over 8,000 civil rights coordinator and investigators.
- DSA has conducted policy reviews for Title IX compliance and investigations for over 350 institutions in the United States.
- The Title IX Team conducts investigations for schools across the country, and has experience covering a broad range of Title IX behaviors including hostile environment and quid pro quo sexual harassment, cyber harassment, rape, fondling, statutory rape, dating violence, domestic violence, exploitation, and stalking. The cases they have investigated have included multiple complainants and respondents, repeat offenders, incapacitation, and counterclaims. The cases have involved students and employees including senior leaders, faculty, coaches, police officers, athletes, Greeks, alums, and graduate students and managed on and off campus cases.
- The Title IX team also conducts investigations of other civil rights violations including Title VI, Title VII, and instances of intersecting behaviors. Other investigative work has included general student and employee misconduct and employee performance issues.

Adrienne Meador Murray



D. Stafford & Associates, Vice President, Equity Compliance and Civil Rights Services and Director, Training & Compliance Activities-NACCOP

- Previous 17-year law enforcement veteran-focus on sex crimes
 - Academy to Patrol through Chief of Police
- Current Title IX Coordinator
- Sexual Misconduct policy and procedure review/rewrites, training, external investigations, expert witness
- Author and lead instructor of DSA national training programs for Title IX Coordinators and Investigators (administrative investigations) and best practice SOP and criminal investigations for police
- Served as an expert witness
- Bachelors' degree-Human Resource Management-University of Richmond
- Master's Degree-Higher Education, Campus Public Safety
- 235th Session, FBI National Academy

1

Pick a partner
(preferably someone
NOT from your school or
who you don't know)

2

Tell them your name and
job title

Ask their name and job
title

3

Share one thing with
each other that you'd
like to learn more about
today OR challenges you
have faced

4

Introduce your partner
to the class and share
the items in number
three for our board

INTRODUCTIONS



LET'S START
WITH
TITLE IX...

2020 Regulation Changes



- *New Subpart A: Introduction*
 - 106.8(a) *Designation of ~~responsible employee~~ coordinator*. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part employee must be referred to as the “Title IX Coordinator.”
 - *106.8(c) Adoption of grievance procedures*. A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30.

2020 Regulation Changes



- Subpart A: Introduction (106.1 - 106.9)
 - CHANGE: coordinator; publication; grievance procedures; preservation of rights
- Subpart B: Coverage (106.11 - 106.17)
 - CHANGE: Religious institutions
- Subpart D: Education Programs/Activities (106.31-106.43)
 - *New*: 106.30: Definitions of sexual harassment
 - *New*: 106.44: Recipient's response to sexual harassment
 - *New*: 106.45: Grievance process formal complaints of sexual harassment

NO CHANGE

- Subpart C: Admission and Recruitment (106.22 - 106.23)
- Subpart E: Employment (106.51- 106.61)
- Subpart F: Procedures (106.71)

Title IX Overview



Applies to Higher Ed
and K-12



Limited regulations
pre-2020

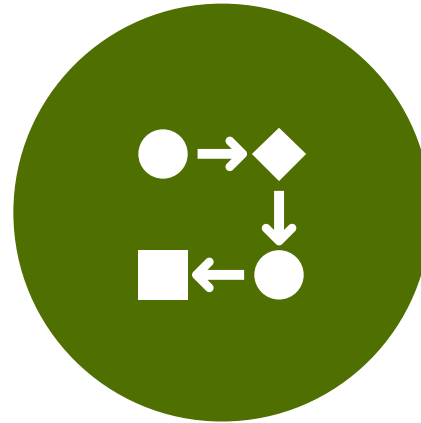


Covers wide range of
sex discrimination

2020 Regulations



Preamble



Process For Sexual
Harassment ONLY



Technical Assistance

§106.3 – Remedial Action



Fix it



No monetary damages

§106.6 – Effect of Other Requirements and Preservation of Rights



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Constitutional
Rights

FERPA

Title VII

Parents and
guardians

State and
local laws

§106.8(a) Designation of Coordinator



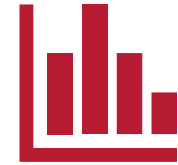
Title IX
Coordinator



Notification of
parties



Contact
information



Reporting
information

§106.8(b) Dissemination of Policy



Notification that
you do not
discriminate



Title IX
Coordinator
contact
information



Grievance
procedure



United States

§106.8(C) Adoption of Grievance Procedure



“grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part and a grievance process that complies with § 106.45 for formal complaints as defined in § 106.30.”

§106.8(d) Application Outside of the United States



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Only applies to US (and US territories)

Use other policy

No Clery conflicts

§106.8(d) Religious Institution



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Submit in writing

Specific tenant

Not required

Raise any time

§106.30 Definitions – Actual Knowledge



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“Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient.”

§106.30 Definitions – Actual Knowledge



Title IX
Coordinator



Official
with
authority



Different
K-12
standard



Designation



Not same as
CSAs

§106.30 Definitions – Complainant & Respondent

■ Complainant

“an individual who is alleged to be the victim of conduct that could constitute sexual harassment”

■ Respondent

“an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment”

§106.30 Definitions – Formal Complaint

-
- *“... a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient 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 education program or activity of the recipient with which the formal complaint is filed.”*
 - *“Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.”*

§106.30

Definitions - Sexual Harassment



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Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- 1. 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;*
- 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 education program or activity;*
- 3. "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).*

On the Basis of Sex

“Under *Bostock*’s reasoning, laws that prohibit sex discrimination – including Title IX of the Education Amendments of 1972 ... prohibit discrimination on the basis of gender identity or sexual orientation, so long as the laws do not contain sufficient indications to the contrary.”

Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, January 21, 2021

PRONG 1: Quid Pro Quo



Must be an employee respondent (not volunteer, visitor, student)



“This for that” harassment



When favorable professional or educational treatment is conditioned on a sexual activity

PRONG 2: Hostile Environment+ (The *Davis* Standard)



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No definition of consent required



Not the same Title VII “hostile environment” or 2001 Guidance



First Amendment protections

PRONG 3: The VAWA Offenses



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Sexual Assault

Rape
Fondling
Incest
Statutory Rape



Intimate Partner Violence

Dating Violence
Domestic Violence



Stalking

§106.30 Definitions – Supportive Measures



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“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.”

“Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment.”

§106.30 Definitions – Supportive Measures



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Non-
disciplinary,
non-punitive

Both parties

Academic,
housing, and
athletic impact

“Mutual
restrictions on
contact”

§106.44 Recipient's Response



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Deliberately
Indifferent

Educational
Program or
Activity

Equitable

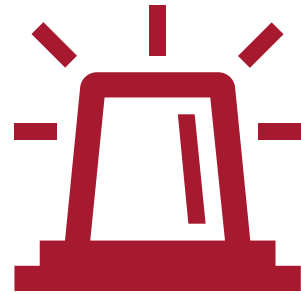
Contact
Complainant

On-line

§106.44 (c) Emergency Removal; (d) Administrative Leave



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Emergency removal



Administrative leave

§106.45 Grievance Process



“A recipient’s treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX.”

§106.45 Grievance Process



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Equitable

Objective
Evaluations

Impartiality
and Training

Presumption
of Not
Responsible

Prompt Time
Frames

§106.45 Grievance Process



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Range of
sanctions and
remedies

Standard of
evidence

Appeal

Supportive
measures

Respect
privilege

§106.45 Grievance Process



Notice requirements



Additional allegations

Training

§106.44(b)(1)(iii)

- **All Title IX Personnel**
 - Definition of sexual harassment
 - Scope of the recipient's education program or activity
 - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
 - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- **Decision-makers**
 - Technology to be used at a live hearing
 - Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- **Investigators**
 - Issues of relevance to create an investigative report that fairly summarizes relevant evidence

§106.45(b)(3) Dismissal of a Formal Complaint



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Must dismiss:

- Behavior does not constitute sexual harassment
- Did not occur in educational program or activity, not in the United States

May dismiss:

- Complainant withdraws formal complaint
- Respondent no longer enrolled/employed
- Insufficient evidence

§106.45(b)(4) Consolidation of a Formal Complaint



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Multiple
respondents

More than one
complainant
against one or
more respondent

One party
against other
party

§106.45 Grievance Process



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Burden of
proof

Witnesses and
facts

No restriction
on discussing
allegations

Advisor

Notice

Inspect
evidence

Investigative
report

§106.45(b)(6) Hearings



Live hearing



Cross-examination

§106.45(b)(6) Hearings



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Advisor

Relevancy

Participation consequences

“Physically present”

