



## The Intersection of the Clery Act (VAWA) and Title IX: Implications for Sexual Misconduct Complaints and Institutional Response

Sponsored by **VALIC**

April 4, 2017

KNOWLEDGE | RESOURCES | ADVOCACY | CONNECTIONS



### Presenters



**Ann Todd**



**Adrienne Murray**

KNOWLEDGE | RESOURCES | ADVOCACY | CONNECTIONS

## Description

This webinar will provide an overview of Title IX and its intersection with the the Violence Against Women Act (VAWA) amendments to the Clery Act. You will learn about best-practice investigative response when sexual misconduct is reported to your institution, as well as key takeaways from recent Department of Education audits and their implications for current practice.

© All rights reserved

## Agenda

- Title IX Overview
- Clery Overview
- Policy and Process Considerations
  - Policy Violations
  - Nondiscrimination Notice
  - Interim Measures
  - Accommodations
  - Mandatory Reporting
  - Time Frames
  - Notice

© All rights reserved

## Poll Question #1

What is your type of institution?

- a) Public, research-extensive university
- b) Private, research-extensive university
- c) Four-year college/university
- d) Two-year college
- e) Other

© All rights reserved

## Title VII of the Civil Rights Act of 1964

It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin;

42 U.S.C. 2000e-2(a)

6

## Key Requirements under Title VII

Prohibits unwelcome conduct of a sexual nature:

- Quid Pro Quo
- Hostile Environment

And prohibits discrimination on the basis of gender including:

- Disparate Treatment of Caregivers
- Pregnancy

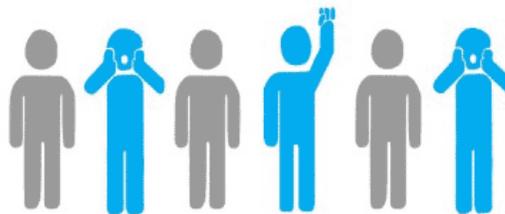
© All rights reserved

7

## Key Requirements under Title VII



1 in 2 workers (51%) who  
witnessed sexual harassment took action



Working without fear: The results of the Sexual Harassment National Telephone Survey 2012

© All rights reserved

8

## Title IX of the Education Amendments of 1972

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

20 U.S.C. 1681 (a)

9

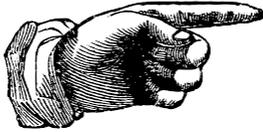
## Poll Question #2

What role do you play at your institution relative to Title IX/Clery (possibly in addition to another job)?

- a) Title IX Coordinator
- b) Deputy Title IX Coordinator
- c) Investigator
- d) Adjudicator/Hearing Board Member
- e) Appeals Adjudicator/Appeals Board Member
- f) Other
- g) None—(just learning or providing support)

## Key Requirements under Title IX

Please Notice This



Once a school knows or reasonably should know of possible sexual harassment, it must take immediate and appropriate action to investigate or otherwise determine what occurred.



© All rights reserved

11

## Obligations Under Title IX

If sexual harassment to include sexual violence has occurred, a school must:



© All rights reserved

12

## The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act

Choosing a postsecondary institution is a major decision for students and their families. Along with academic, financial and geographic considerations, the issue of campus safety is a vital concern. . .

*U.S. Department of Education, 2016 Clery Handbook*

13

### Key Requirements of the Clery Act

- Collect, Classify and Count Crime Reports/Statistics
- Issue Campus Alerts (and test systems)
- Publish Annual Security Report (policy statements)
- Submit Crime Statistics to the Department
- If you have campus police or security department
  - Publish Daily Crime Log
- If you have residential facilities
  - Keep a Fire Log
  - Publish Annual Fire Safety Report
  - Implement Missing Person Procedures

14

## The VAWA Amendments to Clery

- Added Dating/Domestic Violence and Stalking to crime reporting
- Added “Gender Identity” as category for bias for a Hate Crime
- Offer Educational Programs and Campaigns on Dating/Domestic Violence, Sexual Assault & Stalking
- Have Procedures for Institutional Disciplinary Action for Dating/Domestic Violence, Sexual Assault & Stalking

