



Title IX & Clery Act Annual Training

Tuesday, April 11, 2023

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Before we get too far . . .

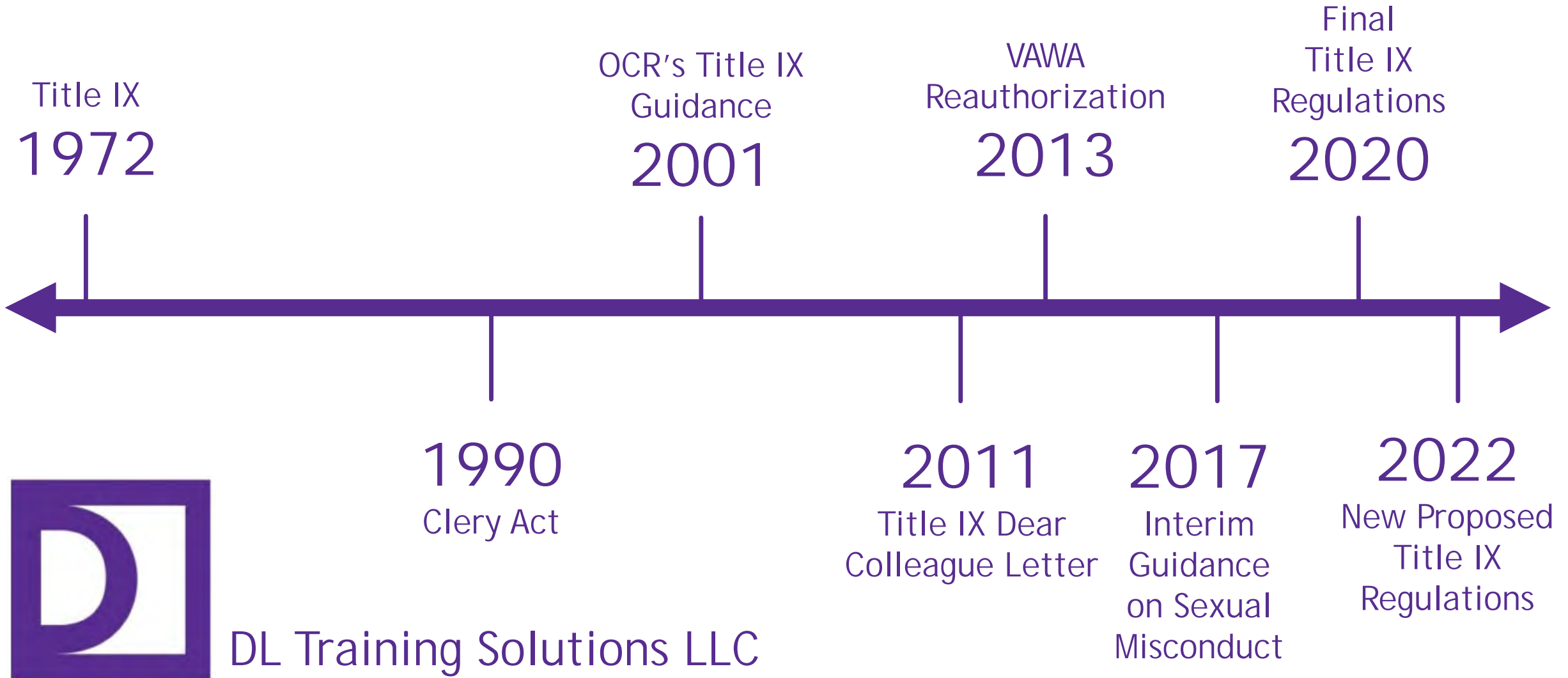


Letter to Stakeholders (April 6, 2021)

U.S Department of Education Office for Civil Rights (OCR) undertook a comprehensive review of the Department's existing regulations, orders, guidance, policies, and any other similar agency actions, including the amendments to the Department's Title IX regulations that took effect on August 14, 2020.

- Public hearings held June 7 to 11, 2021
 - ED received over 30,000 written comments
- OCR issued a 67-page question-and-answer document in July 2021
- **07-12-22 – ED released anticipated NPRM.**
 - At this time, the Title IX regulations as amended in 2020 remain in effect
 - **60-day public comment period ended September 12, 2022**
 - **240,085** public comments received by ED
 - Current Title IX regulations – Over 140,000 public comments
 - Proposed November 2018 – Finalized May 2020 – Effective August 2020
 - ED suggests final regulations may be published in May 2023

Title IX - Clery Act Timeline



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Title IX of the Education Amendments of 1972



Prohibits sex discrimination in education programs that receive federal funding.

- Sexual harassment, including sexual assault, is a type of sex discrimination that is banned by Title IX.