§106.45(b)(7) Determination Regarding Responsibility



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Allegations

Procedural steps

Findings of fact

Conclusion/application

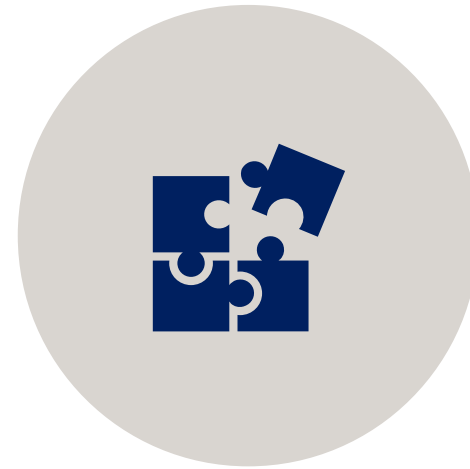
Rationale

Appeal procedures

Sanctions and Remedies



Sanctions



Remedies

§106.45(b)(8) Appeals



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MUST have

- Procedure
- New evidence
- Conflict or bias that impacted outcome

Additional grounds permitted

Decision-maker can have no other role

Reasonably prompt time frame

§106.45(b)(8) Appeals



Notification of
appeal

Equal
opportunity to
respond

Written
outcome -
rationale

§106.45(b)(9) Informal Resolution



Notice



Voluntary



Not allowed for
Employee/student

§106.45(b)(10) Recordkeeping (seven years)



Case Materials



Training materials

§106.71 Retaliation Prohibited



Intimidation, threats, coercions, discrimination

May use same grievance procedure

1st Amendment

False reports

Title IX Resources



Website

<https://www2.ed.gov/about/offices/list/ocr/index.html?src=oc>



Blog

<https://www2.ed.gov/about/offices/list/ocr/blog/index.html>

OCR Enforcement



Resolves Complaints

Compliance Reviews

OCR Enforcement



Evaluation



Opening the
Complaint
for
Investigation



Investigation



Resolution
After
Determination
of Non-
Compliance



Resolution
Prior to
Conclusion
of the
Investigation

Case Processing Manual



- *Provides OCR with procedures to promptly and effectively investigate complaints and compliance reviews, issue findings, and secure resolution agreements that remedy discriminatory policies or practices identified by OCR.*
- Evaluations
- Facilitated Resolution
- Case planning, investigation, and resolution
- Compliance reviews and directed investigations
- Monitoring resolution agreements
- Initiation of enforcement
- Recent Changes



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Title VII



PROTECTED CLASS

Protected Class



Different
Groups



Different
Laws

Protected Classes



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Familial
status

Gender

Gender
identity

Sex*

Sexual
orientation

Age (40+)

Ancestry

Color*

National
origin*

Race*

Disability

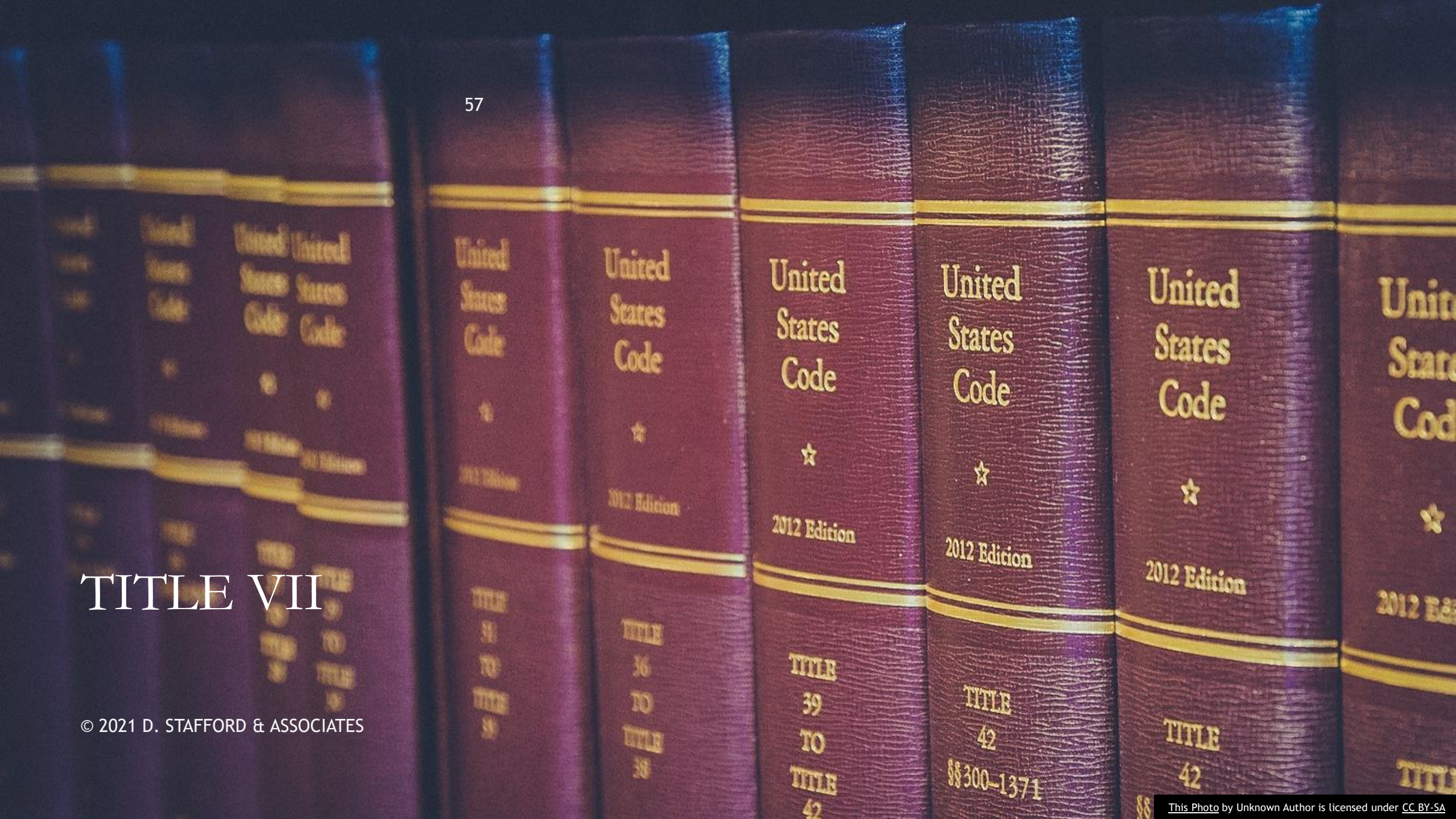
Genetic
information

Military or
veteran
status

Religion*

Law	Who	What	Enforcement
Title VI of the Civil Rights Act of 1964	Students	Race, color, or national origin	OCR
Title VII of the Civil Rights Act of 1964	Employees	Race, color, religion, or sex	EEOC
Title IX of the Education Amendments of 1972	Students; Employees	Basis of sex	OCR
503 and 504 of the Rehabilitation Act of 1973	Students	Disabilities	OCR
ADA/ADAA - Americans with Disabilities Act/Amendments	Employees (Title I); Students (Title II/III)	Disabilities	EEOC/ DOJ
ADEA - Age Discrimination in Employment Act	Employees	Age (40+)	EEOC
PDA - Pregnancy Discrimination Act	Employees	Pregnancy/Title VII	EEOC
USERRA - Uniformed Services Employment and Reemployment Rights Act	Employees	Veterans	DOL/DOJ

TITLE VII



Title VII of the Civil Rights Act of 1964



Title VII prohibits employment discrimination based on race, color, religion, sex, and national origin

History



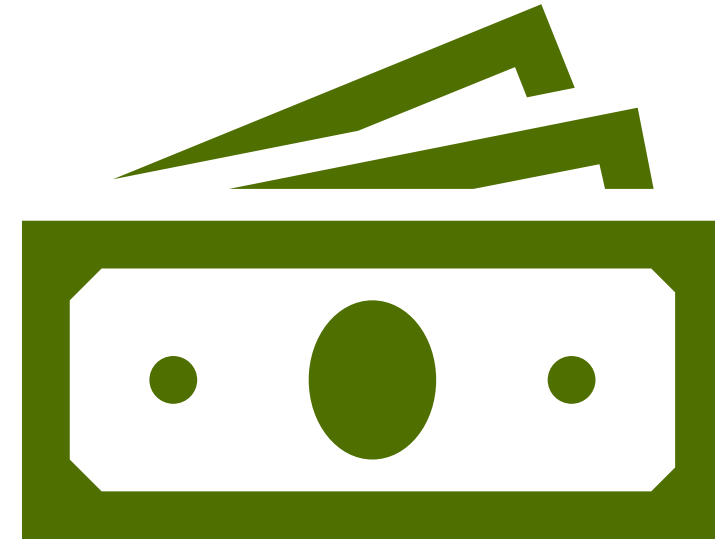
- Civil Rights Act of 1964
- Proposed by Kennedy
- Signed by Johnson
- Race, color, religion, national origin, sex
- Original drafts did not include sex

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42 U.S.C. § 2000e-2 – Unlawful Employment Practices



- Fail or refuse to hire
- Discharge
- Discrimination with respect to compensation, terms, conditions, or privileges of employment
- Limit, segregate, or classify “his” employees
- Harassment is not defined in the statute



The Regulations 29 C.F.R. §1604



- §1604.1 General principles
- §1604.2 Occupational qualification
- §1604.3 Separate lines of progression and seniority systems
- §1604.4 Discrimination against married women
- §1604.5 Job opportunities and advertising
- §1604.6 Employment agencies
- §1604.7 Pre-employment inquiries as to sex
- §1604.8 Relationship to Title VII of the Equal Pay Act
- §1604.9 Fringe benefits
- §1604.10 Employment opportunities related to sex
- §1604.11 Sexual harassment

