

Getting All Your Docs in a Row: Clery/Title IX Compliance for Institutions of All Sizes



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Are you ready for a visit from the USDOE or OCR?

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- What is Title IX and how does it relate to the Clery Act
- Institutional obligations under Title IX and Clery Crime Reporting
- Elements of a Sexual Misconduct Policy
- Title IX Coordinator/Investigator/Administrator
- How to Investigate Sexual Harassment, Assault, Dating & Domestic Violence, and Stalking
- Proper Documentation
- Q&A

DOE Investigations



2015 From the Department of Education Office for Civil Rights Report

Title IX of the Education Amendments of 1972 to the Civil Rights Act of 1964

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- 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.

The Clery Act

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- The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or Clery Act, signed in 1990, is a federal statute.
- Named for Jeanne Clery, a first year student at Lehigh University in PA who was raped and murdered in her residence hall.
- The law is 25 years old and has been amended, most recently by the Reauthorization of the Violence Against Women Act of 2013.

Title IX and the Clery Act

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- Institutions must comply with Title IX and the Clery Act.
- The Violence Against Women Act (VAWA 2013) amended the Clery Act to include crimes of Dating Violence, Domestic Violence and Stalking.
- Under the Clery Act, institutions must report campus crime statistics and outline institutional policies and procedures regarding safety and Title IX.
- The average annual security report will include at least 30-50 pages of required statements/policies/procedures.

Obligations Under Title IX

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- If sexual harassment has occurred, a school must:
 - Take prompt and effective steps to end the sexual violence
 - Prevent its occurrence
 - Address its effects, whether or not the sexual violence is the subject of criminal investigation

Obligations Under Title IX (cont.)

- 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.
- The institution has a duty to provide interim protective measures and to resolve the complaint. Institutions are given reasonable time, based on the complexity of the investigation, to close out the complaint.

Interim and Protective Measures

- The institution may impose interim actions or protective measures at any point during an investigation.
- These actions are designed to eliminate the harassment and prevent its recurrence.
- These measures may include, but are not limited to, no contact orders, change in class assignment for accused and/or complainant, academic accommodations, removal from campus facilities, social restrictions, and/or emotional support, etc.

Jurisdiction and Reporting Timeframes

- Because sexual misconduct that occurs off-campus is likely to impact a person's work, academic, or extracurricular experience, the institution assumes jurisdiction to adjudicate off campus complaints should they become known.
- If a student/employee experiences dating/domestic violence or stalking outside of the institution by a party that is not part of the institution, the institution must provide a list of resources and possible accommodations.

Jurisdiction and Reporting Timeframes (cont.)

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- The institution should encourage prompt reporting of all allegations of sexual misconduct so that it can respond promptly and equitably.
- If the accused person is no longer affiliated with the institution at the time the report is made, the institution should still conduct an inquiry for purposes of complying with Title IX, take steps to prevent the recurrence of such conduct and remedy the effects, if appropriate.

Obligations Under Clery

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- Appropriately capture and count crime statistics reported to the institution that occurred within the institution's Clery-reportable geography.
- Assess crimes reported for purposes of issuing a Timely Warning Notice.

Sexual Misconduct Definition

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- Sexual misconduct is a broad umbrella term to collectively identify a number of forms of discrimination based on sex.
- It includes sexual harassment, sexual assault, and sexual exploitation.
- Also refers to other acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.

Sexual Misconduct Policy

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- A policy that has been created by an institution to demonstrate its commitment to:
 - Prohibit sexual misconduct, stalking, dating violence and domestic violence
 - Disseminate clear policies and procedures for responding to sexual misconduct reported to the institution
 - Engage in investigative inquiry and resolution of reports that are prompt, fair, equitable, and independent of other investigations that may occur

Sexual Misconduct Policy (cont.)

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- Deliver primary prevention and awareness programs, provide ongoing training and education campaigns to students and employees so they may identify behavior that constitutes sexual misconduct.
- Understand how to report misconduct.
- Recognize warning signs of potentially abusive behavior and ways to reduce risks.
- Learn about safe and positive options for bystander intervention.

Sexual Misconduct Policy (cont.)

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- Provide a written explanation of the rights and options available to every student or employee that has been the victim of domestic violence, dating violence, sexual assault or stalking, regardless of whether the offense occurred on or off campus.

Sexual Misconduct Policy (cont.)

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- Identify the Institution's Title IX Coordinator(s) and describe their role.
- Describe how students and employees can confidentially report sexual misconduct to the institution.
- Identify resources available both on and off campus, including the rights of employees and students to notify (or not notify) local law enforcement.
- Provide information regarding how reports are assessed, investigated, and resolved.

Title IX Coordinator

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- If multiple campuses/brands, may use a structure of Title IX Coordinator, Deputies, Administrators, Investigators.
- Campus Title IX Administrators may be designated for each campus to ensure that each branch has representation regarding the intake and resolution of complaints.
- Title IX Administrator may also serve as Title IX Investigator and conduct thorough and impartial investigations into the facts of the case, including interviewing the complainant, respondent, witnesses or others who may have information about the case and collect any other evidence deemed relevant
- Having a single Title IX Coordinator for an institution allows for consistency in how each case is handled and documented, and may help identify trends.

How to Investigate Sexual Misconduct

- Investigation must be conducted by a trained Title IX Investigator.
- Identify if a violation of Sexual Misconduct Policy may have occurred.
- Must provide notice of the investigation to both parties, provide sufficient details of the accusation and allow time to prepare before the initial interview.
- Both parties may be accompanied by an advisor of choice.
- Must gather sufficient evidence – police report, text messages, pictures, emails, witness reports, interviews with both parties.
- The investigation must be impartial.
- Interim measures must be available to both parties.
- Once the investigation is complete, a written investigative report should be completed.
- Both parties must be provided reasonable time to review the report before a final outcome is issued and each may provide a written response if they choose.

How to Investigate Sexual Misconduct (cont.)

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- Single Investigators vs. Hearing Boards
- Under either structure a determination must be made regarding the outcome of the investigation.
- It must be determined whether the facts support a finding of responsibility.
- The institution may use a standard of either preponderance of evidence or clear and convincing evidence.
- If an accusation is against different respondents, each case should be treated separately.
- If there are several accusations against the same respondent, the institution must treat and respond to each accusation separately.

How to Investigate Sexual Misconduct (cont.)

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- May have different people involved in a finding of responsibility and any resulting disciplinary sanction.
- Any disciplinary decision must be proportional to the violation (ex: stalking vs. one instance of inappropriate text messaging).
- In the annual security report, institutions must outline all possible sanctions that it may impose for a violation of its sexual misconduct policy.

How to Investigate Sexual Misconduct (cont.)

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- The outcome of the investigation should be delivered in writing to both parties simultaneously.
- The institution may provide a right to appeal to the respondent or may choose to allow it for both parties.
- If an appeal process is available, an appeal officer must be identified in the Sexual Misconduct policy and in the outcome letter issued to the parties.
- Institutions may initiate informal resolutions of the complaints.

Documentation

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- **Complaint tracking system (ex: Maxient) to track all Title IX Complaints**
 - **Notifications of Complaint Beginning, Completing, Delaying, Outcome**
 - **Interview notes**
 - **Initial Report**
 - **Investigative Reports**
 - **Witness statements**
 - **Evidence**

Questions?

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