Clery Act of 1990



Every institution must:

- **Collect, classify, and count crime reports and crime statistics.**
- Issue a **timely warning** for any *Clery Act* crime that represents an ongoing threat to the safety of students or employees.
- Issue an **emergency notification** upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.
- **Publish an annual security report** containing safety- and security-related policy statements and crime statistics and distribute it to all current students and employees. Schools also must inform prospective students and employees about the availability of the report.
- **Submit crime statistics to ED.** Each year in the fall schools must participate in a Web-based data collection to disclose crime statistics by type, location, and year.
- ED can issue civil **finest of up to \$62,689 per violation** for a substantial misrepresentation of the number, location, or nature of the crimes required to be reported or for a violation of any other provision of the safety- and security-related *HEA* regulations.

2001 OCR Title IX Guidance



Provides the principles that a school should use to recognize and effectively respond to sexual harassment of students in its program as a condition of receiving federal financial assistance.

- Describes the regulatory basis for a school's compliance responsibilities under Title IX
- Outlines the circumstances under which sexual harassment may constitute discrimination prohibited by the statute and regulations
- Provides information about actions that schools should take to prevent sexual harassment or to address it effectively if it does occur

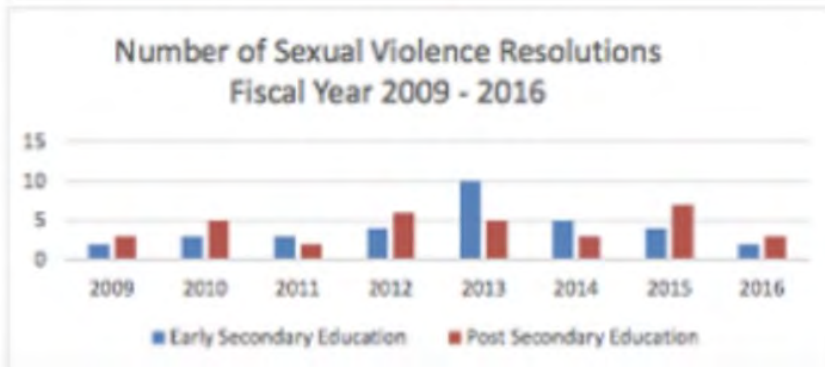
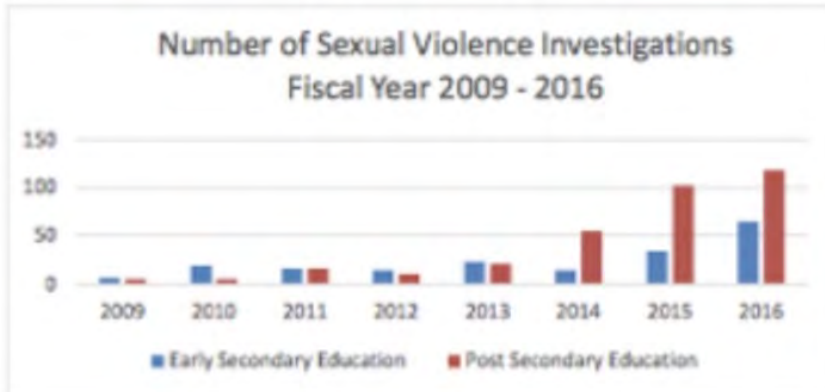
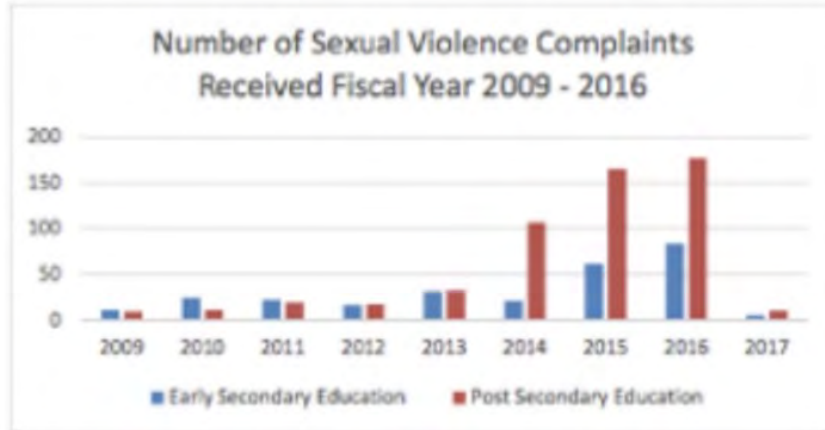
2011 Dear Colleague Letter



