



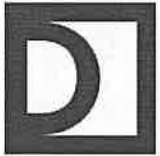
Title IX & Clery Act Annual Training

Regions PCCS

June 26, 2018

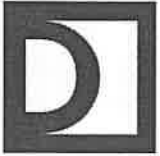


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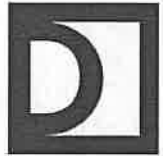


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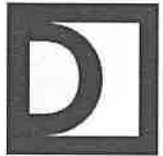


Title IX - Clery Background: How did we get here?



Timeline

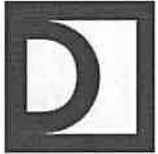
- 1972 – Title IX
- 1990 – Clery Act
- 2011 – Title IX Dear Colleague Letter
- 2013 – Violence Against Women Act Reauthorization
- 2017 – New Interim Guidance on Campus Sexual Misconduct



Title IX of the Education Amendments of 1972

Prohibits sex discrimination in education programs that receive federal funding.

- Sexual harassment, including sexual assault, is a type of sex discrimination that is banned by Title IX.
- Sexual harassment creates a hostile environment when it is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from an education program.

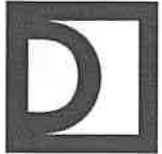


Clery Act:

Every institution must:

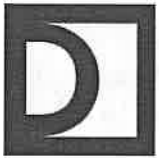
- **Collect, classify and count crime reports and crime statistics.**
- Issue a **timely warning** for any *Clery Act* crime that represents an ongoing threat to the safety of students or employees;
- Issue an **emergency notification** upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.
- **Publish an annual security report** containing safety- and security-related policy statements and crime statistics and distribute it to all current students and employees. Schools also must inform prospective students and employees about the availability of the report.
- **Submit crime statistics to ED.** Each year in the fall schools must participate in a Web-based data collection to disclose crime statistics by type, location and year.
- ED can issue civil **fines of up to \$54,789 per violation** for a substantial misrepresentation of the number, location or nature of the crimes required to be reported or for a violation of any other provision of the safety- and security-related *HEA* regulations.

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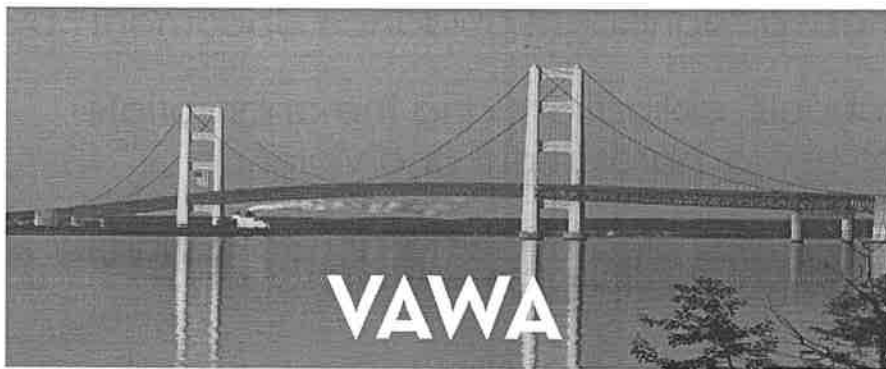


2011 Dear Colleague Letter

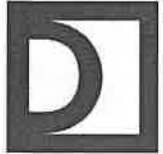
- Was deemed a “significant guidance document” by ED
- Detailed schools' obligations and the appropriate response to sexual harassment and violence
- Guidance was repealed by Secretary DeVos in September 2017



Title
IX



Clery
Act

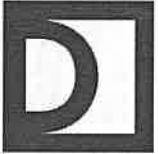


Violence Against Women Reauthorization Act (2013)

Amended the Clery Act to require that schools compile statistics for incidents of

- domestic violence,
- dating violence,
- sexual assault; and
- stalking

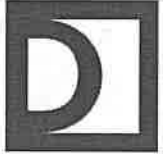
(collectively referred to as "sexual misconduct") that occur on or near campus.



Violence Against Women Reauthorization Act (2013)

Updated requirements for school's Annual Security Reports. The ASR must now include:

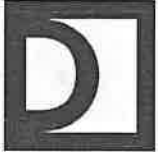
- The school's **educational programs** to promote awareness of sexual misconduct;
- Possible **sanctions** school may impose regarding sexual misconduct;
- **Procedures that victims should** follow if an incident of sexual misconduct has occurred;
- The school's procedures for conducting a **disciplinary proceeding** in cases of alleged sexual misconduct;



Violence Against Women Reauthorization Act (2013)

School's Annual Security Report must also include:

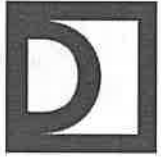
- Information about how the school will protect **confidentiality** of a victim;
- Written notification to students and employees about **counseling, health, victim advocacy, legal assistance** and other services available for victims;
- Written notification to victims about available **accommodations** to academic and living arrangements if requested by the victim.



