

Title IX: How the Increased Focus on Sexual Violence on Campus Effects Community College Districts



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Title IX / Clery Act Compliance

The Overall Goal

To protect all people associated with educational institutions from sexual violence, harassment and discrimination and eliminate these sexual abuses from America's education system.

Title IX / Clery Act

Overview

1. Recent Federal Legislation and Enforcement Efforts
2. Title IX and Compliance Requirements
3. Clery Act Changes and Requirements
4. Checklist for Campus Compliance and Risk Management

Recent Title IX Litigation and Press

- “Oregon Basketball Coach Sued by Alleged Rape Victim for Ignoring Player’s Sexual Assault Record.” *Huffington Post*, March 5, 2015.
- “Oregon Accessed Campus Counseling Records of Victim Allegedly Raped by 3 Basketball Players to Use Against Her in Court.” *USA Today*, March 3, 2015.

Recent Title IX Litigation and Press

- “Stanford under federal investigation for handling of sexual assault case.” *The Stanford Daily*, March 4, 2015.
- “More college men are fighting back against sexual misconduct cases.” *L.A. Times*, June 7, 2014.
- “UCLA joined Occidental College . . . and 74 other higher education institutions in being investigated by the federal government for its handling of alleged sexual misconduct on campus.”

Recent Title IX Litigation and Press

- “Western Kentucky Suspends Swimming, Diving Program 5 Years.” *USA Today*, April 14, 2015.
- “After complaints of hazing, sexual assault and drug use from a former member prompted police and Title IX investigation into Western Kentucky University’s swimming and diving teams, the school on Tuesday announced a 5 year suspension of the program.”

Applicable Federal Legislation

Title IX

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

(Title IX of the Education Amendments of 1972 (20 U.S.C. section 1681 et seq.) and related regulations (34 C.F.R. Part 106).)

Applicable Federal Legislation

What is Protected By Title IX? Sex Discrimination

- Sexual Harassment
- Sexual Violence
- Gender Discrimination
- Unequal Pay
- Pregnancy Discrimination
- Unequal Distribution of Athletic Resources
- Unequal Admissions
- Unequal Financial Aid Practices

Sexual Violence

Physical Sexual Acts Perpetuated Without Consent

- Consent Defined:

An act of a sexual nature without clear, unambiguous, and voluntary agreement between the participants to engage in specific sexual activity.

Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature. It includes...

- Unwelcome sexual advances
- Requests for sexual favors
- Other sexual conduct verbal, nonverbal, or physical
 - Rises to the level that interferes or limits student's ability to participate in or benefit from school's programs.

Title IX Guidelines

U.S. Department of Justice

Department of Education's Office of Civil Rights

- 2001 Revised Sexual Harassment Guidance
- 2011 Dear Colleague Letter
- 2014 Q & As
- April 24, 2015 Guidance Package:
 - Dear Colleague Letter
 - Letter to Title IX Coordinators
 - Title IX Resource Guide



Title IX Guidelines

OCR's April 24, 2015 Dear Colleague Letter:

*"...OCR has found that some of the most egregious and harmful Title IX violations occur when a recipient **fails to designate a Title IX coordinator**, or when a Title IX coordinator **has not been sufficiently trained or given the appropriate level of authority** to oversee the recipient's compliance with Title IX..."*



OCR Training Guidelines

- All persons involved in grievance procedures (e.g., Title IX coordinators, others who receive complaints, investigators, and **adjudicators**)
 - In an expulsion case, do panel members have adequate training to ensure that expulsion proceedings are conducted in compliance with Title IX?