29 C.F.R. § 1604 DISCRIMINATION BECAUSE OF SEX

- Sex-based discrimination
- Sex discrimination harassment
- Retaliation
- Pregnancy
- Disparate impact
- 3rd party harassment



Basis of Sex



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Pregnancy-related
protections

Sexual orientation/Gender
identity (Bostock)



DISCRIMINATION

AN ADVERSE ACTION IS TAKEN AND IS BASED ON A PROTECTED CLASS

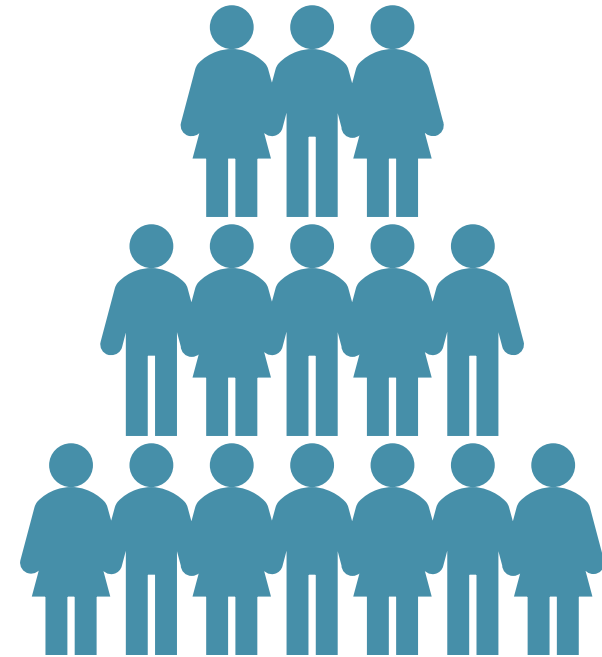
Disparate Treatment

When a person, or a group of people, are treated less favorably than another person or group of people on the basis of a protected class.



Disparate Impact

When a policy, practice, or decision is based on neutral factors that have an adverse impact on a protected class



29 C.F.R. § 1604.11(a) Sexual Harassment



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Harassment on the basis of sex violates Title VII. Unwelcome conduct of a sexual nature that:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; OR

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; OR

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment

29 C.F.R. § 1604.11 Sexual Harassment



Totality of
Circumstances



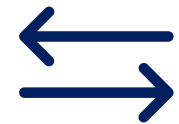
Notice



3rd party



Prevention



Related

Quid Pro Quo



Tangible
employment action



Punish for refusing
to engage



Submission due to
conditions

Severe or Pervasive

- Complainant belongs to a protected category
- Conduct was unwelcome
- Conduct based on complainant's protected category
- Plaintiff subjectively viewed the harassment as creating a hostile environment
- A reasonable person would objectively view the work environment as abusive

Severe and Pervasive Examples



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Rape

Physical threats

Unwelcome
sexual advances

Repeated
requests for
sexual favors

Verbal or
physical
harassment of a
sexual nature

Offensive
comments
based on sex

Unwelcome Conduct

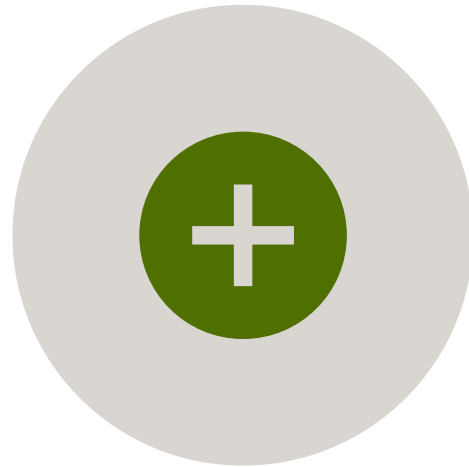


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“in the sense that the employee did not solicit or incite it, and in the sense that the employee regarded the conduct as undesirable or offensive.” Henson v. City of Dundee, 682 F.2d at 903

Totality of the circumstances

Reasonable Person



More than petty slights



Conduct applications

Retaliation



Protected activity



Adverse impact

Employer Liable Unless They Can Show:



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Reasonably tried to
prevent and correct
harassing behavior

Employee
unreasonably failed
to take advantage of
preventative or
corrective measures

This includes conduct of
non-employees as well.



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INTERSECTIONS

	Title IX	Title VII
Protected Class	Sex	Sex, race, color, religion, national origin...age, or disability
Activities Covered	Academic opportunities and activities	Employment
Retaliation?	Prohibition on retaliation	Prohibition on retaliation
LGBTQ	Protections for gender identity and sexual orientation	Protections for gender identity and sexual orientation
Enforcement	OCR	EEOC and/or state agency
Training?	Training requirements	No training requirements
Standard	Preponderance/clear and convincing	Probable cause/Preponderance
Notice?	Notice requirements	No notice requirements
3rd Party?	It depends . . .	Yes

Amorous Relationship Policies



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7 Title VII

9 Title IX

➤ Separate policy?

SPECIAL CONSIDERATIONS

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Microaggressions



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“Mansplaining”

Suggestive
photographs

You are such an
...

Representation

Looking at chest

“The
Spokesperson”

You should smile
more

I would never
have known you
are/were ...

That’s so gay

You will never
be a real man

First Amendment Limitations



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Obscenity

Defamation

Incitement

True threats

Integral to
criminal
conduct

Academic Freedom



College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence, they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

- AAUP, *Policy Documents & Reports* 3-4 (9th ed. 2001)

Academic Freedom



YES:

- Debate
- Pedagogical philosophy
- Compare, contrast, and challenge
- Express view
- Research
- Free from others' beliefs
- Grievance and due process
- Grade
- Teach

NO:

- Harass/threaten
- Protect incompetency
- Protect from abiding by law or regulations
- Protect from disciplinary or sanctions
- Allow disruption of speakers

1st Amendment and Academic Freedom



As noted above, OCR interprets its regulations consistent with the requirements of the First Amendment. Some speech may be used to communicate ideas or emotions that nevertheless implicate First Amendment protections. However, this case presents extraordinary factual circumstances: The Dean's reported years of sexual comments were just a portion of the ongoing alleged sexually harassing conduct the Dean was reported to have engaged in during his long tenure at the College, including asking for sexual favors from a student in exchange for assistance with a certification examination. The University therefore had an obligation under Title IX to investigate and, if warranted, take steps necessary to determine whether a hostile environment based on sex had been created.

Office For Civil Rights, Michigan State University Letter of Finding (2019)





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The Clery Act for Title IX Coordinators



- Key Requirements
- Counting Crime Statistics
- Clery Reporting: Public Disclosures
- VAWA Offenses
- VAWA Procedural Requirements



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KEY REQUIREMENTS

Key Requirements of the Clery Act



Collect, classify, and count crime reports/statistics



Public disclosures-Timely Warning Notices and Emergency Notifications



Publish Annual Security Report



Submit crime statistics to the Department

Gettysburg College

2019 - 2020 Academic Year Annual Security and Fire Safety Report

Prepared by the Department of Public Safety
Includes Crime Statistics for Calendar Years (CYs) 2016, 2017 & 2018



COUNTING CRIME STATISTICS

Three Part Test

1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution's reportable Clery geography?



Campus Security Authorities (CSA)



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Campus
police/security

Security
responsibility

Individual or
organization
where crimes
should be reported

An official with
responsibility for
student and
campus activities

Who is never a CSA?



Professional Counselors



Pastoral Counselors



REPORT



A CSA'S FUNCTION IS TO REPORT
ALLEGATIONS OF CLERY ACT
CRIMES MADE IN GOOD FAITH.

Reporting Considerations



Title IX - "Officials with authority"

- Title IX Coordinator
- Official(s) who can institute corrective measures on behalf of the school
- Any other person who is designated by the institution as a person who shall report

Clery Act - CSAs

- Campus police department
- Responsible for security
- Individuals to whom crimes should be reported
- "Officials with significant responsibility for student and campus activities"
- Local law enforcement

(Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act)

Calendar Years (CY) 2016 – 2018

Criminal Offenses or Primary Crimes (Crimes Reported By Hierarchy)	Calendar Year	On Campus (Including Residential)	Non- Campus	Public Property	Totals	On Campus (Residential Only)
Murder & Non -Negligent Manslaughter	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Manslaughter by Negligence	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Rape	2018	11	2	0	13	11
	2017	25	2	0	27	18
	2016	14	2	0	16	10
Fondling	2018	11	1	0	12	9
	2017	4	1	0	5	4
	2016	0	3	0	3	0
Incest	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Statutory Rape	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Robbery	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	1	1	0
Aggravated Assault	2018	3	0	2	5	1
	2017	4	0	0	4	4
	2016	3	1	0	4	3
Burglary	2018	32	9	0	41*	31
	2017	7	1	0	8	6
	2016	3	1	0	4	1
Motor Vehicle Theft	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0

COUNTING CRIME STATISTICS:

CLERY CRIMES

Three Part Test

1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution's reportable Clery geography?