VAWA Challenges - Non-Traditional Schools

The VAWA requirements present particular challenges to non-traditional trade and career schools.

- These schools typically do not have on-campus police or dedicated security forces.
- The Title IX coordinator at these schools is often the director or another administrator whose primary job functions pertain to school operations.
- Given the size of the student body, lack of residential student housing and limited school-sponsored extracurricular activities, incidents of sexual misconduct may be infrequent at these types of institutes.



VAWA Challenges – Non-Traditional Schools

During the proposed regulations' public comment period, a number of commenters noted the significant compliance burden that the regulations place on small institutions.

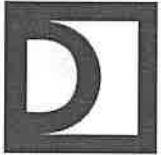
- For example, the commenters referenced the requirement for institutional disciplinary proceedings in the case of alleged dating violence, domestic violence, sexual assault or stalking.
- In response, the Department noted that institutions are not making determinations of criminal responsibility but are determining whether the institution's own rules have been violated.
- The Department further noted that students at smaller institutions should have the same protections as their counterparts at larger institutions.



2014 White House Task Force – First Report Findings:

- One in five women is sexually assaulted in college
- Most often by someone she knows
- Most often not reported
- Many survivors feel isolated, ashamed or to blame
- Although less often, men also victims

Source: Not Alone, The First Report of the White House Task Force to Protect Students From Sexual Assault, April, 2014, accessed December 5, 2017, <https://www.justice.gov/ovw/page/file/905942/download>



BJS 2016 Campus Climate Survey

- The Bureau of Justice Statistics developed a pilot campus climate survey to address key Task Force goals and key issues related to the measurement of rape and sexual assault in self-report surveys .
- Completed surveys were collected from more than 23,000 undergraduate students at nine schools
 - Data collection occurred March through May 2015
- The overall prevalence rate for completed sexual assault experienced by undergraduate females, averaged across the nine schools, was 10.3%

"Campus Climate Survey Validation Study Final Technical Report," (January 2016). Bureau of Justice Statistics, accessed January 21, 2016 (<http://www.bjs.gov/content/pub/pdf/ccsvsfttr.pdf>)



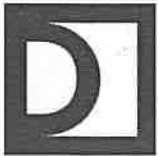
**The Second Report of the White House Task Force
to Protect Students from Sexual Assault**

January 5, 2017



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

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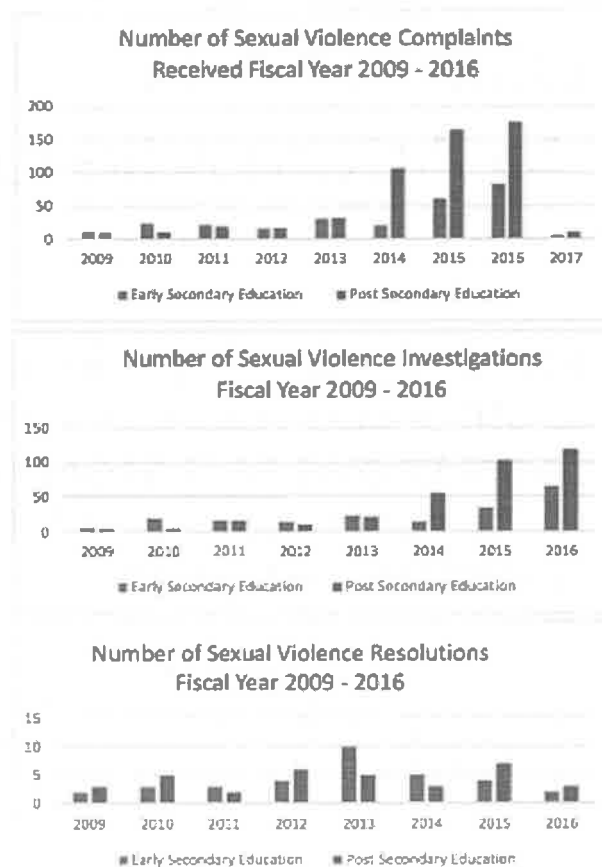


Appendix D: Number of Title IX Complaints, Investigations, and Resolutions

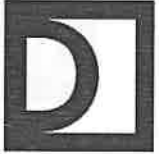
2009-2016

Source: Department of Education, Office for Civil Rights

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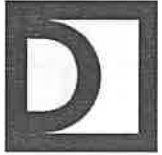
"The Second Report of the White House Task Force to Protect Students from Sexual Assault," January 5, 2017, (retrieved from <https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Documents/1.4.17.VAW%20Event.TF%20Report.PDF>) retrieved January 18, 2017]



What is the Nature of a School's Responsibility to Address Sexual Misconduct?

