

## Intersections of Title IX and the Clery Act:



### A Step-by-Step Application

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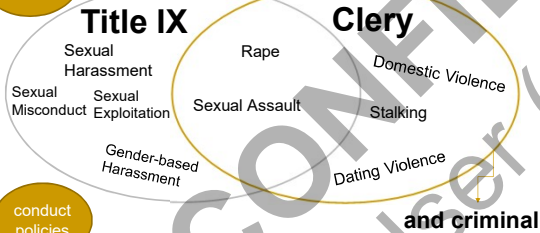
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## Policy and Process Intersections



EOO  
policies

Employee  
Handbooks



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## Title IX and Clery Intersections: Prohibited Conduct



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## Prohibited Conduct Defined



- **Sexual Misconduct** is an umbrella term used to identify a number of forms of unwelcome behavior, of a sexual nature, that is prohibited by law and institutional policy. The term Sexual Misconduct includes, but is not limited to, behaviors often described as sexual harassment, sexual assault (rape and fondling), stalking, sexual exploitation, and intimate partner or relationship violence.
- Sexual misconduct may occur in any sex or gender configuration – between members of the opposite sex or the same-sex – regardless of gender or gender identity. Sexual misconduct may vary in its severity and consists of a range of behaviors.

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## Sexual Misconduct



- **Sexual Harassment**
- **Sexual Assault**
- **Sexual Exploitation**
- **Stalking**
- **Intimate Partner Violence**
  - **Dating Violence**
  - **Domestic Violence**



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## Sexual Harassment



- Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature.
- The harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student or employee's ability to participate in or benefit from the school's program.

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## Sexual Assault



### Non-Consensual Sexual Intercourse or Penetration

- any sexual **intercourse** or **penetration** of the anus, mouth or vagina;
- however slight;
- with any object;
- by a person upon another person;
- **without consent** or upon a person who is unable to give consent, as defined below.

*Examples of actions that may constitute non-consensual sexual intercourse or penetration (Rape): Unwilling or non-consensual penetration of the mouth, vagina or anus with any object or body part, including but not limited to fingers, penis, tongue, or any foreign object.*

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## Sexual Exploitation



Sexual exploitation occurs when a member of the community takes non-consensual, unfair, or abusive advantage of another person's sexuality for the purpose of their own sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses identified within the institution's Policy.

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## Stalking



- i. Engaging in a **course of conduct** directed at a specific person that would cause a **reasonable person** to—
  - A. Fear for the person's safety or the safety of others; or
  - B. Suffer **substantial emotional distress**.
- ii. For the purposes of this definition—
  - A. **Course of conduct** means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means—follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

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## Stalking



- B. Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- C. Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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## Intimate Partner Violence



(also called Dating Violence, Domestic Violence, and Relationship Violence)

Intimate partner violence includes any act of violence or threatened act of violence against a person who is or has been involved in a sexual, dating, domestic, or other intimate relationship by the other person in the relationship. It may involve one act or an ongoing pattern of behavior. Intimate partner violence encompasses a range of behavior, including but not limited to, physical violence, sexual violence, emotional violence, and economic abuse. Intimate partner violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner, and/or to the family members or friends of the sexual or romantic partner.

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## Domestic Violence



- A felony or misdemeanor crime of violence committed by:
  - a) a current or former spouse or intimate partner of the victim,
  - b) by a person with whom the victim shares a child in common,
  - c) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner,
  - d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred OR
  - e) by any other person against an adult or youth **victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction** in which the crime of violence occurred.

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## Dating Violence



- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
  - i. The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
  - ii. For the purposes of this definition—
    - A. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - B. Dating violence does not include acts covered under the definition of domestic violence. (i.e., Do not double count Dating Violence if you already counted incident as Domestic Violence).

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## Terms: Clery Act & Title IX



- It is important to note that the Clery Act definitions of sexual assault, domestic violence, dating violence and stalking are sometimes, but not usually, used by an institution in their sexual misconduct policy and procedure.
- The institutional policy is an administrative process.

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## Title IX and Clery Intersections: Requirements



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## Notification of Rights

- Title IX: Rights available to one must be available to the other.
- Clery: Institutions will provide written explanation of rights and options regarding . . .