Clery Crime Categories



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Primary Crimes



Hate Crimes



Arrests and Referrals for Drug, Liquor, and Weapon Violations



Dating Violence, Domestic Violence, and Stalking Incidents (VAWA Offenses)

Clery Reportable Crime Categories



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- Murder/Non-negligent Manslaughter*
- Manslaughter by Negligence*
- Sex Assault*
 - Rape
 - Fondling
 - Incest
 - Statutory Rape
- Robbery*
- Aggravated Assault*
- Burglary*
- Motor Vehicle Theft*
- Arson*
- Arrests and Disciplinary Referrals for:
 - Liquor
 - Drugs
 - Weapons
- Domestic Violence
- Dating Violence
- Stalking
- Hate Crimes for *, plus
 - Larceny-Theft
 - Simple Assault
 - Intimidation
 - Destruction/Damage/Vandalism of Property

Counting Clery Crimes

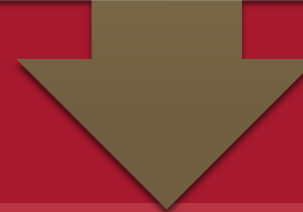
If a crime is reported (and otherwise meets the three-part test) it is counted.

Includes attempts

Includes cases a DA would reject

Includes cases of “not responsible”

Does NOT include every conduct code violation



It is not the word used but the facts of the case that determine how it gets counted



COUNTING CRIME
STATISTICS:

CLERY
GEOGRAPHY

Three Part Test

Was the crime reported to a Campus Security Authority?

Is the crime a Clery Act crime?

Did the crime occur on or within the institution's reportable Clery geography?

CLERY
GEOGRAPHY

On Campus (& On-Campus
Residential)

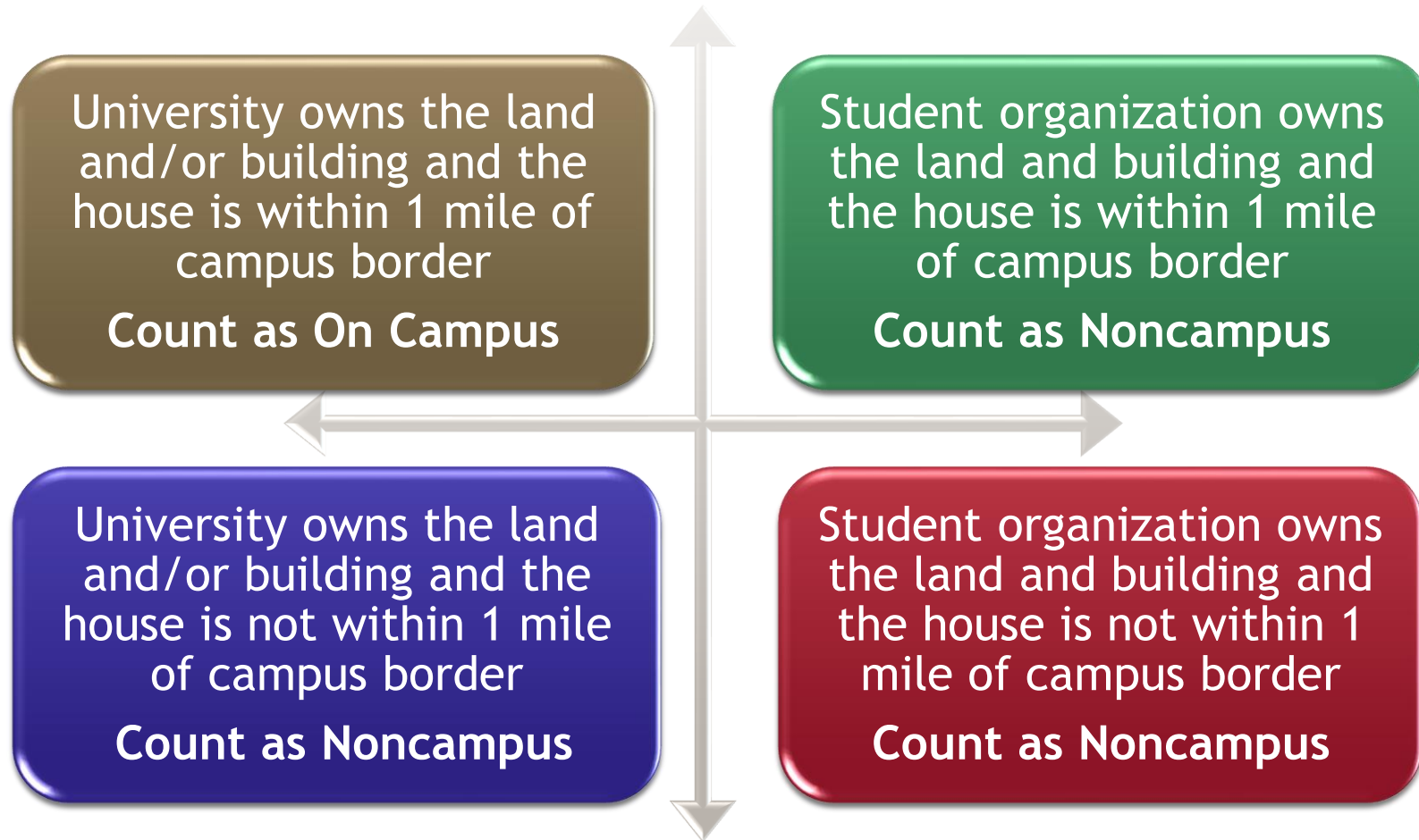
Public Property

Non-campus building or
property

Student Organization Houses



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Impact of Location & Party

2020 Title IX Regulations

- Conduct that occurs within its “education program or activity”
- Against a person within the United States
- School must have exercised substantial control over both the respondent and the context in which the sexual harassment occurs
- Also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution

Clery Act

- On campus; on public property within or immediately adjacent to and accessible from the campus; in or on non-campus buildings or property that your institution (or a recognized student organization) owns/controls
- May include some study abroad programs
- For VAWA offenses, must use processes even if occurs off-campus

Geography versus Jurisdiction



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Geography is the defined physical area in which the Clery Act attaches. A crime **MUST** occur within the institution's physical Clery geography to be captured.

Jurisdiction generally describes authority to apply law to a certain area and/or to certain persons. For example, under Title IX, an act may not physically occur on campus, but if it occurs within certain programs between certain people, Title IX attaches.



CLERY
REPORTING:
PUBLIC
DISCLOSURES

Public Disclosures



Daily Crime Log



Annual Security Report (ASR)



Emergency Notifications/Timely Warning Notices

Timely Warning/Emergency Notification



TIMELY WARNING (TWN)

EMERGENCY NOTIFICATION (EN)

Legal Standard:

Serious or continuing threat

Immediate threat to health and safety

Circumstance:

Clery-reportable crimes that have been reported (occurred in past)

Clery-reportable crimes as well as other types of emergencies (happening right now or about to happen)

Audience:

Community-wide

Can send to a segment of the community, if appropriate

When Issued:

As soon as pertinent information is available

Upon confirmation of emergency (when possible)

Follow-Up:

Not Required

Required

Timely Warning Decisions

EVERY Clery-reported crime must be assessed on a case by case basis for timely warning purposes



The nature and type of the crime



The continuing danger to the campus community

Sample ASR Language: Issuance



Who writes it? Who distributes it?

The alerts are generally written by the Chief of Police or a designee, and they are approved and distributed to the community by the Office of External Relations. Updates to the Campus community about any particular case resulting in a Timely Warning may be distributed via blast email, may be posted on the Campus Advisories web site or may be shared with The Student Newspaper for a follow-up story. Posters may also be posted by the Campus PD in campus buildings when deemed necessary.

Yale Issue



- Police versus Residential College Master
- Lesson: Follow the procedures written in the ASR!

TW Inquiry from NACUA Member



In light of the recent fines imposed on Michigan State University by the DOE, my institution has been looking at the Clery Act guidance in section 6 of the Clery handbook on issuing timely warnings for Clery crimes, specifically sexual misconduct.

Are other institutions sending out timely warnings to their campus community regarding sexual predators that are currently being investigated for sexual misconduct?

Response from Former CACD Director

As the former head of ED's Clery Act Compliance Division (one of the two offices that investigated MSU), I can attest the Department, for obvious reasons, considers Timely Warnings, and their proper dissemination, VERY important, and scrutinizes them VERY closely. Generally speaking, if a "sexual predator" has caused a threat to your campus community, the Department would expect to see a Timely Warning. If that threat is ongoing, more than one Timely Warning is likely in order. You will want to keep copies of those warnings, as well as records of how they were sent, to whom, and when (date/time).

Response from Former CACD Director

If, for some reason, you decided not to send a Timely Warning despite that threat, you will definitely want to maintain a record of the discussions that were had, with whom they were had, and the reason(s) why a Timely Warning was decided against. While there is some subjectivity involved in these decisions, it will be difficult to convince the Department that the presence of a "sexual predator" on campus didn't warrant a warning to your community. That being said, there are times when a show of good faith deliberation - even one that results in the decision not to issue a Timely Warning when the Department would have done so - can be enough to ward off a violation.