- Was deemed a “significant guidance document” by ED
- Detailed schools’ obligations and the appropriate response to sexual harassment and violence
- Guidance was repealed by Secretary DeVos in September 2017

Appendix D: Number of Title IX Complaints, Investigations, and Resolutions 2009-2016

Source: Department of Education, Office for Civil Rights



“The Second Report of the White House Task Force to Protect Students from Sexual Assault,” January 5, 2017, (originally retrieved from <https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Documents/1.4.17.VAW%20Event.TF%20Report.PDF> [January 18, 2017])

Retrieved from: <http://www.changingourcampus.org/resources/not-alone/Second-Report-VAW-Event-TF-Report.PDF> (June 20, 2022)



Violence Against Women Reauthorization Act (2013)



Amended the Clery Act to require that schools compile statistics for incidents of:

- domestic violence,
- dating violence,
- sexual assault, and
- stalking

(collectively referred to as “sexual misconduct”) that occur on or near campus.

Violence Against Women Reauthorization Act (2013)



Updated requirements for school's Annual Security Reports.
The ASR must include:

- the school's ***education programs*** to promote awareness of sexual misconduct;
- Possible ***sanctions*** schools may impose regarding sexual misconduct;
- ***Procedures that victims should*** follow if an incident of sexual misconduct has occurred;
- The school's procedures for conducting a ***disciplinary proceeding*** in cases of alleged sexual misconduct;

VAWA Challenges – Non-Traditional Higher Education



The VAWA requirements present particular challenges to postsecondary trade and career schools.

- These schools typically do not have on-campus police or dedicated security forces.
- The Title IX coordinator at these schools is often the director or another administrator whose primary job functions pertain to school operations.
- Given the size of the student body, lack of residential student housing, and limited school-sponsored extracurricular activities, incidents of sexual misconduct may be infrequent at these types of institutes.

VAWA Challenges – Non-Traditional Higher Education



During the proposed regulations' public comment period, a number of commenters noted the significant compliance burden that the regulations place on small institutions.

- For example, the commenters referenced the requirement for institutional disciplinary proceedings in the case of alleged dating violence, domestic violence, sexual assault, or stalking.
- In response, the Department noted that institutions are not making determinations of criminal responsibility but are determining whether the institution's own rules have been violated.
- The Department further noted that students at smaller institutions should have the same protections as their counterparts at larger institutions.

2014 White House Task Force – First Report Findings:

- One in five women is sexually assaulted in college
- Most often by someone she knows
- Most often not reported
- Many survivors feel isolated, ashamed, or to blame
- Although less often, men also victims

Source: Not Alone, The First Report of the White House Task Force to Protect Students From Sexual Assault, April, 2014, accessed June 20, 2022, <https://www.justice.gov/ovw/page/file/905942/download>



BJS 2016 Campus Climate Survey



- The Bureau of Justice Statistics developed a pilot campus climate survey to address key Task Force goals and issues related to the measurement of rape and sexual assault in self-report surveys.
- Completed surveys were collected from more than 23,000 undergraduate students at nine schools
 - Data collection occurred March through May 2015
- The overall prevalence rate for completed sexual assault experienced by undergraduate females, averaged across the nine schools, was 10.3%

"Campus Climate Survey Validation Study Final Technical Report," (January 2016). Bureau of Justice Statistics, accessed January 21, 2016 (<http://www.bjs.gov/content/pub/pdf/ccsvsfr.pdf>)

What is the Nature of a School's Responsibility to Address Sexual Misconduct?



Whether or not a student files a complaint of alleged sexual misconduct or otherwise asks the school to take action, where the school knows *or reasonably should know* of an incident of sexual misconduct, the school must take steps to understand what occurred and to respond appropriately.

THIS STANDARD HAS BEEN RESCINDED & REPLACED BY NEW TITLE IX REGULATIONS EFFECTIVE 08-14-20

- ***New proposed regs would change standard once again.***

2020 FINAL Title IX Regulations – Effective 8-14-20



Final Rule published May 6, 2020

“This new regulation requires schools to act in meaningful ways to support survivors of sexual misconduct, without sacrificing important safeguards to ensure a fair and transparent process. We can and must continue to fight sexual misconduct in our nation’s schools, and this rule makes certain that fight continues.”

- U.S. Secretary of Education Betsy DeVos, Press Release May 6, 2020

106.44 (a) General response to sexual harassment.



A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent.

- A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances**

106.44 (a) General response to sexual harassment.



Title IX Coordinator must promptly contact the complainant to:

- discuss the availability of supportive measures,
- consider the complainant's wishes with respect to supportive measures,
- inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
- explain to the complainant the process for filing a formal complaint.

106.44 (a) General response to sexual harassment.



