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TSUS Violence Against Women Act Requirements and the Intersections with Title IX

Presented by DSA Associates:

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Adrienne Meador Murray, Vice President,
Equity Compliance and Civil Rights Services



In January 2014, Adrienne Meador Murray joined D. Stafford & Associates where she currently serves as the Vice President, Equity Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012 and the National Association of Clery Compliance Officers & Professionals (NACCOP) where she currently serves as Director of Training and Compliance Activities. Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson

College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.).

As the Executive Director, Equity Compliance and Civil Rights Services for DSA, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA



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Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



TITLE IX

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ISSUANCE OF CERTIFICATES FOR COMPLETION OF DSA/NACCOP CLASSES

To receive a certificate for classes held by D. Stafford & Associates, LLC or the National Association of Clery Compliance Officers and Professionals (NACCOP), attendees must attend the majority of the class. This includes in-person classes and virtual classes. DSA and NACCOP understands that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. That said, our general rule of thumb for our 4 and 5 day classes is that if an attendee misses more than 1 hour of class time, they will not be issued a certificate of completion for the class. If the class is a 1, 2 or 3 day class, the amount of time that can be missed may be less, as classes of those lengths are more condensed.

For virtual classes, because we can't see all of the attendees all of the time like we can in an in-person class (based on the attendee controlling whether they have their camera turned on or not), the criteria for receipt of a certificate is determined based on missed class time (no more than 1 hour or less, depending on the length of the class) and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched before doing so, to ensure that everyone who is there can/will respond to the poll. If there is an issue with responding to the attendance poll, the attendee would need to **immediately notify the Administrative Support person** in the course via the chat function in the zoom platform. That way we can immediately resolve any issues and give the attendee credit for being in attendance for the poll. Notifying us hours or days after having an issue with not being able to complete the attendance poll will not allow us to give the attendee credit for being in class during the poll.

Our classes qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, but accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate, which equates to verification that the participant attended the complete class. For DSA and NACCOP, issuance of a Certificate of Completion is verification of that fact.

If the attendee missed class for a legitimate reason, that doesn't mean that an attendee wasn't there for much of the class and that they didn't benefit from that attendance. It just means that based on the missed time and/or attendance polls (in virtual classes only), we aren't able to issue you a certificate of completion.

If an attendee has to miss time in class, the instructions attendees receive before the class provide instructions for notifying the Administrative Support person about the time that will be missed **IN ADVANCE**, so we can jointly identify what blocks of instruction will be missed, and the DSA/NACCOP team will then work with the attendee to see if we can get them in a future class module to make up that material, which would result in us being able to issue the attendee a certificate. We provide this service and opportunity at no additional cost, as we want each attendee to finish the class and get a certificate of completion. Effective communication by each attendee is the key to this option.

INVESTIGATION CLASS ACRONYMS

- ASR:** Annual Security Report (often used as a reference to the Annual Security Report and/or the Annual Security and Fire Safety Report) that must be published by each institution of higher education.
- CSA:** Campus Security Authority—Individuals on each campus who have been identified by the Department of Education as persons who are required to report crimes that they become aware of to the Reporting Structure at each institution.
- DCL:** Dear Colleague Letter—this is a formal name of the method of communication from the Department of Education to college campuses. It is like naming their official “memo” to campuses.
- FERPA:** Family Educational Rights and Privacy Act—governs the confidentiality of student records.
- FNE:** Forensic Nurse Examiners
- GO:** General Order—some departments describe their operating procedures as general orders
- HEOA:** Higher Education Opportunity Act—the broader law that contains the Clery Act language and the fire safety and missing person language that is in the law but not contained within the “Clery Act” portion of the law.
- HIPAA:** Health Insurance and Privacy and Portability Act—governs privacy of medical records.
- MOU:** Memorandum of Understanding—an official agreement developed between agencies.
- NIBRS:** National Incident-Based Reporting System. 1 of 2 crime reporting systems developed by the FBI, but not the system that you are required to use for Clery Reporting—the only portion of this system that is used for Clery Act purposes are the 4 forcible and 2 non-forcible sex offense definitions.
- OCR:** Office of Civil Rights—the unit of the Department of Education that oversees Title IX Compliance.
- PD:** Police Department
- PS:** Public Safety
- PNG:** Persona-non-Grata—process used by some campuses not keep students from entering certain areas of the campus or the entire campus (administrative process) versus legal bar notice or trespass warning.
- SACC:** Sexual Assault Crisis Center, also known as Women’s Center.
- SANE:** Sexual Assault Nurse Examiner

SART: Sexual Assault Response Team


SOP: Standard Operating Procedures—some departments describe their operating procedures as Standard Operating Procedures. Some call them General Orders, etc...