LaSalle University (2006)



- Failed to issue TW for 2 reported sexual assaults and failed to have an adequate policy on issuing such warnings. (Fined \$27,500)
 - LaSalle conceded that there was never official consideration of whether to issue a warning b/c the coach did not report the incident.
 - The Fine Letter states: A warning should be issued as soon as pertinent information is available to alert the campus community of potential threats and thereby enabling the community to protect itself and assist in preventing similar crimes. The Department does not agree that suspending the accused students achieves this requirement. The potential of a serious threat continued and should have been disseminated to the campus community.

Removal of Suspect from Campus



- Is a Timely Warning necessary for a sex offense such as a date rape, when the suspect has been identified and removed from the campus?
 - A “date” or “acquaintance” rape is a **Sexual Assault**.
 - Timely warnings should be made when it has been determined that the nature of the offense creates a threat of continuing danger to the campus community. The apprehension of the offender *typically* removes that threat.
 - However, specific circumstances such as the use of a date-rape drug may merit a general alert to the campus community to encourage crime-prevention precautions.
 - Follow your institutional policy

The Possible Risk of Compromising Law Enforcement Efforts

-
- This factor **does not mean** that in the event of a serious or continuing threat to your students or employees you should decide not to issue a timely warning.
 - It means that the institution should consider the potential impact on various law enforcement operations **as it issues** these warnings.
 - For example, you should warn students if there is a serial rapist preying on female joggers along the bike paths running through campus; you should not compromise law enforcement efforts by disclosing that 2 undercover female officers are being assigned to patrol the bike path.

Content of the Timely Warning



- Issuing a warning that cautions the campus community to be careful or to avoid certain practices or places is not sufficient.
- You must include information about the crime that triggered the warning.
- Your institution's policy regarding timely warnings should specify what types of information will be included.

Handbook Cautions...

- Timely warnings are not limited to violent crimes or crimes against persons so you should not have a timely warning policy that contains this restriction. Timely warnings can be issued for threats to persons or to property.
- Institutions cannot outsource the requirement to issue timely warnings to local law enforcement agencies and must not enter into agreements that prohibit the issuance of such warnings.

Confidentiality



- **VAWA REQUIREMENT:** TW reports shall be provided to students and employees in a manner that is timely, that withholds the names of victims as confidential.
- There is no requirement to withhold the perpetrator's identity.

USC ADMITS TO 'TROUBLING DELAY' IN WARNING ABOUT FRATERNITY DRUGGING, SEXUAL ASSAULT REPORTS

USC freshman Blake Walters, 18, right, marches out in front of a group of USC faculty, students and area residents as they chant slogans and carry signs during a demonstration on the USC campus on Friday. The demonstration comes one week after sexual misconduct allegations against Sigma Nu fraternity members surfaced. (Brian van der Brug/Los Angeles Times)

BY TERESA WATANABE, COLLEEN SHALBY

OCT. 29, 2021 UPDATED 9:02 PM PT



USC admits to 'troubling delay' in warning about fraternity drugging, sexual assault reports

USC acknowledged Friday a “troubling delay” in warning the campus community about allegations of drugging and sexual assault by a fraternity last month as a rare faculty protest added to mounting criticism about the university’s handling of the crisis.

In a message to the campus community Friday night, USC President Carol Folt said that a university confidential reporting program received five to seven disclosures of possible drugging and possible sexual assault at a fraternity in late September. The information, however, was not shared with the campus community until Oct. 20, when the Department of Public Safety posted an alert that the university had received a report of sexual assault and reports of drugs being placed into drinks at the Sigma Nu fraternity house, “leading to possible drug-facilitated sexual assaults.”

Six students reported that the alleged drugging and assault took place at Sigma Nu on Sept. 24 and one student reported she was drugged Sept. 27 at an unknown location, according to the department’s daily crime log posted Oct. 21. The university subsequently announced it had suspended the fraternity.

MSU TW Noncompliance Finding



Finding #2: Failure to Issue Timely Warnings in Accordance with Federal Regulations

“As noted throughout this report, and particularly in Finding #1, several of Nassar’s victims reported sex crimes to Michigan State employees, most of whom clearly met the definition of CSAs. These crimes occurred over a period of nearly 20 years.

In each of the identified case, the University also failed to issue Timely Warnings in response to the sex offenses reported by these survivors.” (Michigan State Campus Crime Program Review Report, 2018, p.13).

Occidental College (2017)



■ Finding #4: Timely Warning Issuance and Policy Violations

- Occidental did not issue timely warnings for reports of Clery-reportable crimes that did in fact pose a serious or ongoing threat to students, employees, and the broader campus community.
- Moreover, the College did not include accurate and/or essential details about such threats in some of the warnings that were issued...the contents...were often so vague as to constitute a failure to provide actual notice of the dangerous condition.

Montgomery College (2015)

- **Finding 1: Failure to Comply with the Timely Warning Requirements**
 - MC failed to issue a timely warning in accordance with its own policy, which stipulated that alerts would be sent within 24 hours of receiving a report of a crime against a person on campus
 - MC distributed a TWN 2 days after the report, which was judged by ED not to be “timely” and furthermore not reasonably calculated to prevent the occurrence of similar crimes
- Referred to Administrative Action and Appeals Service Group for possible adverse action

A close-up photograph of two squirrels. The squirrel on the left is holding a nut in its paws and is about to take a bite. The squirrel on the right is looking towards the first squirrel. The background is dark, making the brown and tan fur of the squirrels stand out.

TITLE IX & CLERY
COMPLIANCE



VAWA OFFENSES

Duties Under VAWA



VAWA Offenses



Rape

Fondling

Incest

Statutory
Rape

Dating
Violence

Domestic
Violence

Stalking

Consent



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The Clery Act does not require any particular definition of consent

ASR must include definition of consent as defined by jurisdiction (state law)

Institution should have a definition in their institutional sexual misconduct policy

VAWA
PROCEDURAL
REQUIREMENTS

Response Requirements for VAWA Offenses



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Procedures victims of VAWA Offenses should follow



Procedures an institution will follow when offense reported



and make sure it is all in WRITING.

Written Explanation of Student or Employee's Rights



(b)(11)(vii) “When a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student’s or employee’s rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section. . . .”

Written Explanation of Rights and Options



- 1. The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order**
 - Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide later
- 2. How and to whom the alleged offense should be reported**
 - List any person or organization that can assist the victim
 - Recommended: Also include community organizations

Written Explanation of Rights and Options



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3. **Notification of the victim's option to**
 - Notify proper law enforcement authorities, including on-campus and local police
 - Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses
 - Decline to notify such authorities
4. **The rights of victims and the institution's responsibilities for**
 - Orders of protection
 - "No contact" orders
 - Restraining orders
 - Similar lawful orders issued by a criminal, civil, tribal, or institutional

Written Explanation of Rights and Options



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5. **To students AND employees about existing:**
 - Counseling, health, mental health services
 - Victim Advocacy
 - Legal Assistance
 - Visa and Immigration Assistance
 - Student Financial Aid
 - Other services available for victims
6. **Options for, available assistance in, and how to request changes to (if requested and reasonably available)**
 - Academic, living, transportation, working

Written Explanation of Rights and Options



7. Confidentiality

- Publicly available recordkeeping has no personally identifying information about the victim (not required for respondent but best practice in most cases)
- Accommodations and protective measures are confidential (to the extent they can be without impairing the ability to provide them)

8. Disciplinary Procedures

- An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required

Response to “Actual Knowledge”

2020 Title IX Regulations

Contact the complainant

Offer and/or implement supportive measures

Explain the process for filing a formal complaint

Clery Act

Written explanation of victim’s rights and options including:

- procedures to follow (preserve evidence, where report)

- information about confidentiality

- existing counseling, mental health, assistance, etc.

- access to law enforcement and no contacts, etc.

- changes to academic, living, transportation, and working situations, institutional procedures

- process for institutional disciplinary process

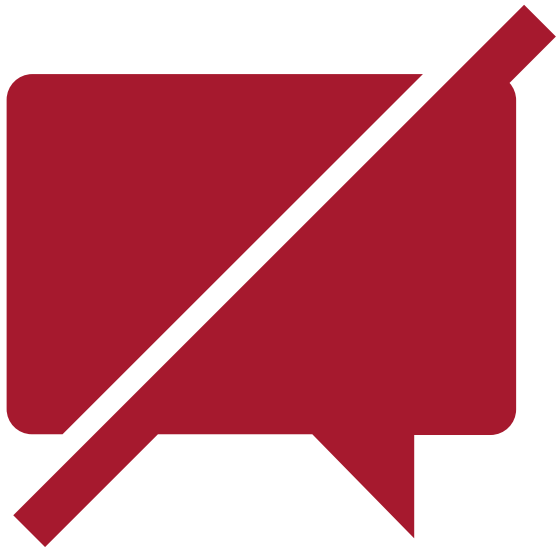
Assess for Timely Warning Notice OR Emergency Notification