OCR Training Guidelines

- Working with and interviewing persons subjected to sexual violence
- Particular types of conduct that would constitute sexual violence, including same-sex sexual violence
- Proper standard of review for sexual violence complaints (preponderance of the evidence)
- Consent and the role drugs or alcohol can play in the ability to consent

OCR Training Guidelines

- Importance of accountability for individuals found to have committed sexual violence
- Need for remedial actions for the perpetrator, complainant, and school community
- How to determine credibility
- How to evaluate evidence and weigh it in an impartial manner
- How to conduct investigations
- Confidentiality

OCR Training Guidelines

- Effects of trauma, including neurobiological change
- Cultural awareness training regarding how sexual violence may impact students differently depending on their cultural backgrounds

OCR Dear Colleague Letter April 24, 2015

- Title IX Coordinator Training
 - Prior training and experience “rarely” a substitute
 - “Recipients must ensure that their Title IX coordinators are **appropriately trained** and possess **comprehensive knowledge** in all areas over which they have responsibility in order to effectively carry out those responsibilities, including...

OCR Dear Colleague Letter April 24, 2015

- Title IX Coordinator Training
 - District policies and procedures on sex discrimination
 - Complaint investigation policies, procedures, practices
 - Title IX, including OCR guidance
 - Other applicable state and federal laws & regulations that overlap with Title IX

OCR Dear Colleague Letter

April 24, 2015

- **Regular** Training for Title IX Coordinator
- **Regular** Training for **All** Employees Responsible for Title IX (district and site administrators, teachers, other staff)

Title IX Compliance

- Notice of Nondiscrimination
 - Publish and widely disseminate a notice of nondiscrimination on the basis of gender or sex
- Title IX Coordinator
 - Designate and publicize one Title IX Coordinator for each campus
- Complaint and Investigation Procedures
 - Adopt and publish appropriate complaint and investigation procedures

Title IX Compliance

- Training, Education, Prevention Requirements
 - Implement sexual harassment/violence prevention programs for students and employees
 - Provide written rights and options for victims of sexual violence
 - Provide training on how to prevent, identify and report sexual harassment and sexual violence
 - Provide annual training to designated employees on how to conduct investigations
 - Provide annual training to student conduct hearing officers

Title IX Compliance

- Confidentiality and Sexual Violence
 - Reporting to Title IX Coordinator or other District Employees
 - Privileged and Confidential Communications Physicians, Psychotherapists, Professional Counselors and Clergy (exceptions may apply)

Title IX Compliance

- Coordination with Sexual Violence Criminal Investigations and Proceedings
 - Challenge with Concurrent Investigation
 - Criminal Investigation by Police
 - Conduct Investigation by District
 - Challenges with Concurrent Proceedings
 - Criminal Trial
 - Student Discipline and Expulsion

Title IX Remedies

- Individuals May:
 - Institute a lawsuit in court and seek damages or injunctive or declaratory relief
 - File an administrative complaint with the U.S. Department of Education Office of Civil Rights (“OCR”)
- U.S. Department of Education - OCR May:
 - Initiate an Investigation
 - Require voluntary compliance
 - Institute an enforcement action – potential loss of federal funds

Applicable Federal Legislation

Clery Act

- Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act. (20 U.S.C. 1092(f).)
- Clery Act was amended by the Violence Against Women Reauthorization Act of 2013 under its Campus Sexual Violence Elimination Act provision (Campus SaVE Act) Effective March 7, 2014.
 - Focus on Sexual Offenses
 - Colleges must report compliance with the SaVE Act in annual security reports by 10/1/14

Clery Act Compliance

1. Prepare Annual Campus Security Report
2. Identify and Train Campus Security Authority
3. Establish Definition of Clery Act Crimes
4. Provide Timely Warnings of Crimes that Threaten Campus
5. Create Awareness and Prevention Process
6. Establish and Circulate Victim's Rights

Clery Act Compliance

The Overall Goal

To protect all people associated with educational institutions from sexual violence and eliminate these sexual abuses from America's higher education institutions.