SWA: Senior Women's Administrator (Athletics)

TWN: Timely Warning Notice

UCR: Uniformed Crime Report. This is 1 of 2 crime statistics reporting systems developed by the FBI. Institutions are required to use UCR Standards for counting and classifying crimes for reporting the Clery statistics.



VAWA: Violence Against Women Act



Violence Against Women Act Requirements and the Intersections with Title IX
 Presented by Adrienne Murray
 for the Texas State University System
 April 25, 2022

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ADRIENNE MEADOR MURRAY

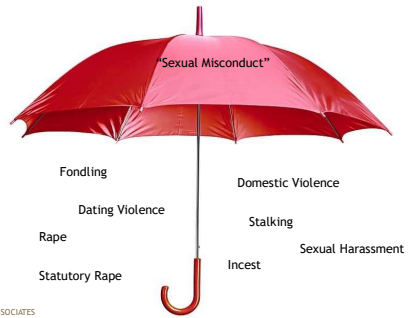



- Vice President, Equity Compliance and Civil Rights Services
- Director of Training and Compliance Activities for NAACOP
- 17-year law enforcement veteran
 - University of Richmond (Operations Lieutenant)
 - Davidson College (Chief of Police)
 - Trinity Washington University (Chief of Police)
- Trained Title IX Coordinator and Civil Rights Investigator
- Author and lead instructor of DSA training programs, including:
 - Sex Crimes Investigations for Campus Police & Public Safety Officers
 - Title IX Coordinator/Investigator Training
 - Investigation of Domestic Violence, Dating Violence and Stalking for Campus Police, Public Safety and Civil Rights (Title IX/Conduct) Investigations
- Procedural Justice Institute Faculty-Based Policing and Ethics

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"Sexual Misconduct"

Fondling Domestic Violence

Dating Violence Stalking


Rape Incest Sexual Harassment

Statutory Rape



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Agenda



- Title IX of the Education Amendments of 1972 codified at 20 U.S.C. §§ 1681–1688
- The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), codified at 20 U.S.C. § 1092 (f), with implementing regulations in the U.S. Code of Federal Regulations at 34 C.F.R. 668.46.
- Texas Education Code § 51.251 (3)
- Texas Education Code § 51.253
- Administrative Regulations 19 Texas Admin. Code, Chapter 3
- Texas SB 212

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**VAWA IS REAUTHORIZED!
NO CHANGE TO CLERY DEFINITIONS AT THIS TIME**



"The VAWA Reauthorization Act of 2022 will expand prevention efforts and protections for survivors, including those from underserved communities, and will provide increased resources and training for law enforcement and our judicial system."



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Title IX Update



On February 17, 2022, the U.S. Department of Education sent the draft of the proposed amendments to the Department's regulations implementing Title IX of the Education Amendments of 1972 to the Office of Information and Regulatory Affairs (OIRA), the part of the Office of Management and Budget responsible for coordinating the review of all Executive Branch regulations.

Their submission of the draft amendments, known as a Notice of Proposed Rulemaking, or NPRM, is the next, important, step. At this stage of the rulemaking process, the draft NPRM remains internal to the federal government and is not yet available for public viewing.

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**Two Federal Laws-
Two Sets of Requirements**



Title IX is an anti-discrimination law


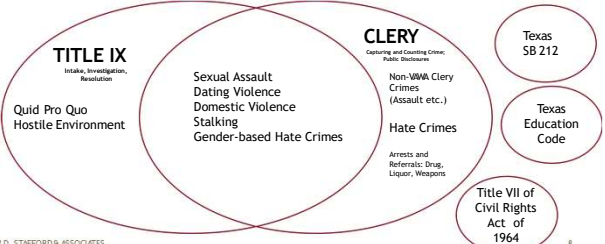
The Clery Act is a consumer reporting law



