



# Clery Center's Clery Act Training Seminar: Title IX-related Content

## **NOTICE OF APPROVED USE**

As a way to support institutions in their efforts to comply with section 106.45 of the final Title IX Rules, Clery Center has compiled all relevant Title IX training materials from CATS (Clery Act Training Seminar) into one comprehensive document.

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Clery Center embraces a multi-disciplinary approach to Clery Act compliance and recognizes there are areas wherein the Clery Act and Title IX intersect. However, we believe that only some training content could be interpreted as Title IX training. As such, institutions requesting materials used in the training of “Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process” are only permitted to download and share this document in the format provided, with Clery Center logo and branding intact and unchanged. Individuals and/or institutions are not authorized to alter, copy, adapt, crop, or otherwise change the materials in any way, nor may they use the materials for training or for any commercial purpose unless expressly provided to the institution by Clery Center for that purpose.



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# Virtual Clery Act Training Seminar

# Intersections

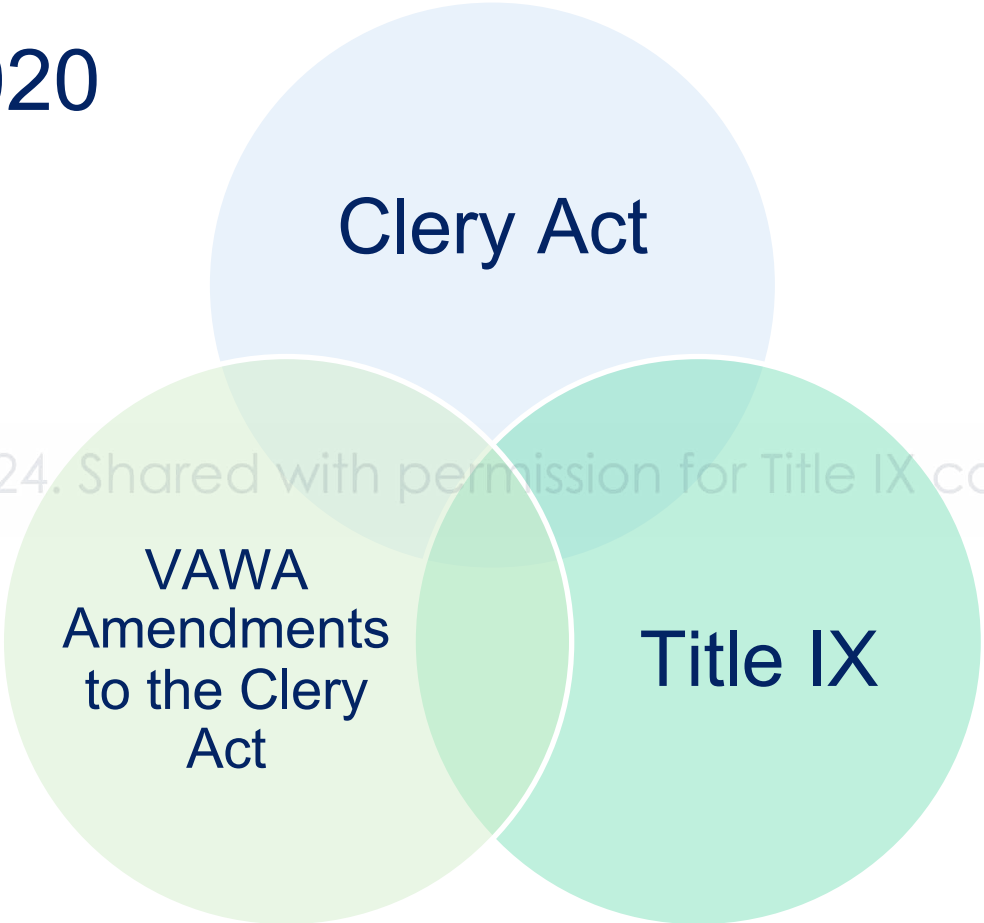
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**All the requirements in this lesson are for dating violence, domestic violence, sexual assault, and stalking.**

**Sexual assault is an offense that meets the definition of rape, fondling, incest, or statutory rape.**

As of May 2020



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# Title IX Defines Sexual Harassment as:

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Conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient (institution) conditioning the provision of 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 (institution's) education program or activity; or....