“**Education program or activity**” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- Every Title IX Coordinator, investigator, decision-maker, and person who facilitates an informal resolution process, must be trained on (among other things) “the scope of the recipient’s education program or activity.”
- Nothing in the final regulations precludes the recipient from choosing to also address allegations of conduct outside the recipient’s education program or activity.
 - May offer supportive measures to students and individuals impacted by misconduct or trauma even when Title IX and its implementing regulations do not require such actions

106.44 (a) General response to sexual harassment.



Scope of "Education program or activity:"

A teacher's sexual harassment of a student is likely to constitute sexual harassment "in the program" of the school even if the harassment occurs off campus.

Title IX protects students in connection with all of the academic, educational, extra-curricular, athletic, and other programs of the school, whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere.

May include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the recipient.

Title IX Regulations § 106.8 (b)

Dissemination of policy



Each recipient must:

- provide notice that it does not discriminate on the basis of sex in the education program or activity that it operates;
- prominently display the Title IX Coordinator contact information and grievance policy on its website, if any, and in each handbook or catalog.

Title IX Regulations § 106.8 (c)

Adoption of grievance procedures.



- A recipient must adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee Title IX complaints.
- A recipient must provide notice of the recipient's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the recipient will respond.

2022 Proposed Title IX Regulations



SUMMARY: *The U.S. Department of Education (Department) proposes to amend the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). The purpose of the proposed regulations is to better align the Title IX regulatory requirements with Title IX's nondiscrimination mandate, and to clarify the scope and application of Title IX and the obligation of all schools, including elementary schools, secondary schools, postsecondary institutions, and other recipients that receive Federal financial assistance from the Department (referred to below as recipients or schools) to provide an educational environment free from discrimination on the basis of sex, including through responding to incidents of sex discrimination. The Department recognizes that schools vary in size, student populations, and administrative structure. The proposed regulations would enable all schools to meet their obligations to comply fully with Title IX while providing them appropriate discretion and flexibility to account for these variations.*

Summary of Major Provisions in NPRM Sex-Based Harassment



Proposed Regs:

- Continue to cover quid-pro-quo harassment
- Also covers harassment that creates a hostile environment

Current Regs:

- Prohibit unwelcome sex-based conduct only if it is “so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.”

Summary of Major Provisions in NPRM Off-Campus Conduct



Proposed Regs:

- Under the proposed regulations, a recipient would be required to address a sex-based hostile environment in its education program or activity, including when sex-based harassment contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.

Current Regs:

- Do not require a recipient to address a sex-based hostile environment in its education program or activity in the United States if the hostile environment results from sex-based harassment that happened outside of the recipient's education program or activity, or outside of the United States.

Summary of Major Provisions in NPRM Responding to Sex Discrimination



Proposed Regs:

- Would require a recipient to take prompt and effective action to end any prohibited sex discrimination that has occurred in its education program or activity, prevent its recurrence, and remedy its effects.

Current Regs:

- Require a recipient to respond to possible sexual harassment when it has “actual knowledge” of the harassment

Summary of Major Provisions in NPRM Responding to Sex Discrimination



Proposed Regs:

- recipients must require certain employees to notify the recipient's Title IX Coordinator of conduct that may constitute sex discrimination under Title IX.
- An employee at a postsecondary institution who has authority to take corrective action or, for incidents involving students, has responsibility for administrative leadership, teaching, or advising in the recipient's education program or activity, would be obligated to notify the Title IX Coordinator.
- All other employees at a postsecondary institution would be obligated to notify the Title IX Coordinator or provide an individual with the Title IX Coordinator's contact information and information about reporting

Current Regs:

- A recipient is obligated to respond to possible sexual harassment only when it has "actual knowledge" of the harassment (i.e. notice of sexual harassment or alleged sexual harassment).
- At postsecondary institutions, only employees with authority to institute corrective measures can have actual knowledge

Summary of Major Provisions in NPRM Grievance Procedures



Key changes in the proposed regulations include:

- Grievance procedures apply to all complaints of sex discrimination, not just sexual harassment
- Decisionmaker may be the same person as the Title IX Coordinator or investigator
- Must use a preponderance of the evidence standard of proof, unless the clear and convincing evidence standard is used in all other comparable proceedings

Summary of Major Provisions in NPRM Grievance Procedures – Postsecondary Schools



Key changes in the proposed regulations include:

- Allowing the decisionmaker to ask relevant and not otherwise impermissible questions in a meeting or at a live hearing, and allowing the parties to propose relevant and not otherwise impermissible questions for the decisionmaker or investigator to ask during a meeting or live hearing
- Permitting, but not requiring, a live hearing.
- Not relying on a statement of a party that supports that party's position if the party does not respond to questions related to their credibility

Transgender Students



Joint Dear Colleague Letter issued by DOJ & ED on 5/13/16

- Treated a student's gender identity as the student's sex for Title IX purposes
- School could not treat a transgender student differently from the way it treated other students of the same gender identity
- A school's failure to treat students consistent with their gender identity may have created or contributed to a hostile environment in violation of Title IX

JOINT DOJ & ED LETTER WITHDRAWN BY TRUMP ADMINISTRATION 2/17/17

EXECUTIVE ORDER 14021, 86 Fed. Reg. 13,803 (March 11, 2021)

[A]ll students should be guaranteed an educational environment free from discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity.