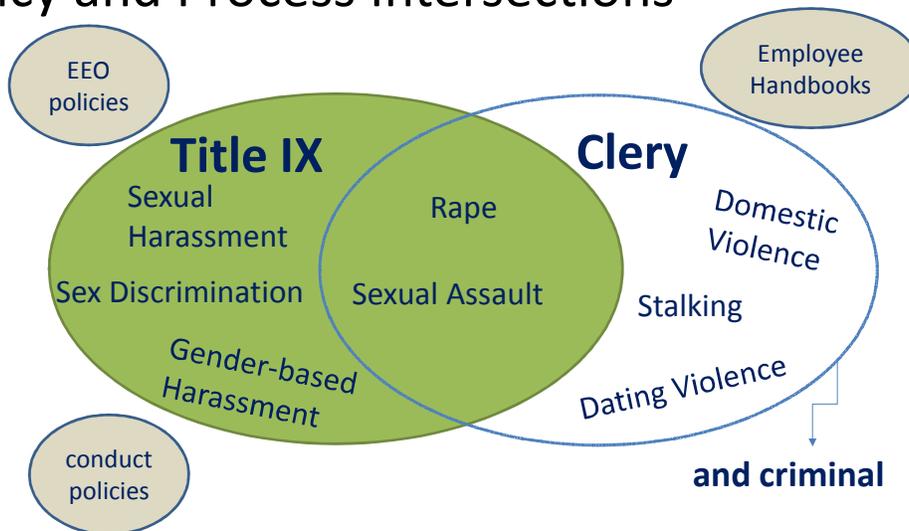
Notice  
Rights

Procedures  
Training

Due Process

15

## Policy and Process Intersections



© All rights reserved

16

## Poll Question #3

How many policies do you have in place with jurisdiction over the intake and resolution of complaints of sex-based harassment/misconduct at your institution?

- a) One policy and it applies to all students and employees
- b) Two policies-one for student and one for employees
- c) Three policies-one for students, one for staff and one for faculty
- d) Four or more
- e) Yikes! I don't have any idea how many we have...

© All rights reserved

## Multiple Policies



- Do your policies conflict?
- Can a complainant use more than one policy?
- How do offices work together to address complaints when the complainant is:
  - A student and the respondent is a faculty member?
  - A student and the respondent is a staff member?
  - A staff member and the respondent is a student?
  - A faculty member and the respondent is a student?

© All rights reserved

18

## Meet Dr. Gray

Dr. Gray is a faculty member at your campus. She reports to her department chair that she entered into a consensual relationship with a younger man over the summer. She learned that he was enrolling at your institution and she broke off the relationship. Now that the student is on campus, he has repeatedly sent her sexual emails and texts, has left notes under her door at her office and is threatening to go to her department chair to report her if she doesn't agree to resume the relationship. She doesn't want anything formal done—but doesn't want him contacting her (or placed in any of her classes).

© All rights reserved

## What is being reported?

- Sexual Harassment
- Gender-based Harassment
- Sex Discrimination
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking
- Other conduct code

© All rights reserved

## Assess for Hostile Environment

**Sexual Harassment:** Unwanted conduct of a sexual nature.

**Hostile Environment:**

When the sexual harassment is sufficiently serious that it denies or limits a person's ability to participate in or benefit from an education program or activity.



© All rights reserved

## Non-Discrimination Notice

Each recipient must designate at least one employee to coordinate its efforts (Title IX Coordinator) and to notify applicants, students, employees etc. that it does not discriminate...and incidents may be referred to the Title IX Coordinator or to OCR.

**IMPORTANT  
NOTICE**

© All rights reserved

## Non-Discrimination Notice—Audit Takeaways

- Include accurate contact information, including physical address of Title IX Coordinator.
- Include contact information for OCR.
- If Title IX isn't accessible from your homepage, include info on webpages for admissions and recruitment, as well as in ALL handbooks.
- ASR must include Title IX contact information.
- Include “sex” not just gender.

© All rights reserved

## Interim Measures



Actions to ensure individuals can fully access programs while an investigation is pending. May include changes to academic, living, transportation, and working situations or protective measures as soon as requested or necessary.

© All rights reserved

## Interim Measures—Audit Takeaways

- Wittenburg University OCR: “the files did not indicate whether the University provided interim measures as needed.”
- CUNY-Hunter OCR: “The College did not provide the Complainant with interim measures. . . “(and not all of their policies state they are available).

© All rights reserved

## Accommodations

Provide in WRITING a list of resources on and off campus including:

- victim advocacy
- housing assistance
- academic support
- counseling
- disability services
- health and mental health services
- legal assistance
- Visa and immigration assistance
- Student financial aid



© All rights reserved

## Accommodations—Audit Takeaways

**Frostburg State/OCR:** “Evidence did not show that the University provided Complainant 1 with guidance regarding the full range. . . .” and in some instances she arranged for measures, such as alternative coursework, on her own.

“Although the University provided some limited information regarding counseling services, it determined that additional services were not necessary because Complainant 2 graduated from the University the day after making her report, and thus, Complainant 2 was not offered the full range of remedial services.”