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Intersectional Implications

TITLE IX
Intake, Investigation, Resolution
Quid Pro Quo
Hostile Environment

CLERY
Capturing and Counting Crimes; Public Disclosures
Non-WVA Clery Crimes (Assault etc.)
Hate Crimes
Arrests and Referrals; Drug, Liquor, Weapons


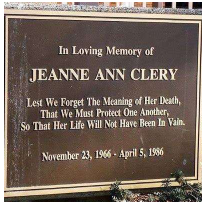
Sexual Assault
Dating Violence
Domestic Violence
Stalking
Gender-based Hate Crimes

Texas SB 212
Texas Education Code
Title VII of Civil Rights Act of 1964

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The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act)





In Loving Memory of
JEANNE ANN CLERY
Lest We Forget The Meaning of Her Death,
That We Must Protect One Another,
So That Her Life Will Not Have Been In Vain.
November 23, 1966 - April 5, 1986

- In 1990, Congress passed the Crime Awareness and Campus Security Act (CACSA) amendments to the Higher Education Act of 1965 (HEA).
- Amendments to CACSA in 1998 renamed the law the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in memory of a student who was raped and murdered in her residence hall room.
- In 2013, Congress passed the Violence Against Women Reauthorization Act (WVA), which resulted in an additional amendment to the Clery Act. (The Act has been amended some six times since its' inception.)
- The Clery Act requires that all postsecondary institutions participating in Title IV student financial assistance programs disclose campus crime statistics and other security information to campus community members. The WVA amendments added requirements that institutions disclose statistics, policies and programs related to dating violence, domestic violence, sexual assault, and stalking, among other changes.

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Key Requirements of the Clery Act 

- Collect, Classify, and Count Crime Reports/Statistics
- Public Disclosures-Timely Warning Notices and Emergency Notifications
- Publish Annual Security Report
- Submit Crime Statistics to the Department

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Key Requirements (cont.) 

- Provide Educational Programs and Campaigns on Dating/Domestic Violence, Sexual Assault, & Stalking
- Have Procedures for Institutional Disciplinary Action for DV/DV/SA/S
- If you have a campus police or security department: Publish Daily Crime Log
- If you have residential facilities: Fire Log, Fire Safety Report, Missing Persons Procedures

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Extra! Extra! 



Read all about it!
NEWS RELEASE:
U.S. Department of Education Increases Maximum Fine to \$62,689 Per Violation (4/20/2022)

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Clery Act--Three Part Test






1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery Act crime?
3. Did the crime occur on or within the institution's reportable Clery geography?

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Clery Act: Employee Reporting Considerations



Clery Act--CSAs

- Campus police department
- Those responsible for security
- individuals to whom crimes should be reported
- "officials with significant responsibility for student and campus activities"
- Local law enforcement





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Clery Reportable Crime Categories



- Murder/Non-negligent Manslaughter*
- Manslaughter by Negligence*
- Sex Assault*
 - Rape
 - Fondling
 - Incest
 - Statutory Rape)
- Robbery*
- Aggravated Assault*
- Burglary*
- Motor Vehicle Theft*
- Arson*

Arrests and Disciplinary Referrals for:

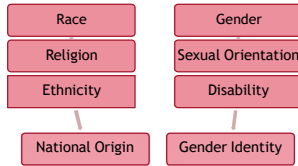
- Liquor
- Drugs
- Weapons
- Domestic Violence
- Dating Violence
- Stalking
- Hate Crimes for *, plus
 - Larceny-Theft
 - Simple Assault
 - Intimidation
 - Destruction/Damage/Vandalism of Property

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Categories of Bias

- Include any of the aforementioned crimes that manifest evidence that the victim was intentionally selected because of the perpetrator's bias.



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A CSA's Primary Responsibility is...



...to report allegations of Clery Act crimes they receive to the reporting structure established by the institution.

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Reported Crimes



- Under the *Clery Act*, a crime is "reported" when it is brought to the attention of a campus security authority, the institution's police department or campus safety office, or local law enforcement personnel by a victim, witness, other third party or even the offender.
- If a Campus Security Authority receives a report, he or she must include it as a crime report using whatever procedure has been specified by your institution.

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Reported Crimes

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- What you must include, therefore, are **statistics based on reports of alleged criminal incidents.**
- It is not necessary for
 - the crime to have been investigated by the police or a campus security authority,
 - nor must a finding of guilt or responsibility be made
 to include the reported crime in your institution's crime statistics.