Transgender Students



OCR Notice of Interpretation – Published in Federal Register June 22, 2021

In 2020, the Supreme Court in *Bostock v. Clayton County*, 140 S. Ct. 1731, 590 U.S. _____ (2020), concluded that discrimination based on sexual orientation and discrimination based on gender identity inherently involve treating individuals differently because of their sex.

- It reached this conclusion in the context of Title VII of the Civil Rights Act, which prohibits sex discrimination in employment.

The Department issued this Interpretation to make clear that the Department interprets Title IX's prohibition on sex discrimination to encompass discrimination based on sexual orientation and gender identity.

HOWEVER: July 15, 2022 – Federal Judge in Tennessee issued preliminary injunction blocking ED's Title IX guidance prohibiting discrimination based on gender identity and sexual orientation

Transgender Students



OCR Letter to Educators on Title IX's 49th Anniversary

June 23, 2021

OCR will fully enforce Title IX to prohibit discrimination based on sexual orientation and gender identity in education programs and activities that receive Federal financial assistance from the Department.

OCR/DOJ published Fact Sheet: Confronting Anti-LGBTQI+ Harassment in Schools

[ed.gov/about/offices/list/ocr/lgbt.html](https://www.ed.gov/about/offices/list/ocr/lgbt.html)

additional information and resources for LGBTQI+ students:

[ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf](https://www.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tix-202106.pdf)

Sexual Orientation & Gender Proposed § 106.10



The proposed regulations would make clear that Title IX prohibits all forms of sex discrimination, including discrimination based on sexual orientation, gender identity, and sex characteristics.

Pregnancy or Related Conditions

Proposed § 106.40



When student notifies Title IX coordinator of student's pregnancy or related status, school must:

- Provide options of modifications to ensure equal access to education programs or activities;
- Allow for voluntary LOA and reinstatement upon return;
- Provide clean, private space for lactation.

A recipient would be required to provide its employees with reasonable break time for lactation, as well as a clean and private lactation space.

State Policies



State legislatures have also addressed the issues of sexual misconduct on college campuses, including:

- Affirmative Consent
- Transcript Notations
- Mandatory Reporting
- Access to Medical Attention
- Memorandums of Understanding (MOU)
- Climate Surveys
- Good Samaritan Provisions

To the extent of a conflict between State or local law and Title IX, the obligation to comply with Title IX takes priority



Title IX Coordinator

Dear Colleague Letter April 24, 2015



- Reminded all schools to designate a Title IX Coordinator
- Contact information must be widely distributed on school's website and various publications
- Department began collecting information about school's Title IX Coordinators in 2015

Title IX Regulations § 106.8 (a)

Designation of Title IX Coordinator



- Each recipient must designate at least one employee as the “Title IX Coordinator.”
- Must notify applicants for admission and employment, students, and employees of the Title IX Coordinator’s name or title, office address, email address, and telephone number.
- Any person may report sex discrimination, including sexual harassment, in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator.
- Report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.

Title IX Coordinator



Title IX does not categorically exclude particular employees from serving as Title IX coordinators.

- However, when designating a Title IX coordinator, an institution should be careful to avoid designating an employee whose other job responsibilities may create a conflict of interest.
- A dedicated, full-time Title IX coordinator is the ideal.
- Designating a full-time Title IX coordinator will also minimize the risk of a conflict of interest.
- Some colleges and universities may not have the resources to support a full-time position.
- If this is the case, it is critical that the employee has all the qualifications, training, authority, and time to address all complaints raising the Title IX issues.

Title IX Coordinator Responsibilities



Responsible for monitoring and overseeing school's compliance with Title IX and prevention of sexual misconduct.

- Knowledgeable and trained in school's policies and procedures and relevant state and federal law.
- Available to advise individuals about school and community resources and reporting options.
- Available to provide assistance to school employees regarding how to respond appropriately to report of the Title IX-related prohibited conduct and related retaliation.