© All rights reserved

## Mandatory Reporting Guide

ALL EMPLOYEES fall in one of four categories:

1. **Responsible Employee:** MUST report to Title IX
2. **Clery Confidential Resources:** Pastoral and professional counselors (licensed counselors) NO DUTY to report
3. **Other Title IX Confidential Resources:** NO DUTY to report to Title IX (may have duty to report data for Clery)
4. **Everyone else:** Must still be offered primary prevention training

© All rights reserved

## Mandatory Annual Training for Investigators/Adjudicators

All persons who conduct an investigation (civil rights or criminal) into a complaint of sexual assault, stalking, dating violence or domestic violence, or adjudicate such complaints, including appellate officers, must be *annually trained*. (Clery Handbook, 8-19)

1. **Trauma Informed:** Proper techniques for questioning
2. **Removing Bias:** Removing perceived and actual conflicts of interest
3. **Due Process:** How to understand basic procedural rules for adjudication and what constitutes relevant evidence and how to use it during a proceeding

© All rights reserved

## Reporting Options

Once a report is received, a school must give the victim their reporting options:

- **Law Enforcement** (and school will assist in making the report). Must be offered the option but may decline.
- **School civil rights process** (if more than one option, provide information on all available avenues)



© All rights reserved

## Declining the school process

- Inform complainant not going through a formal process may limit our ability to fully respond
- Put IN WRITING that they may change their mind at any time.
- Inform them that we may still need to conduct a full investigation for the safety of the community.



**AND THEN DO A MINIMAL INVESTIGATION!**

© All rights reserved

## Investigation—Audit Takeaways

- **Minot State:** *Declined to give name--“could have attempted to identify him through other means.”*
- **Occidental:** *Anonymous complaints—“the College carefully reviewed all complaints”*
- **Elmira:** *Do not wish to proceed: “the documentation provided does not demonstrate that the University engaged in a deliberative determination. . .”*
- **Frostburg State:** *Off campus: “did not make a determination whether the conduct occurred in the context of an education program or had a continuing effect on campus...”*

© All rights reserved

## “Prompt” Resolution

- Required under Title IX and Clery
- Title IX estimates 60 calendar days for the investigation (from report to finding) with 3-10 day delay if requested by law enforcement.



© All rights reserved

## “Prompt” Resolution —Audit Takeaways

- **Wesley:** You can actually be “too” prompt—take the time necessary to do the investigation correctly.
- **Hunter:** Can suspend investigation at request of DA but must determine if delay is “justified.”
- **Frostburg:** Need timeframes for all “major stages” including investigations involving employees.

© All rights reserved

## Notice

- **TITLE IX:** A school must notify in writing both parties of the “outcome” of the complaint.
- **CLERY:** Require simultaneous notification, in writing, to both the accuser and the accused, of
  - The results (initial, interim, and final decision, including sanction and rationale).
  - Procedures for appeal (if available)
  - Change to the result
  - When such results become final



© All rights reserved

## Notice—Audit Takeaways

***Notice goes beyond the “final” outcome. Provide notice anytime a “decision” is made.***

**Frostburg:** Provide notice when decision to take “no further action.”

**Hunter:** Policy silent to notice of outcome for employees or visitors; no mention of outcome upon appeal.

**Frostburg:** Provide information on no-contact order if could be retaliation or creating hostile environment.

© All rights reserved

## What do we do now?

**1-Gather:** Identify relevant stakeholders to your intake and adjudication process and ensure annual trauma-informed training

**2-Review:** Ensure policies and procedures are compliant with both Title IX and the Clery Act as amended by R-VAWA 2013

**3-Track:** Ensure Responsible Employees are identified, told of their reporting duties, and trained to promptly report

**4-Investigate:** Minimal inquiry to every complaint and full investigations for incidents meeting certain criteria taking care to discharge notice to parties and required protective measures

**5-Collaborate:** Implement internal or external MOUs and/or protocols for working with other units to the process

© All rights reserved

## Title IX/VAWA Services

- Sexual Assault/Sexual Misconduct Response Assessments & Training
- Title IX Policy Development/Review
- Title IX Independent Investigations
- Title IX Coordinator Searches
- Title IX Trainings (campus-based)
- Title IX Coordinator/Investigator Training
  - May 23-26, 2017 at Northern Illinois University – Naperville Campus, Naperville, IL
  - October 24-27, 2017 at University of Tennessee, in Knoxville, TN

38

## Investigation of Sexual Misconduct

### *Investigation of Sex Crimes for Campus Police, Public Safety and Conduct/Title IX Civil Rights Investigators: Conducting Trauma-Informed Investigations*

- March 28-30, 2017 Brown University in Providence, RI
- August 1-3, 2017 at University of Washington, Seattle, WA