Our institution's "Director of Greek Life" says that they have to "investigate" to make sure an offense "actually occurred" before they report it to us.
Is that right? (NO!)



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Sexual Assault

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Sexual assault means an offense that meets the definition of Rape, Fondling, Incest, or Statutory Rape as used in the FBI's UCR program and included in Appendix A of this subpart.

Sexual assault, a.k.a. Sex Offenses, involves "any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent."

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Rape

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The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

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Rape




This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol).

Physical resistance is not required on the part of the victim to demonstrate lack of consent.

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Consent



The Clery Act provides no definition of consent. The ability of the victim to give consent must be a professional determination by a law enforcement agency.


Note that, while the definitions of Sexual Assault include lack of consent as an element of the offense, for the purposes of including a reported Sexual Assault in Clery Act statistics, no determination as to whether that element has been met is required.

Therefore, all Sexual Assaults that are reported to a campus security authority must be included in your Clery Act statistics and also included in your crime log (if you are required to have one), regardless of the issue of consent.

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Fondling



The touching of the private body parts of another person for the purpose of sexual gratification, without consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or temporary or permanent mental incapacity.

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Fondling



Note: Males and Females can be a victim

- Fondling is recognized as an element of the other sex offenses. Therefore, count Fondling only if it is the only sex offense.

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MSU Finding



“Survivor J: In 2015, Survivor J reported that, during a treatment at the MSU Sports Medicine Clinic, Nassar groped her bare breasts with his bare hands. The woman informed Employee 7, her former boyfriend and a Michigan State athletic trainer, of the abuse in his capacity as a University employee; yet no report of this crime was ever properly lodged in accordance with the Clery Act. This incident should have been classified as an incident of Fondling and should have been included in the University’s campus crime statistics.” (Michigan State University, Campus Crime Program Review Report, 2018, p. 11-12).

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Fondling; Male Victim Consideration



- A male victim reports to campus police that he awoke to find his male friend performing oral sex on him. He was asleep and did not consent to the act. How should we capture this statistic? As a rape or as a fondling?

Because this constitutes the touching of private body parts only and the victim himself was not sexually penetrated, this would count as fondling, not rape.

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Victim stated that an “unknown male grabbed her thigh and female intimate area through her clothing”

ED Disagrees with UTA's contention that Forcible Fondling requires evidence of a state of tumescence (becoming swollen) or utterance to indicate that the perpetrator's touching was for sexual gratification.

ED fined UTA \$27,500 for this violation.

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Incest



Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- If force was used or threatened, if the victim did not consent, or if the victim was incapable of giving consent—count as Rape.

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Statutory Rape



Sexual intercourse with a person who is under the statutory age of consent

- If force was used or threatened, if the victim did not consent, or if the victim was incapable of giving consent—count as Rape.

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Example



A 21-year-old student has sex with a 15-year-old juvenile in the student's on-campus apartment. There is no use of force or threat of force (the statutory age of consent is 16).

Include this as one Statutory Rape in the on-campus category and one Statutory Rape in the on-campus student housing facility category.

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Date Rape Drugs



- Note that a case which is determined through investigation to have involved the administration of a date-rape drug in an unsuccessful attempt to incapacitate and sexually assault the victim (and the officer believes that the perpetrator's intent was to commit a sex offense)—the incident should be classified as a sex offense.

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Date Rape Drugs



- If the officer has no knowledge of the "intent" of the perpetrator, the incident should be classified as an Aggravated Assault.
- The ED Handbook says: "The use of drugs to subdue a victim, such as the use of date rape drugs, should be counted as Aggravated Assault because it can be assumed that the intent was to inflict aggravated bodily harm. However, if the use of the drugs results in Rape or Murder within the same incident, follow the Hierarchy Rule, and count the more serious offenses."

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Domestic Violence



A felony or misdemeanor crime of violence committed by:

- a current or former spouse or intimate partner of the victim,
- by a person with whom the victim shares a child in common,
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner,
- 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
- 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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WHAT IS A "CRIME OF VIOLENCE?"



- According to Section 16 of title 18 of the United States Code, the term "crime of violence" means
 - an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
 - any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

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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.



- 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.
- For the purposes of this definition—
 - Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.