Title IX Coordinator Responsibilities



- Ensures effective implementation of school's sexual misconduct policies and procedures.
- Oversees training, prevention, and education efforts and annual reviews of climate and culture.
- Overseeing the school's response to Title IX reports and complaints and identifying and addressing any patterns or systemic problems revealed by such reports and complaints.
- The school should ensure that the Title IX coordinator is given the training, authority, and visibility necessary to fulfill these responsibilities.



Training & Education

VAWA (Clery Act) Requirements



Institutional disciplinary hearings must be:

“conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the victims and promotes accountability”

20 USC 1092(f)(8)(iv)(I)(bb)

Prevention and Education



Clery Act requires that an institution's annual security report include a statement of policy that addresses the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking.

- The statement must include
 - i. A description of the institution's primary prevention and awareness programs for all incoming students and new employees, and
 - ii. A description of the institution's ongoing prevention and awareness campaigns for students and employees

Primary Prevention Programs



Defined in regulations as programming, initiatives, and strategies that are intended to stop dating violence, domestic violence, sexual assault, and 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 healthy and safe directions

34 CFR 668.46(j)(2)(iv)

Prevention and Education



Prior OCR guidance (rescinded September 2017) recommended that the following topics (as appropriate) be covered as part of student training:

- Title IX and what constitutes sexual violence under the school's policies;
- school's definition of consent, including examples;
- how the school analyzes whether conduct was unwelcome under Title IX;
- reporting options, including formal reporting and confidential disclosure options and any timeframes set by the school for reporting;
- school's grievance procedures
- disciplinary code provisions relating to sexual violence and the consequences of violating those provisions;

Prevention and Education



Additional recommended student training topics (per prior OCR guidance):

- effects of trauma;
- the role alcohol and drugs often play in sexual violence incidents;
- strategies and skills for bystander intervention;
- how to report sexual violence to campus or local law enforcement;
- Title IX's protections against retaliation;
- encouraging students to report incidents of sexual violence;
- educating students about the persons on campus to whom they can confidentially report incidents of sexual violence.

Title IX Regulations:

§ 106.45 (b)(10) Recordkeeping.



A recipient must maintain for a period of **seven years** records of all materials used to train Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process.

These training materials must be publicly available on the recipient's website, or if the recipient does not maintain a website then upon request.

US Department of Education Title IX Resources for Students, Institutions



TITLE IX

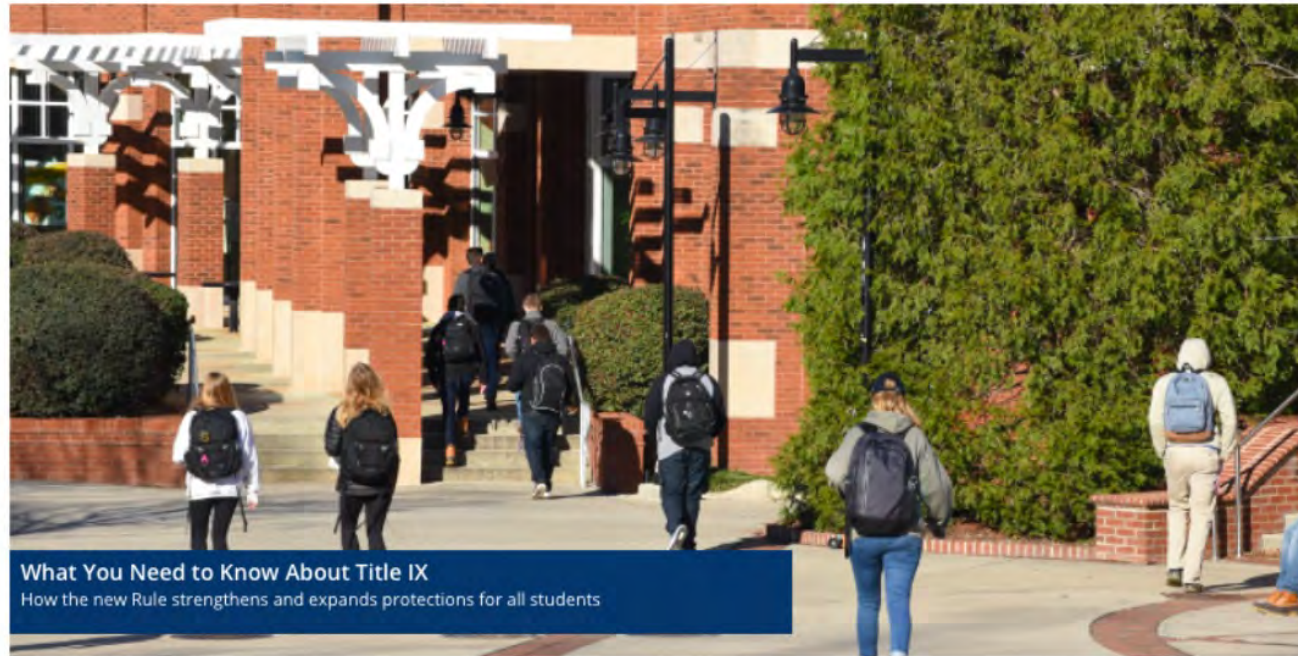
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Policy