Clery Requirements for Disciplinary Proceedings



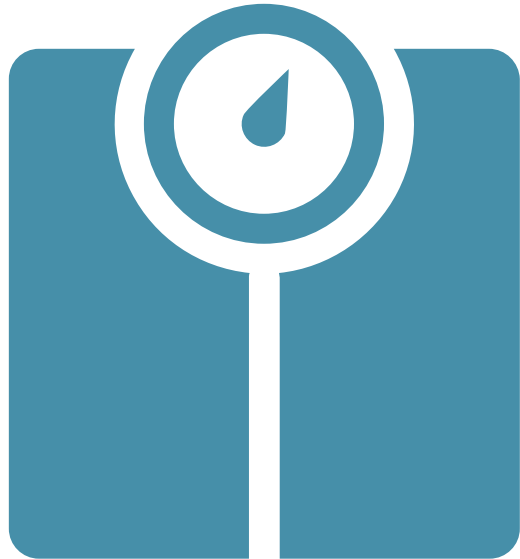
- Anticipated timelines (“reasonably prompt”)
- Decision-making process
- How to and options for filing a school complaint (with contact info)
- How school determines which process to use
- Who makes decisions
- Include employee procedures
- Use procedures regardless of Clery geography

Advisors Per Clery



- Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice
- Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties

Standard of Evidence



- **2020 Title IX Regulations**
 - Either the preponderance of the evidence standard or the clear and convincing standard
 - Must be the same for all sexual misconduct
- **Clery Act**
 - Any standard of evidence ... must include in policy
 - Would not prohibit using different standards for different groups

2020 Title IX Regulations

- Can offer, but may not require
- Not allowed for “employee on student” sexual harassment
- Party may withdraw up to a point

Clery Act

- Written information about procedures the institution will follow for VAWA offenses (does not differentiate between formal vs informal)

Formal Complaint Rights



2020 Title IX Regulations

- Treat equitably with goal to restore/preserve access to education; due process for respondent
 - Include presumption of not responsible
 - Include any discipline for false statements
- Reasonably prompt time-frames*
 - Describe the range of sanctions
 - Describe range of supportive measures

Clery Act

- Prompt, fair and impartial investigation and resolution
 - Anticipated timeframes
 - List all possible sanctions for each offense (employees and students)
 - Consistent with policy and transparent
 - Not required to list all protective measures

Formal (Live Hearing)



2020 Title IX Regulations

Requires live hearing with cross examination by advisor



Clery Act

Clery is silent regarding live hearing

Written Determination



Title IX

- Identification of the allegations
- Procedural steps taken from receipt through determination
- Findings of fact supporting the determination
- Conclusions regarding the application of code of conduct to the facts
- Result (responsibility, rationale, sanctions, remedies for each allegation)
- Appeals procedures
- When results become final (post appeal)

Clery Act

- Result (include any sanctions and rationale for results and sanction)
- Appeals procedures
- Any change to the result
- When such results become final

Bias Free and Training for “Officials”



Annual training on the issues related to dating violence, domestic violence, sexual assault and stalking and on how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability

Clery Requirements for Officials



- Training must be described in ASR
- Annual
- Should include (at a minimum):
 - Relevant evidence and how it should be used
 - Proper interview techniques
 - Basic procedural rules for conducting a proceeding
 - Avoiding actual/perceived conflicts
- Can be in person or electronic (webinar or video)

Appeals



2020 Title IX Regulations

- Must offer both parties an appeal
- Based on specific grounds

Clery Act

- Not required (but must provide notice if allowed along with appeal procedures)
- Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final

Recordkeeping



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2020 Title IX Regulations

- 7 years

Clery Act

- Retain all records used in compiling ASR for three years from the latest publication of the report to which they apply (in effect 7 years)





Practical Application

Notice and Intake Stages

-
- Trauma Informed
 - Intake
 - Written Notice to the Parties
 - Party Rights
 - Supportive Measures
 - Emergency Removal and Administrative Leave
 - Consolidation
 - Dismissal



154

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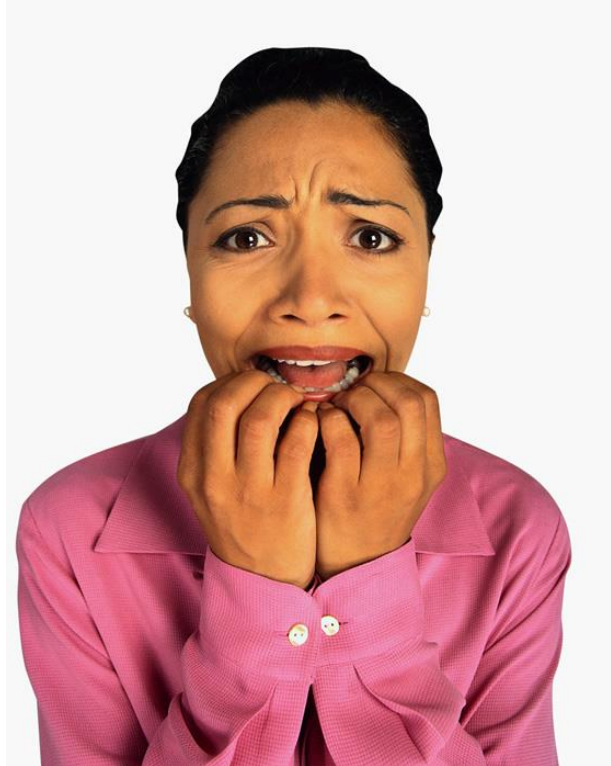
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UNDERSTANDING
STRESS
AND
TRAUMA



- Understanding Stress and Trauma
 - During the Traumatic Event: Neurobiology
 - After the Traumatic Event: Memory
 - Long-Term Response: Impact

Let's Talk Stress and Anxiety



- What makes you stressed/anxious?
- How does your **body** respond when you are stressed/anxious?
- How does your **mind** respond?

What Is Trauma?