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DISTINGUISHING BETWEEN DATING AND DOMESTIC VIOLENCE



Per the Help Desk:
Domestic Violence is intended to include situations where the victim and perpetrator currently have, or have had in the past, a relationship of a domestic nature. This means that they are currently or formerly married, have cohabitated as intimate partners, or have had an intimate relationship of a similar domestic nature.

Dating Violence is intended to include situations where the victim and perpetrator have, or have had, a social relationship of an intimate nature, but have not entered into a domestic relationship as described above. The most common example is a dating relationship where the two parties do not live together, have never been married, and do not share a child in common.

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Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

* For the purposes of this definition—*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



Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

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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When A CSA Reports a Clery Crime...

Initial Crime Report

Assess for Timely Warning

Daily Crime Log

Annual Statistical Disclosures

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Responsibility for Classifying Offenses

"The Department [of Education] must emphasize that the proper classification of an incident is not in any regard dependent on the label that a victim or witness uses to describe it. Rather, a competent institutional official with the requisite knowledge and experience must evaluate the available information and determine the crime classification(s) that apply to the particular set of case facts"

(University of Saint Thomas FPRD, 2017, p. 10).

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Title IX

Title IX of the Education Amendment of 1972

"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 educational program or activity receiving federal financial assistance."

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**2020 Title IX Regulations
(Discrimination on the Basis of Sex)**




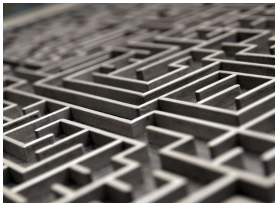
The goal of the Title IX Regulations is to require Title IV funded institutions to "promptly respond to individuals who are alleged to be victims of sexual harassment by offering supportive measures; follow a fair grievance process to resolve sexual harassment allegations when a complainant requests an investigation, or a Title IX Coordinator decides on the recipient's behalf that an investigation is necessary; and provide remedies to victims of sexual harassment." *(Summary of the Major Provisions of This Regulatory Action, Federal Register)*



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Major Changes Under Title IX Federal Regulations





- Responsible employees
- Jurisdiction
- Definitions
- Duty to respond
- Report vs signed formal complaints
- Role of advisor of choice
- Supportive measures
- Separation of duties
- Live hearings
- Notice requirements

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Unlike Clery, Title IX Regs Give Flexibility for Employee Reporting



- Title IX Coordinator
- Officials with Authority to Institute Corrective Measures on Behalf of the Recipient
- *Other Employees as Designated by the Institution (pulls in requirements of Texas State law)

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Who is an Employee?

Tex. Educ. Code § 51.251 (3): Employee does not include a student enrolled at the institution.

Administrative Regulations 19 Tex. Adm. Code, Chapter 3

- Rule §3.3 (b): Course and Scope of Employment – means an employee performing duties in the furtherance of the institution's interests.
- Rule §3.5 (a)(2): The employee is required to report an incident regardless of when or where the incident occurred.

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Texas Education Code (SB212)



- Sec. 51.252. REPORTING REQUIRED FOR CERTAIN INCIDENTS. (a) An employee of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator.
- (b) Except as provided by Subsection (c), the report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident.
- (c) An employee of a postsecondary educational institution designated by the institution as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking or who receives information regarding such an incident under circumstances that render the employee's communications confidential or privileged under other law shall, in making a report under this section, state only the type of incident reported and may not include any information that would violate a student's expectation of privacy. This subsection does not affect the employee's duty to report an incident under any other law.

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State of Texas Reporting Requirements

Texas Education Code SB 212



What should be reported?

Anything reported to you on or after 1-1-2020, regardless of when or where it occurred and falls under:

- Sexual harassment
- Sexual assault
- Dating violence
- Stalking

Committed by or against a student enrolled at an individual employed by the institution at the time of the incident



Who is required to report?

ALL employees who become aware of an incident

- Exclusions include the victim themselves, public awareness events, duplicate reports previously received by the institution

During the course or scope of an employee's job

Employees must provide their name when reporting (no anonymous reporting)




Who to report incidents to?

Reports must be made to the Title IX Coordinator after becoming aware by:

- Email
- Phone
- Via online reporting form
- In person

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Title IX Applicability/Jurisdiction



Who (our students and employees)

What (sexual harassment as defined by Title IX)


Within Educational program or activity (regardless of geography)

Within the United States (Study abroad is out for Title IX, however, an institution can decide to pull it in if they desire.)