Title IX Resources

- [Title IX Final Rule](#)
- [Title IX Regulations Addressing Sexual Harassment \(Unofficial Copy\) PDF \(6M\)](#)
- [Title IX: U.S. Department of Education Title IX Final Rule Overview PDF \(553K\)](#)
- [Summary of Major Provisions of the Title IX Final Rule PDF](#)
- [Fact Sheet: Final Title IX Regulation](#)
- [Questions and Answers Regarding the Department's Final Title IX Rule](#)
- [OCR Webinar: Title IX Regulations Addressing Sexual Harassment \(Length: 01:11:29\)](#)
- [The First Amendment and Title IX: An OCR Short Webinar](#)
- [OCR Short Webinar on How to Report Sexual Harassment under Title IX](#)
- [Conducting and Adjudicating Title IX Hearings: An OCR Training Webinar](#)
- [OCR Webinar on Due Process Protections under the New Title IX Regulations](#)
- [OCR Webinar on New Title IX Protections Against Sexual Assault](#)
- [OCR Blog: Effective Date and Retroactivity](#)
- [OCR Blog: Live Hearings, Excluding Reliance on a Party's Statements, and Verbal Conduct](#)
- [OCR Blog: The Requirement to Update School Websites with Important Title IX Information](#)

If you believe your school, college, or university has violated Title IX, [learn more about how to file a complaint](#) with the Department's Office for Civil Rights. Technical assistance inquiries, including questions regarding compliance with the new Title IX Rule, may be submitted to: OCR@ed.gov.



Clery Reporting

Clery Act Guidance



On October 9, 2020, the U.S. Department of Education **RESCINDED** the *Handbook for Campus Safety and Security Reporting, 2016 Edition*.

- Replaced with a new Appendix in the FSA Handbook
- According to the Department's Electronic Announcement:

The 2016 edition, as well as the previous versions, created additional requirements and expanded the scope of the statute and regulations. Despite the fact that the guidance found in the 2016 edition did not have the force of law or regulations, some institutions may have felt pressured to satisfy the non-regulatory or non-statutory based aspects of the guidance, calculating that the financial and reputational consequences of non-compliance were too great.

Clery Act Requirements – The Basics



Clery Act Requirements – The Basics	
<ul style="list-style-type: none">• Collect, classify, and count crime reports and statistics	
<ul style="list-style-type: none">• Issue campus alerts and warning notices	<ul style="list-style-type: none">• Publish an Annual Security Report (Due date: October 1)
<ul style="list-style-type: none">• Disclose missing student notification procedures, when applicable	<ul style="list-style-type: none">• Submit crime and fire statistics to the Department, when applicable
<ul style="list-style-type: none">• Disclose procedures for institutional disciplinary actions	<ul style="list-style-type: none">• Provide educational programs and campaigns
<ul style="list-style-type: none">• Keep a daily crime log, when applicable	<ul style="list-style-type: none">• Disclose fire safety information, when applicable

Clery Act Appendix for FSA Handbook, p. 1



The tools you need for Campus Safety and Security analysis

Get Data for One School

Search for a school to view general information and the past three years of safety- and security-related statistical data for the entire school or by campus.

Compare Data for Multiple Schools

Select up to four schools to see a side-by-side comparison of aggregated data for the most recent year, along with an option to view the number per 1000 students.

Download Custom Data

Select the safety- and security-related statistical data you are interested in for one or more years and download data for a customized group of schools.

Generate Trend Data

Select a subject area and a question that you are interested in, and then see the answer for a selected year, build a table, and see a graph that shows the trend over time. You can customize your results by various institutional characteristics such as public or private, 2-year or 4-year, or state.

Download Data

Download the complete data file for all institutions from a single data collection. Files will include all data submitted by all institutions in the selected survey year.

What is the Campus Safety and Security Data Analysis Cutting Tool?

The Campus Safety and Security Data Analysis Cutting Tool is brought to you by the Office of Postsecondary Education of the U.S. Department of Education. This analysis cutting tool was designed to provide rapid customized reports for public inquiries relating to campus crime and fire data. The data are drawn from the OPE Campus Safety and Security Statistics website database to which crime statistics and fire statistics (as of the 2010 data collection) are submitted annually, via a web-based data collection, by all postsecondary institutions that receive Title IV funding (i.e., those that participate in federal student aid programs). This data collection is required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and the Higher Education Opportunity Act.