Whether or not a student files a complaint of alleged sexual misconduct or otherwise asks the school to take action, where the school knows **or reasonably should know** of an incident of sexual misconduct, the school must take steps to understand what occurred and to respond appropriately.

United States Department of Education, Office for Civil Rights,
Q&A on Campus Sexual Misconduct, September 2017,
<https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf>



Resources for School Officials

U.S. Department of Justice, Office on Violence Against Women

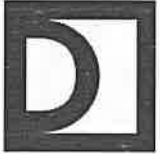
- Campus Climate Surveys
- Sexual Misconduct Policies: Sample Language for Colleges & Universities
- Prevention Resources
- Other Resources

www.justice.gov/ovw/protecting-students-sexual-assault#campus

The Center for Changing Our Campus Culture

- Comprehensive online resource clearinghouse created to provide important resources for colleges and universities on sexual assault, domestic violence, dating violence, and stalking.

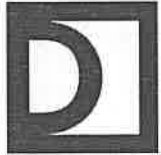
www.changingourcampus.org



Policy Checklist

- White House Task Force created checklist for sexual misconduct policies to highlight elements that are particularly important for institutions to consider when drafting sexual misconduct policies as part of their overall response to sexual misconduct.
- Schools cautioned not to adopt checklist without first engaging in a comprehensive drafting process that considers the unique aspects of the institution and its student body.
- Items in the checklist intended to be guidelines, neither exhaustive nor exclusive, to help a school cover the important bases

<https://www.justice.gov/ovw/page/file/910271/download>



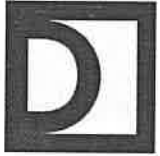
Transgender Students

Joint Dear Colleague Letter issued by DOJ & ED on 5/13/16

- The Departments treat a student's gender identity as the student's sex for Title IX purposes
- School must not treat a transgender student differently from the way it treats other students of the same gender identity
- A school's failure to treat students consistent with their gender identity may create or contribute to a hostile environment in violation of Title IX

WITHDRAWN BY TRUMP ADMINISTRATION 02/17/17

FEBRUARY 2018 – ED states that it is no longer investigating civil rights complaints from transgender students banned from using bathrooms conforming with their gender identity



State Policies

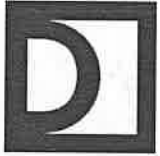
- The American Association of State Colleges and Universities published a report in December, 2015 regarding state law activity regarding campus sexual assault.
- According to the report, 26 states considered legislation related to campus sexual assault in 2015.
- Issues being addressed by state legislatures include:
 - Affirmative Consent
 - Transcript Notations
 - Mandatory Reporting
 - Access to Medical Attention
 - Memorandums of Understanding (MOU)
 - Climate Surveys
 - God Samaritan Provisions

Lebioda, Kati. (2015) State Policy Proposals to Combat Campus Sexual Assault, accessed January 20, 2016, <https://www.aascu.org/policy/publications/policy-matters/campussexualassault.pdf>



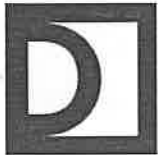
Title IX Coordinator

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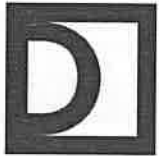
Dear Colleague Letter April 24, 2015

- Reminds all schools to designate a Title IX Coordinator
- Contact information must be widely distributed on school's website and various publications
- Department began collecting information about schools' Title IX Coordinators in 2015



Title IX Coordinator

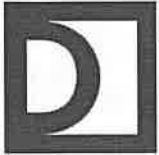
- Title IX does not categorically exclude particular employees from serving as Title IX coordinators.
 - However, when designating a Title IX coordinator, an institution should be careful to avoid designating an employee whose other job responsibilities may create a conflict of interest.
- A dedicated, full-time Title IX coordinator is the ideal.
 - Designating a full-time Title IX coordinator will also minimize the risk of a conflict of interest.
- Some colleges and universities may not have the resources to support a full-time position.
 - If this is the case, it is critical that the employee has the qualifications, training, authority, and time to address all complaints raising Title IX issues.



Title IX Coordinator Responsibilities

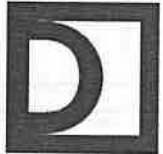
Responsible for monitoring and overseeing school's compliance with Title IX and prevention of sexual misconduct.