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Definition of Sexual Harassment



Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:


1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity;
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

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Likely outside of Title IX

- Title VII**
 - Hostile environment harassment below Title IX bar
- VAWA Requirements**
 - Non-Sex-based Stalking
 - Domestic violence involving family member
- Other Sex-based behaviors**
 - Gender-based discrimination
 - Sexual Exploitation



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Non-Title IX Cases

Where do they go?

- Student Code of Conduct
- Employee Guide

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Models

Title IX Only

Other sexual misconduct is referred to different policies

Sexual Misconduct - Same Resolution Process

- Covers all sexual misconduct
- Resolution process follows Title IX regulations
- Resolution process is same for employees and students

Sexual Misconduct - Multiple Resolution Processes

- Covers all sexual misconduct
- Diverts at resolution stage based on Title IX criteria and respondent's status

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Related Policies

- Retaliation Policy
- False Statements Policy
- Consensual relationships policy
- Definition of student
- Gender discrimination

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Mandatory Dismissal

For it to be covered under Title IX, it must meet:


- Definitions
- Jurisdiction of person
- Jurisdiction of activity

If it does NOT meet these requirements...


- Mandatory dismissal
- Can go to a different resolution process

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Dismissal of Formal Complaints




Must Dismiss:

Behavior does not constitute sexual harassment
Did not occur in educational program or activity, not in the United States



May Dismiss


Complainant withdraws formal complaint
Respondent no longer enrolled/employed
Insufficient evidence



Notification and appeal


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No Policy Shopping...

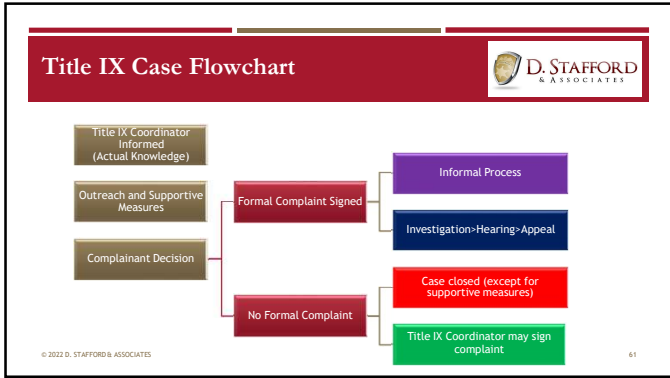
- Can't policy shop.
- If it is Title IX, it is
 - Title IX proceeding, or
 - Title IX not proceeding.
- It CANNOT be Title IX and referred to different process.



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Employees must have same process

- Not just for students anymore
- Expectation that recipients handle any formal complaint that occurs through education program or activity in the United States through the Title IX compliant grievance process

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Must haves for ALL policies

- Legally compliant (Title IX, Clery Act/VAWA, State laws)
- Comprehensive and flexible
- True to institutional mission
- Clear and understandable!

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SS and TT




SS reports to the Title IX Coordinator being the victim of sexual assault three months ago. She states that the person who assaulted her was a person she had hooked up with a few times prior and that the assault happened in residence on campus. She states that she was unconscious due to drinking shots of alcohol and taking two 10mg edibles. She states she passed out in her room and awoke due to feeling pain in her vaginal region. She realized after a few moments that student TT was having sex with her by putting his penis in her vagina.




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“Report” versus “Signed Formal Complaint”




What is the difference between a report and a signed formal complaint?



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SS and TT



The Title IX Coordinator explains the process for filing a signed formal complaint and extends supportive measures.

The Title IX Coordinator assesses the report to determine if it falls within the jurisdiction of Title IX or if it should be referred to a different office that handles non-Title IX sexual misconduct.



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Supportive Measures






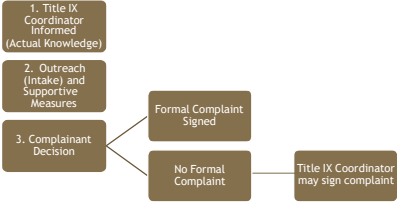
- Change in class
- Change in housing
- Increased security
- Dual no contact directives
- Academic accommodations
- Withdrawal without penalty
- Modified activities or campus access (as long as not punitive to respondent)

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Title IX Case Flowchart






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Limitations on Interim Action