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## Notification of Rights Document

**Complainant**

- The Policy
  - Resolution Processes/Advisor
- Preserving evidence
- Reporting options
- Orders of protection
- Confidentiality
  - Clery and accommodations
- On and off-campus resources
  - Counseling; victim advocacy; legal assistance; visa and immigration, student financial aid
- Changes/Accommodations
- Involvement of law enforcement
  - Law enforcement; Assisted in notification; Decline to notify

**Respondent**

- The Policy
  - Resolution Processes/Advisors
- Preserving evidence
- Reporting options
- Orders of protection
- Confidentiality
  - Clergy and accommodations
- On and off-campus resources
  - Counseling; victim advocacy; legal assistance; visa and immigration; student financial aid
- Changes/Accommodations

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## Accommodation Requirements

- **TITLE IX:** Individualized services offered to either or both parties...including counseling, course-related adjustments, modifications of work or class schedules, change in work or housing location, leave of absence, and other similar accommodations...
- **CLERY:** Service options including, counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community;

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## Accommodation Requirements



**TRANSLATION:** Provide WRITTEN information about these on and off campus services.

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## Interim Measure Requirements



- **TITLE IX:** May be during the investigation. Individualized and appropriate based on information gathered making every effort to avoid depriving any student of her or his education. May evolve over time. Cannot have rules that favor one party over another. Includes campus escorts, restrictions on contact, increased security and monitoring.
- **CLERY:** The institution must make such accommodations or provide such protective measures if the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement;

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## Interim Measure Requirements



**TRANSLATION:** Provide changes to academic, living, transportation, and working situations or protective measures as soon as requested/necessary to both parties.

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## Reporting Option Requirements



- **CLERY:** Options about the involvement of law enforcement and campus authorities, including 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; and
  - Decline to notify such authorities

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## Reporting Option Requirements



**TRANSLATION:** Make all reporting options clear and don't appear to discourage involvement of law enforcement.

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## Grievance Procedure Requirements



- **TITLE IX:** "prompt and equitable" resolution.
  - Rights made available to one party should be made available to the other on equal terms
- **CLERY:** fair, and impartial proceeding. . . . Conducted in a manner that . . .
  - Is consistent with the institution's policies and transparent to the accuser and accused...
  - Provides equal access to any information that will be used during meetings and hearings


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### Grievance Procedure Requirements



**TRANSLATION:** equal rights (including appeals if provided) and lots of transparency.

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### Advisor Requirement

- **TITLE IX:** If school permits one party to have lawyers or other advisors (or restricts participation) it must do so equally.
- **CLERY:** Provide the accuser and the accused with the same opportunities to have others present ... including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;
  - Advisor - individual who support, guidance, or advice.
  - Not limit the choice of advisor or presence in any meeting
  - May restrict advisor participation if apply equally to both parties;
  - Timely notice of meetings at which the accuser or accused, or both, may be present;

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### Advisor Requirement



**TRANSLATION:** Allow advisors at all meetings (but limit participation).

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## Standard of Proof



- **TITLE IX:** A school may use either the "preponderance of the evidence" standard or the clear and convincing evidence standard.
- **CLERY:** Policy must describe the standard of evidence that will be used during any institutional disciplinary proceeding . . .

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## Notice Requirements - Outcome



- **TITLE IX:** A school must notify in writing both parties of the "outcome" of the complaint concurrently to include whether it found alleged conduct occurred, individual remedies offered to the reporting party and sanction imposed on responding party directly related to reporting party and other steps to eliminate the hostile environment.
- **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

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## Notice Requirements



**Translation:** Provide findings to both parties including applicable sanctions/remedies with explanation of weight of evidence using appropriate standard of proof.

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## Requirements for Officials



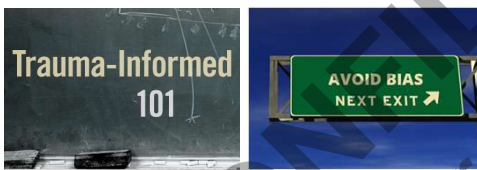
- **TITLE IX:** Regular training for all persons involved in implementing a school's grievance procedure (TI Coordinator, others who receive complaints, investigators, and adjudicators). Training materials should avoid sex stereotypes or generalizations.
- **CLERY:** Be conducted by officials who, at a minimum, receive annual training on the issues and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. . . . Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.

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## Requirements for Officials



**TRANSLATION:** Annual training for investigators, adjudicators (including appeals) AND steps in policy to remove someone due to bias.

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## Grievance Procedure Requirements




- **TITLE IX:** A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints . . . Notice of procedures; application of grievance procedures; investigation; prompt time frame; notification; prevent recurrence
- **CLERY:** A prompt, fair, and impartial proceeding includes a proceeding that is completed within reasonably prompt timeframes . . .

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## Grievance Procedure Requirements



**TRANSLATION:** No fixed timeframe but good faith effort ...

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## Questions?

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## Remember to Evaluate This Session!



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