### *Advanced Investigations Course: Investigations of Sexual Misconduct Conducting Trauma Informed Investigations Designed for Campus Police/Public Safety/Title IX & Conduct Officers* *(Investigation of Sex Crimes class is a pre-requisite)*

- July 10-14, 2017 Montgomery College in Maryland

### *Investigation of Domestic Violence/Dating Violence and Stalking*

- June 6-8, 2017 at Villanova University, in Villanova, PA (outside Philadelphia)
- October 16-18, 2017 at Kennesaw State University in Kennesaw, GA (outside Atlanta)

### *On Line Annual Recertification Classes*

- Sexual Assault Investigations Recertification (SAIR) Training Program
- Domestic/Dating Violence and Stalking Investigations Recertification Training Program

39

## VAWA Adjudicator Training

Officials involved in adjudicating student and employee conduct violations involving incidents of dating violence, domestic violence, sexual assault and stalking are required to receive annual training. **Our Online VAWA Adjudicator Training Program** allows for these officials to participate in a low-cost, convenient training program to meet this requirement. Program benefits include:

- Online, self-paced training
- Provides trauma-informed adjudication information
- Customized training portal to manage enrollments and reporting
- Certificate of completion provided with successful fulfillment of all program modules
- Meets key accessibility standards for persons with disabilities

**Flat fee of \$325 for up to 20 adjudicators and just \$5 per person for each additional learner. Visit [www.naccop.org](http://www.naccop.org) for more information.**



## Has your institution joined NACCOP?



- Membership Benefits
  - Member-exclusive tools and resources for managing institutional compliance with the Clery Act/VAWA/HEOA
  - Access to VAWA policy template, Annual Security & Fire Safety Report checklist, Clery Act Records Retention Schedule in addition to other valuable compliance tools
  - Connect and collaborate with other members through NACCOPConnect
  - Discounted member-rate to NACCOP events - conference, webinars & training classes
  - Discounted access to Clery Compliance Officer Certification Program
  - A copy of the annual Journal of Clery Compliance Officers and Professionals
  - Stay current with access to breaking news related to the Clery Act/VAWA/HEOA
  - Access to member exclusive whitepapers
- Visit <http://www.naccop.org/> for more information about membership plans

41

## 4th ANNUAL NACCOP CONFERENCE

Baltimore, MD

Conference – July 19-21, 2017

Pre-Conferences – July 18, 2017

Three Pre-Conference Boot Camps-July 18, 2017

**Track One for Clery Compliance Officers**—Constructing a Clery Compliant Annual Security and Fire Safety Report (ASFSR) (All-day: 8:30am-5:00pm)

**Track Two for Title IX Coordinators**—Developing a Clery and VAWA Compliant Institutional Sexual Misconduct Policy: A Workshop for Practitioners (Half-Day: 12:30pm to 5pm)

**Track Three for DFSCA/Part 86 Compliance Coordinators**—The Fundamentals of Complying with the Drug-Free Schools and Communities Act (Half-Day: 12:30pm to 5pm)

**Register at [www.NACCOP.org](http://www.NACCOP.org)**



42

# cupa·hr™ Webinar

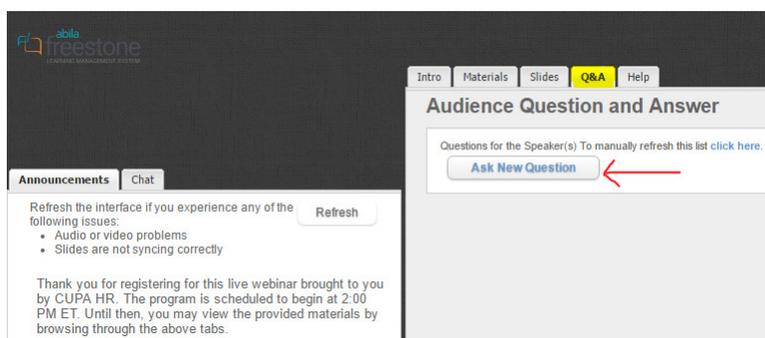
Sponsored by **VALIC**®

Don't forget to submit your questions to our presenters.

**How?** Click on the Q & A tab at the top of the presentation and select *Ask New Question*.

Thank you for joining us today!

## Q & A



KNOWLEDGE | RESOURCES | ADVOCACY | CONNECTIONS

# cupa·hr™ Webinar

## Thank You!

“The Intersection of the Clery Act (VAWA) and Title IX:  
Implications for Sexual Misconduct Complaints and  
Institutional Response”

April 4, 2017

Sponsored by **VALIC**®

KNOWLEDGE | RESOURCES | ADVOCACY | CONNECTIONS