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Comparison



Stress

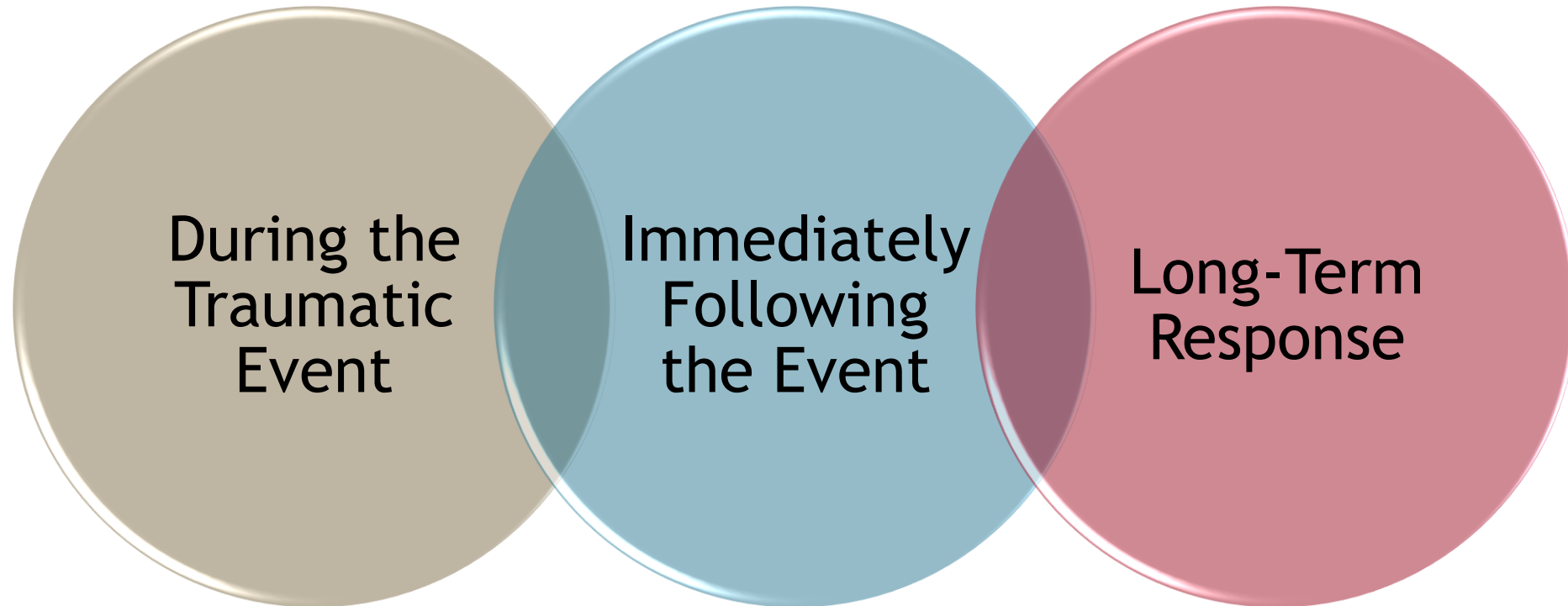


Trauma

Impact of Trauma



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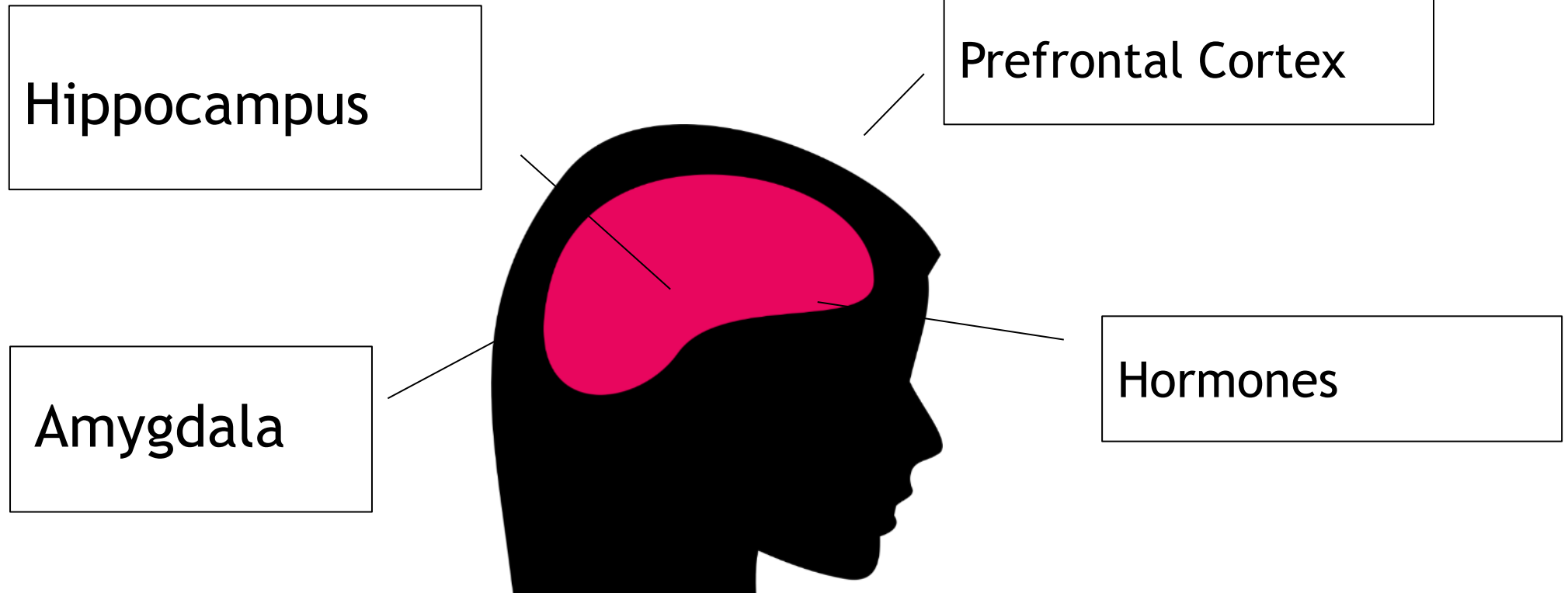
DURING THE
TRAUMATIC
EVENT:

NEUROBIOLOGY

The Limbic System and Stress



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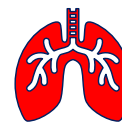
The Body's Response to Fear



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Heart



Lungs



Muscles



Brain



Eyes



Stomach



Skin



Nerves

Degraded Prefrontal Cortex



Alcohol



Age



Prolonged stress
exposure

Response



Reflex



Habit



IMMEDIATELY
AFTER THE
TRAUMATIC EVENT:

MEMORY

Memory



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Encoding

Storage

Retrieval

Memory Encoding



Central Details



Peripheral Details



Time and Context

Trauma Memory Encoding



Sensory



Emotional



Flashbulb
memories



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PRESENTATION

-
-
-
-
-
-
-

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Post-Traumatic Response

- Self-mutilation
- Eating disorders
- Promiscuity/disinterest in sex
- Substance use/abuse
- Depression
- Counterintuitive behaviors
- Suicide attempts/completions
- Sleep disorders

Re-traumatization in the Title IX Process



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Safety and well-being



Maintain privacy and
confidentiality



Kept up to date



Empathy and respect

Multi-Pronged Approach

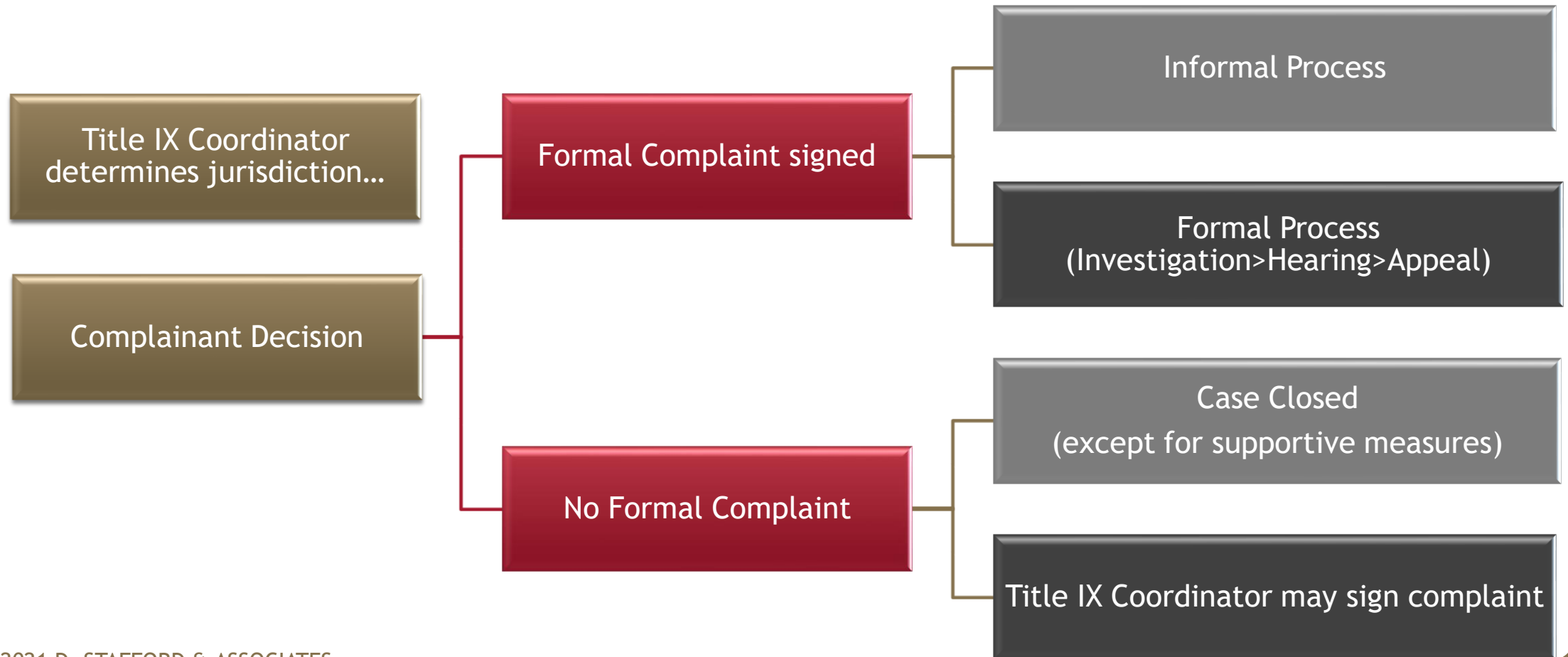




Title IX Case Flowchart Post Outreach



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DETERMINING JURISDICTION

■ A employee reports being stalked by a coworker with whom they had an intimate relationship. The employee reporter, PK, states that the relationship ended about six weeks ago due to threats of violence and since that time, the coworker keeps “showing up” off campus at various places the complainant is at. Further, while on campus, the coworker has texted and posted things on social media about PK. PK states that they want the behavior to stop and are fearful for their safety. The two do not have any children in common.



Group Work-Jurisdiction



1. Take out your institutional policies and procedures.
2. Review the case synopsis.
3. Using the definitions in your policy, determine what has been reported. Specifically, what offenses?
4. Next, determine:
 1. if the offenses fall under the jurisdiction of Title IX.
 2. If you have jurisdiction over the persons.
 3. If the behavior reportedly occurred in the context of the institution's education program or associated activities.
5. Finally, determine what should be reported to your institution's Clery Compliance Officer.



Group Activity-Intake

Break into your groups.

Engage in the breakout exercise on intake.

Investigation and Resolution Stages



Informal Resolution



Investigation Stage



Formal Resolution:

Hearing
Appeals

Group Work-Resolution

- In your groups, open your policy/procedure to investigation and then resolution.
- Discuss the process regarding the following:
 1. How investigations are assigned at your institution.
 2. How the complainant and respondent are notified of the initial report's availability and offered the opportunity to provide feedback. Additionally, with regard to the investigative reports, discuss timelines, rights and options of the parties, and the role of the advisor.
 3. How and when the final report is generated and provided to the parties.
 4. How your institution prepares for the hearing process.
 5. How the prehearing process works.
 6. How decisions are reached.



WHAT IS BIAS?