<https://ope.ed.gov/campussafety/#/>

Clery Geography



You must disclose statistics for reported Clery crimes that occur:

- on campus
- on public property within or immediately adjacent to the campus, and
- in or on noncampus buildings or property that your institution owns or controls

Clery Geography: On-Campus



Under Clery, the **on-campus** category encompasses the following:

- Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and
- Any building or property that is within or reasonably contiguous to the property described above, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or retail vendor).

For Clery reporting purposes, your campus includes buildings and properties that meet all of the following criteria:

- Your institution owns or controls them;
- They are reasonably contiguous to one another; and
- They directly support or relate to the institution's educational purposes

Clery Geography: On-Campus



Institutions that lease space in strip malls:

- Your campus consists of any space within the strip mall that is covered by your written agreement.
- If the lease includes use of the parking lot, or selected spaces in the lot, include the lot (or selected spaces) as part of your campus.
- If your students need to use stairwells or elevators or hallways to access the space your institution controls, include them as part of your campus as well.
- Do not include any of the strip mall's stores, restaurants, offices, etc., in your on-campus category because your institution doesn't control them.

Clery Geography: Public Property



- *All public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes."*
- In order for this definition to apply, the property in question must satisfy all three conditions: 1) public (e.g., publicly-owned); 2) within or adjacent to campus; and 3) accessible from campus.
- This definition excludes any private property, and may in some cases exclude areas such as property divided by a fence or wall, or property with clearly posted signs indicating that it is not part of the campus or that trespassing is prohibited.
- The Department applies no specific measurable distance definition into adjacent public property.

Clery Geography: Noncampus



- The Clery definition of **noncampus buildings or property** is:
 - any building or property owned or controlled by a student organization that is officially recognized by the institution; or
 - any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.
- The noncampus category encompasses two distinct types of buildings and property:
 - those owned or controlled by officially recognized student organizations, and
 - those located off campus but owned or controlled by your institution.

Space versus Program Agreements



Perhaps your institution sends students to an off-campus site for internships, externships, clinical training, or student teacher.

- If you own or control the site or any space within the site, include the site or the specified space in your non-campus category.
- If you do not own or control the space, don't include it.
- If you have an agreement, even a written agreement, to send your students to a location for one of the aforementioned reasons, but that written agreement is for the program rather than for the use of the physical space, you do not have control of the location and do not have to include statistics for crimes that occur there.

U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting, 2016 Edition, Washington, D.C., 2016, p. 2-21.

NOTE: THIS HANDBOOK GUIDANCE HAS BEEN RESCINDED AS OF OCTOBER 9, 2020.

Space versus Program Agreements



For example:

If you have a written agreement to send students to a privately owned hospital for clinical training, but you don't have a written agreement for use of the hospital or any space within the hospital, you do not have to include statistics for the crimes that occur there.

- However, if you rent classroom space for students within the same hospital, you are required to include crime statistics for that space, as well as for any other areas, such as lobby or hallways and elevators used to access that space for the period of time specified in the agreement.

U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting, 2016 Edition, Washington, D.C., 2016, p. 2-21.

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Identifying and Reporting Sexual Misconduct



Prohibited Sexual Misconduct

- Sexual Harassment
- Domestic Violence
- Dating Violence
- Sexual Assault
- Stalking

These are elements of your School Code of Conduct. This is a separate consideration from their status as crimes under state law.

Sexual Harassment



2020 Title IX Regulations §106.30 Definitions. ***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; or
- 3) "Sexual assault," "dating violence," "domestic violence," or "stalking" as defined for VAWA purposes.

Equal Access to Program or Activity



- Does not require showing that a complainant dropped out of school, failed a class, had a panic attack, or otherwise reached a “breaking point” in order to report and receive a recipient’s supportive response to sexual harassment.
- Evaluating whether a reasonable person in the complainant’s position would deem the alleged harassment to deny a person “equal access” to education protects complainants against school officials inappropriately judging how a complainant has reacted to the sexual harassment.

Equal Access to Program or Activity



Final regulations do not require complete exclusion from an education, but rather denial of “equal” access.

Signs of enduring unequal educational access due to severe, pervasive, and objectively offensive sexual harassment may include:

- skipping class to avoid a harasser,
- a decline in a student’s grade point average, or
- having difficulty concentrating in class;

No concrete injury is required to conclude that serious harassment would deprive a reasonable person in the complainant’s position of the ability to access the recipient’s education program or activity on an equal basis with persons who are not suffering such harassment.