Supportive Measures

Non-punitive

Emergency Removal

Immediate health and safety risk

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Determine Emergency Removal




- ✍️ Individualized safety and risk analysis
- ✍️ Immediate threat to physical harm
- 💡 Notice and opportunity to challenge

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Proceeding with “Multiples”- Consolidation of Complaints



Multiple Respondents


More than one complaint against one or more respondents

One party against another party

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Title IX Case Flowchart




```

graph TD
    A[Title IX Coordinator may sign complaint] --> B[Formal Complaint Signed]
    B --> C[Informal Process]
    B --> D[Investigation>Hearing>Appeal]
    
```

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Notice Requirements 

- Grievance process
- Sufficient details and sufficient time to prepare
- Identities of the parties, alleged conduct
- Date and location of incident
- Presumed not responsible
- Advisor of choice
- False statements
- Updates as needed
- Other: Accommodations, Retaliation, Police too!

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Investigations and Evidence Gathering 



- Burden of proof
- Witnesses and facts
- “Gag orders”
- Advisor
- Notice
- Inspect evidence
- Investigative report

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VAWA PROCEDURAL REQUIREMENTS 



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Response Requirements for VAWA Offenses (Clery Act) 

Procedures victims of VAWA Offenses should follow

↓


Procedures an institution will follow when offense reported

↓

and make sure it is all in WRITING.

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Written Explanation of Student or Employee's Rights and Options 

(b)(11)(vii) "When a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section. . . ."

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WRITTEN EXPLANATION OF RIGHTS AND OPTIONS 

- The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order
- Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide later
- How and to whom the alleged offense should be reported
 - List any person or organization that can assist the victim
 - Recommended: Also include community organizations



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WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

- 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
- The rights of victims and the institution's responsibilities for
 - orders of protection,
 - "no contact" orders,
 - restraining orders, or
 - similar lawful orders issued by a criminal, civil, tribal, or institutional entity

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WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

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- To students AND employees about existing:
 - Counseling
 - Health
 - Mental Health
 - Victim Advocacy
 - Legal Assistance
 - Visa and Immigration Assistance
 - Student Financial Aid
 - Other services available for victims
- Options for, available assistance in, and how to request changes to (if requested and reasonably available)
 - Academic, Living, Transportation, Working

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WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

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- Confidentiality
 - Publicly available recordkeeping has no personally identifying information about the victim. (not required for respondent but best practice in most cases)
 - Accommodations and protective measures are confidential (to the extent they can be without impairing the ability to provide them)
- Disciplinary Procedures
 - An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required by paragraph (k)

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Response to "Actual Knowledge"



2020 Title IX Regulations	Clery Act
<ul style="list-style-type: none"> • Contact the Complainant • Offer and/or implement supportive measures • Explain the process for filing a formal complaint 	<ul style="list-style-type: none"> • Written explanation of victim's rights and options including: <ul style="list-style-type: none"> • procedures to follow (preserve evidence, where report) • information about confidentiality • existing counseling, mental health, assistance etc. • access to law enforcement and no contacts etc. • changes to academic, living, transportation and working situations, institutional procedures • process for institutional disciplinary process • Assess for Timely Warning Notice OR Emergency Notification

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CLERY REQUIREMENTS FOR DISCIPLINARY PROCEEDINGS




- Anticipated timelines ("reasonably prompt")
- Decision-making process
- How to and options for filing a school complaint (with contact info)
- How school determines which process to use
- Who makes decisions
- Include employee procedures
- Use procedures regardless of Clery geography

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ADVISORS UNDER CLERY



- Advisor Requirement
 - Advisor - individual who provides support, guidance, or advice
 - Do not limit the choice of advisor
 - May restrict participation if apply equally
 - Provide timely notice of meetings
 - May form a pool of people
 - Can remove a disruptive advisor
 - Could allow them to serve as a proxy
 - Don't have to delay for them (but encouraged to be reasonable)

NO





TALKING

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STANDARD OF EVIDENCE





- **2020 Title IX Regulations**
 - Either the preponderance of the evidence standard or the clear and convincing standard but must be the same for all sexual misconduct
- **Clery Act**
 - Any standard of evidence ... must include in policy
 - Would not prohibit using different standards for different groups

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Informal Resolutions



2020 Title IX Regulations

- Can offer, but may not require
- Not allowed for “employee on student” sexual harassment
- Party may withdraw up to a point