1. Clery Act: Annual Security Report

1. Disclose Crime Statistics occurring on and around campus
2. Establish an Emergency Response, notification, and testing policy
3. Discuss Awareness and Prevention Campaign to address sexual misconduct on campus
4. Develop an Equitable Disciplinary Proceeding modeled after the 2011 Title IX Dear Colleague Letter

2. Clery Act: Campus Security Authority

1. Identify CSAs

- Campus Police and Individuals With Responsibility to Take Respond to Campus Activities (Coaches)

2. Duties of CSAs

- Document and Report any Potential Crime
- Not Required: Determine If Act is a Crime or Stop Crime

3. Training

- What May Constitute A Crime Under Clery Act
- Where and How to Submit A Timely Report

3. Clery Act: Reportable Crimes

- VAWA Added New Reportable Crimes:
 - **Stalking** (course of conduct directed at a specific person that would cause a reasonable person to fear for safety or suffer substantial emotional distress) focus on internal emotion of victim
 - **Dating Violence** (committed by person who is or has been in a social relationship of a romantic or intimate nature with victim, but not domestic violence) focus on non-physical violence
 - **Domestic Violence** (look to local jurisdiction for definition of crime committed by intimate partner) focus on use of relationship to harm partner

4. Clery Act: Timely Warnings

1. Any Potential Threat
 - Potential Perpetrator At Large
 - Anywhere Around the Campus
2. Widespread and Immediate Notification
 - Multiple Sources (Emails, Posters, Handouts)
 - Where To Get Detailed Information
3. Constant Updates
 - Efforts to Resolve
 - Any New Information

5. Clery Act: Awareness and Prevention

- Student and Employee Training Mandated by VAWA
- Wide Dissemination of Education
- Adapt to Changing Conditions and Recent Situations
- Immediate Resources for Help

6. Clery Act: Victims' Rights

- Adopt and publish procedures to create and inform all students and employees of protection they have even if no report is filed.
 - Education and Awareness
 - No Contact Policy
 - Confidentiality
 - Remedies

COMPLIANCE AND RISK MANAGEMENT CHECKLIST

- 1. Are your policies and procedures up to date?
- 2. Are all campus employees trained properly?
- 3. Are your investigation procedures compliant?
- 4. Are your protection measures adequate?
- 5. Are your potential remedies appropriate?
- 6. Are your awareness procedures prominent?
- 7. Are your prevention measures diligent?
- 8. Are you actively pursuing the goal of Title IX?

1. Policy and Procedure

A. Policy: What May Constitute Misconduct

- Non-Sexual Contact
- Lack of Consent
(Clear, Constant, Conscious)
- Sexual Coercion
- Stalking

B. Procedure: Coordinated and Clear Process From Report to Resolution

- 24-Hour Resources
- Confidential Options
- Funnels to Title IX Coordinator

2. Employee Training

A. Responsible Employees

- Duty to Address Sexual Misconduct
- Authority to Redress Any Harm
- Reasonably Believed Authority

B. Information to Provide Victims

- Confidentiality Concerns
- Alternative Resources
- Immediate Services

3. Investigation Procedure

A. Quick and Equal

- 60 Days If Possible
- Equal Access to Information
- Equal Rights at Hearing

B. Police Coordination

- Offer Concurrent Investigation
- Minimum Delays Only
- Memorandum of Understanding

4. Protection Measures

A. Interim Protection Measures

- Immediate and Constant
- Address Friends / Teammates
- Spread Hardship
- Low Threshold

B. Immediate Threat Notification

- Spread Throughout Campus
- Describe Protection Measures

5. Remedies

A. Address Perpetrator and Victim

- Permanent Protection Measures
- After Sanctions, Prevent Future Acts

B. Protect Campus

- Eliminate Future Acts
- Educate Community About Actions
- Address Environment That May Have Caused Misconduct

6. Awareness

A. Dynamic

- Adjust Yearly
- Address Previous Complaints
- Adopt to Technology

B. Detailed Information

- Non-discrimination Policy
- What is Sexual Misconduct
 - Federal = Reporting
 - State = Educating
- Where to Get Specific Information

7. Prevention

A. Bystander Training

- When to Intervene
- How to Report

B. The “One Sheet”

- All Information Needed to Address Sexual Misconduct
- Post, Publish, Website

8. Overall Goal

- To protect all people associated with educational institutions from sexual violence, harassment and discrimination and eliminate these sexual abuses from America's education system

= requires active participation of everyone on campus

= key to compliance

Question & Answer
Session