- Knowledgeable and trained in school's policies and procedures and relevant state and federal law.
- Available to advise individuals about school and community resources and reporting options.
- Available to provide assistance to school employees regarding how to respond appropriately to report of Title IX-related prohibited conduct and related retaliation.
- Ensures effective implementation of school's sexual misconduct policies and procedures.
- Oversees training, prevention, and education efforts and annual reviews of climate and culture.



Title IX Coordinator Responsibilities

- Overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints.
- Must be informed of all reports and complaints raising Title IX issues, even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office.
- The school should ensure that the Title IX coordinator is given the training, authority, and visibility necessary to fulfill these responsibilities.



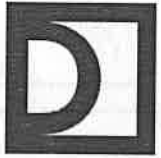
Title IX Coordinator Responsibilities

School may decide to give its Title IX coordinator additional responsibilities, such as:

- providing training to students, faculty, and staff on Title IX issues;
- conducting Title IX investigations and determining appropriate sanctions against the perpetrator and remedies for the complainant;
- determining appropriate interim measures for a complainant upon learning of a report or complaint of sexual violence;
- Ensuring appropriate policies and procedures for working with local law enforcement and coordinating services with local victim advocacy organizations and service providers;



Training

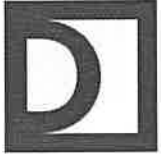


The Law:

Institutional disciplinary hearings must be:

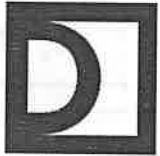
“conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability”

20 USC 1092(f)(8)(iv)(I)(bb)



What type of training should a school provide to employees who are involved in implementing the school's grievance procedures?

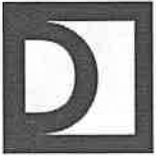
- information on **working with and interviewing persons** subjected to sexual violence;
- information on particular **types of conduct** that would constitute sexual violence, including same-sex sexual violence;
- the proper **standard of review** for sexual violence complaints (preponderance of the evidence);
- information on **consent** and the role drugs or alcohol can play in the ability to consent;
- the need for **remedial actions** for the perpetrator, complainant, and school community;



What type of training should a school provide to employees who are involved in implementing the school's grievance procedures?

- how to determine **credibility**;
- how to **evaluate evidence** and weigh it in an impartial manner;
- how to conduct **investigations**;
- **confidentiality**;
- the effects of **trauma**, including neurobiological change; and
- **cultural awareness training** regarding how sexual violence may impact students differently depending on their cultural backgrounds.

United States Department of Education, Office for Civil Rights, Questions and Answers on Title IX and Sexual Violence, April 29, 2014. <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

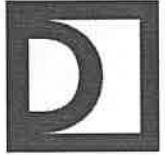


Education & Prevention Programs



Prevention and Education

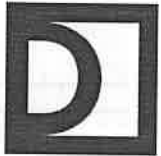
- An institution's annual security report must include a statement of policy that addresses the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking.
- The statement must include—
 - i. A description of the institution's primary prevention and awareness programs for all incoming students and new employees, and
 - ii. A description of the institution's ongoing prevention and awareness campaigns for students and employees



Primary Prevention Programs

- Defined in regulations as programming, initiatives, and strategies that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through:
 - the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality,
 - encourage safe bystander intervention, and
 - seek to change behavior and social norms in healthy and safe directions.

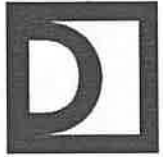
34 CFR 668.46(j) (2) (iv)



Prevention and Education

Prior OCR guidance (rescinded September 2017) recommended that the following topics (as appropriate) be covered as part of student training:

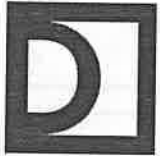
- Title IX and what constitutes sexual violence under the school's policies;
- school's definition of consent, including examples;
- how the school analyzes whether conduct was unwelcome under Title IX;
- how the school analyzes whether unwelcome sexual conduct creates a hostile environment;
- reporting options, including formal reporting and confidential disclosure options and any timeframes set by the school for reporting;
- school's grievance procedures
- disciplinary code provisions relating to sexual violence and the consequences of violating those provisions;



Prevention and Education

Additional recommended student training topics (per prior OCR guidance):

- effects of trauma;
- the role alcohol and drugs often play in sexual violence incidents;
- strategies and skills for bystander intervention;
- how to report sexual violence to campus or local law enforcement;
- Title IX's protections against retaliation;
- encouraging students to report incidents of sexual violence;
- educating students about the persons on campus to whom they can confidentially report incidents of sexual violence.



Clery Reporting