Clery Act

- Written information about procedures the institution will follow for VAWA offense (does not differentiate between formal vs informal)

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Formal Complaint Rights



2020 Title IX Regulations	Clery Act
<ul style="list-style-type: none"> • Treat equitably with goal to restore/preserve access to education; due process for respondent; • Include presumption of not responsible; • Include any discipline for false statements • reasonably prompt time-frames*; • Describe the range of sanctions; • Describe range of supportive measures 	<ul style="list-style-type: none"> • Prompt, fair, and impartial investigation and resolution • Anticipated timeframes • List all possible sanctions for each offense (employees and students) • Consistent with policy and transparent • Not required to list all protective measures

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Formal (Live Hearing)

2020 Title IX Regulations

- Requires live hearing with cross examination by advisor

Clery Act

- Clery is silent regarding live hearing

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Written Determination

Title IX

- Identification of the allegations
- Procedural steps taken from receipt through determination
 - Notifications to the parties
 - Interviews with parties and witnesses
 - Site visits
 - Methods used to gather other evidence
 - Hearings held
- Findings of fact supporting the determination
- Conclusions regarding the application of code of conduct to the facts
- Final responsibility statement, sanctions, remedies for each allegation
- Appeals procedures
- When results become final (post appeal)

Clery Act


- Result (include any sanctions and rationale for results and sanction)
- Appeals procedures
- Any change to the result
- When such results become final

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Clery Requirements for Officials

training




- Training must be described in ASR
- Annual
- Should include (at a minimum):
 - Relevant evidence and how it should be used
 - Proper interview techniques
 - Basic procedural rules for conducting a proceeding
 - Avoiding actual/perceived conflicts
 - Can be in person or electronic (webinar or video)

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Bias Free and Training for “Officials”



Clery (“Officials”)

- Annual training on
 - the issues related to dating violence, domestic violence, sexual assault and stalking and on
 - how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability

Title IX (“Title IX Personnel”)

Training for all on...

- definition of sexual harassment in § 106.30
- the scope of the recipient’s education program or activity
- how to conduct an investigation and grievance process
- how to serve impartially, including by avoiding prejudgment of the facts

Decision Makers

- training on any technology and on issues of relevance

Investigators


- relevance to create an investigative report that fairly summarizes

Training materials must not rely on sex stereotypes

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Appeals



2020 Title IX Regulations

- Must offer both parties an appeal
- Based on specific grounds


Clery Act

- Not required (but must provide notice if allowed along with appeal procedures)
- Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final

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Recordkeeping



2020 Title IX Regulations

- 7 years

Clery Act


- Retain all records used in compiling ASR for three years from the latest publication of the report to which they apply (in effect 7 years)

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Education and Prevention under Clery 

Annual training for conducting "officials" (Investigators, Adjudicators, Appeals)	Primary Prevention and Awareness Programs for all incoming students and <u>new</u> employees
Ongoing Prevention and Awareness Campaigns for <u>ALL</u> students and employees	CSA Training and "Super" CSA Training

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Primary Prevention Best Practices 


"Programming, initiatives, and strategies intended to stop dating violence...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 a health and safe directions."

- Not required that all students take or attend (but mandate encouraged)
- Must show "good faith effort" to reach them with "active notification"
- Format and timeframe encouraging maximum attendance
- Equally important to prevent perpetration as it is to prevent victimization

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Primary Prevention & Awareness 

"The institution's primary prevention and awareness programs for all incoming students and new employees, which must include..."



- Statement prohibiting dating DVDSVAS
- Definitions of DVDSVAS
- Definition of consent
- Safe and positive options for bystander intervention;
- Information on risk reduction

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Ongoing Prevention & Awareness 

"Ongoing prevention and awareness campaigns for students and employees...must provide the same information as the primary awareness and prevention programs"



- Deeper dives
- Sustained over time
- Promote services
- Range of strategies/audiences
 - Social media, email, posters, ads
 - Take Back the Night
 - Sports teams, Greek, dorms
 - Student fairs or campus events
 - DV program for supervisors

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CSA TRAINING (RECOMMENDATIONS, NOT REQUIREMENTS) 



- Role of a CSA
- Provide Reporting materials
 - Map of Clery geography
 - Definitions of Clery crimes
 - Forms for documenting and reporting
- Importance of documentation
- Need for timely reporting
- "Super CSAs?"
- Personally Identifiable Information

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