Bias



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Personal
experience

Personal
identity

Social
identity

Theoretical
perspective

Professional
identity

Religious
perspective

Political
perspective

Identity Bias



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Bias, Data, Impact

Gender
Identity

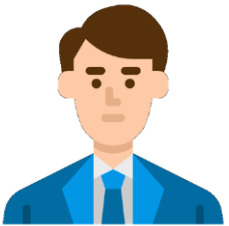
Sexual
Orientation

BIPOC

National
Origin

Individuals
with
disabilities

REPRESENTATION MATTERS



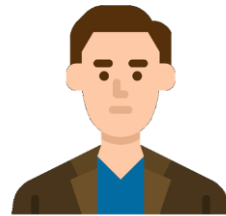
Title IX Coordinator



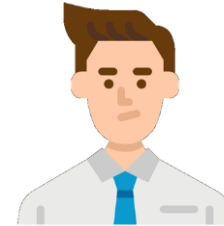
Deputy



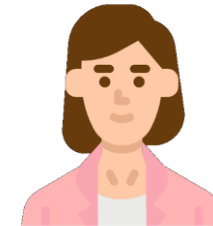
Investigator



Investigator



Board Chair



Board Member



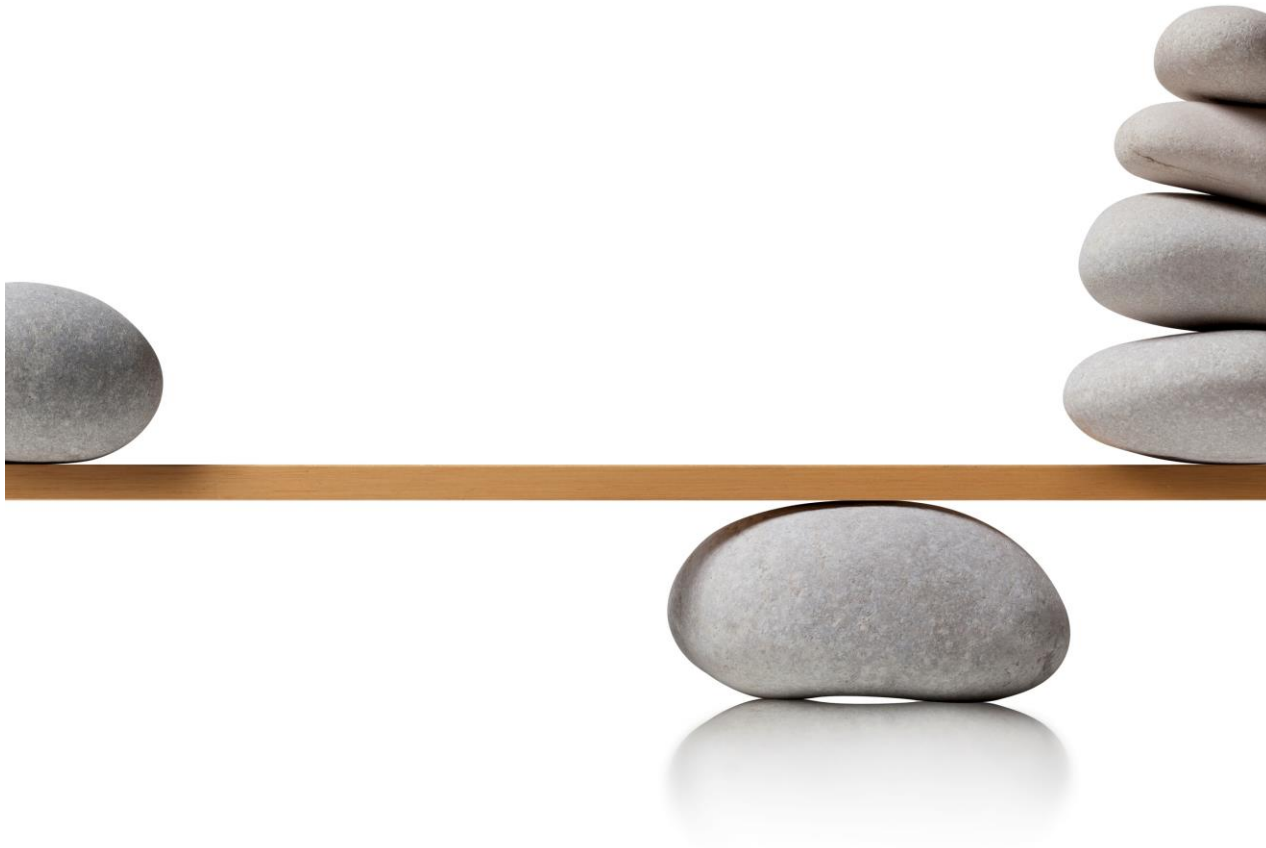
Board Member

Types of Bias



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Confirmation Bias	Confirmed preconceived opinion
Availability Bias	Most important to the memory immediately recalled
Hindsight Bias	See things as more predictable than they were
Foresight Bias	Ability to predict future events
Identity Bias	More likely to believe one group over another
Personal Experience Bias	Believe similar experience (or disbelieve the dissimilar)



ORGANIZATIONAL INTEGRITY

Organizational Integrity



“Organizational Integrity is the term we use to describe the foundational value that is the engine behind getting things done in the organization. It is the collective version of individual integrity where ‘I will do what I say I will do’ becomes ‘We will do what we say we will do.’”

- Partners in Leadership, 2009.



FOLLOW YOUR PROCESS

■ Image by [Ian Wilson](#) from [Pixabay](#)

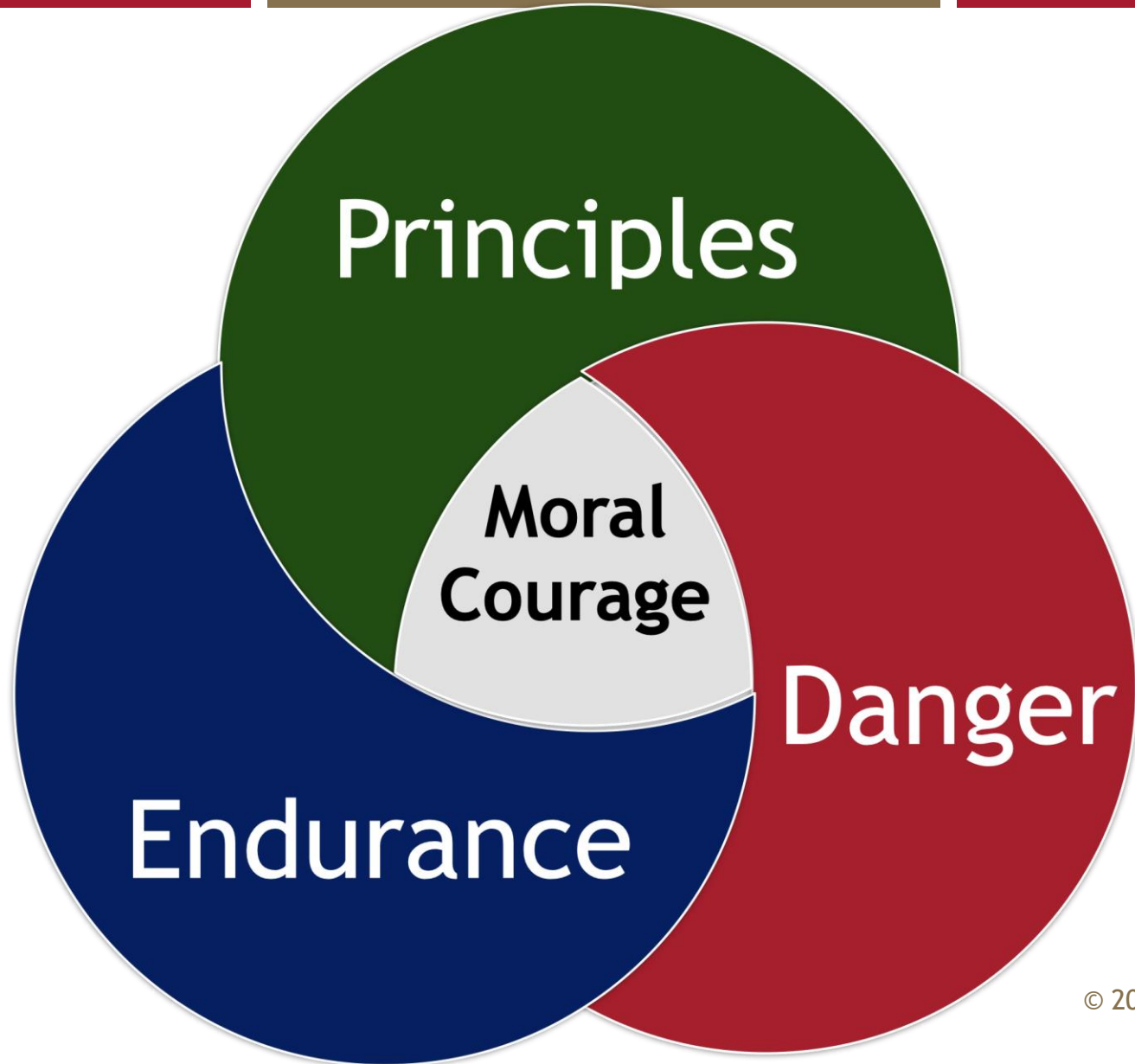


Everyone
stay in your
own lane...





MANAGE THE “NOISE



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Rushworth Kidder, Moral Courage (2006).

Final Note



1

Run a fair, thorough, and impartial process

2

Let your morale compass guide you

3

Do what your policy says you will do

4

Do what the regulations tell you to do