# Last Definition

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3. Sexual assault (which includes rape, fondling, incest, and statutory rape), domestic violence, dating violence, and stalking under the ***CLERY ACT***

# Intersections Between the Clery Act and Title IX

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## The Clery Act

- Reporting requirements
- All Clery crimes
- Accommodations
- Disciplinary procedures

## Title IX

- Reporting requirements
- Sexual harassment
  - Including dating violence, domestic violence, sexual assault, and stalking (DVSAS) as defined in the Clery Act
- Measures
- Grievance procedures



# Geography/Jurisdiction

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## The Clery Act

- Four geographic locations for reporting
  - On-campus
  - On-campus student housing
  - Noncampus
  - Public property
  
- For response: on and off campus

## Title IX

- Educational programs and activities
- May be on campus or off campus plus owned or controlled by recognized student organizations

# Reporting Requirements

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## The Clery Act

- Broader scope of reporting responsibility
- Non-personally identifiable information (nature, date, time, general location, current disposition)
- All Clery crimes

## Title IX

- Higher threshold for a reported incident to be considered “actual knowledge”
- Sexual harassment – one category being DVSAS as defined under Clery

# What is Considered a Report to the Institution Under Title IX?

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- Institutions must respond when the institution has *actual knowledge*, meaning a notice of or allegations of sexual harassment (as previously defined) to:
  - The institution's Title IX coordinator; or
  - Any official...who has the authority to institute corrective measures on behalf of the recipient

# What Must an Institution Do When it Receives a Report?

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**CLERY**

**V.**

**TITLE IX**

# What Must an Institution Do Under Title IX?

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- The institution must respond promptly in a manner that is not deliberately indifferent
- The Title IX Coordinator must promptly contact the complainant to discuss:
  - The availability of supportive measures
  - The individual's wishes with respect to supportive measures
  - The availability of supportive measures with or without the filing of a formal complaint
  - The process for filing a formal complaint

## Formal Complaint Under Title IX

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**Formal Complaint** (document filed by complainant or signed by TIXC alleging harassment and requesting investigation)

- Complainant must be participating in or attempting to participate in education program or activity at time of complaint
- Filed with TIXC in person, by mail, e-mail, or other methods of contact
- Physical or digital signature or otherwise indicates complainant is person filing.

# Accommodations & Measures

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## The Clery Act

- Accommodations
- Must be provided in writing
- Options for, available assistance in, and how to request changes to:
  - Academic
  - Living
  - Transportation
  - Working
  - Protective Measures
- If requested by the victim
- If reasonably available
- Regardless of whether the victim chooses to report to campus police or local law enforcement

## Title IX

- Supportive Measures
- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge
- To the complainant or the respondent
- Before or after the filing of a formal complaint or where no formal complaint has been filed

# Disciplinary Process

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## The Clery Act

- Prompt, fair, and impartial
- Describe the standard of evidence
- Be conducted by officials who receive annual training
- Advisor of choice
- Simultaneous notification of results

## Title IX

- Prompt and equitable
- Regulations inform standard of evidence
- Annual training requirements
- Advisor of choice with role in cross-examination
- Simultaneous notification of results



# Standard of Evidence

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## The Clery Act

- Must describe the standard of evidence that will be used

## Title IX

- Must state whether institution uses preponderance of the evidence or clear and convincing
- Must be same standard for formal complaints against students as for formal complaints against employees
- Must apply same standard of evidence to all formal complaints of sexual harassment

# Sanctions & Remedies

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## The Clery Act

- Must list all possible sanctions
- Must describe range of protective measures

## Title IX

- Must describe range of sanctions, but...
- Must describe range of remedies

# Advisor Of Choice

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## The Clery Act

- Both parties must have same opportunities to be accompanied by an advisor of choice
- May not limit choice of advisor
- Allows institutions to establish restrictions on how the advisor may participate as long as applied equally to both parties

## Title IX

- Both parties notified that they may have an advisor of choice who may, but is not required to be, an attorney
- Responsible for conducting cross-examination (directly, orally, and in real time)
- Must be included in party's receipt of evidence and investigator's report
- May also serve as witness
- If no advisor, institution must provide one to conduct cross-examination (institution's choice, does not have to be an attorney, but...)

# Notice of Outcome

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## The Clery Act

- Simultaneous notification in writing of:
  - Result of any institutional disciplinary proceeding
  - Procedures for accused and victim to appeal the result, if such procedures are available
  - Any change to the result
  - When such results become final
- Must include rationale for the results and the sanctions

## Title IX

- Simultaneous written determination, including:
  - Allegations potentially constituting sexual harassment
  - Procedural steps taken
  - Findings of fact supporting determination
  - Conclusions regarding application of code of conduct to the facts
  - Statement of, and rationale for, the results as to each allegation

# Training

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## The Clery Act

- Proceedings must be conducted by officials who receive annual training on:
  - Issues related to dating violence, domestic violence, sexual assault, and stalking
  - How to conduct an investigation and hearing process that protects the safety of victims and promotes accountability

## Title IX

- Individuals involved in process must receive training on specific topics listed in regulations
- Must make training materials publicly available on the institution's website (or if no website, available upon request for inspection)

# Annual Training Components

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## The Clery Act

- Relevant evidence and how it should be used during a proceeding
- Proper techniques for interviewing witnesses
- Basic procedural rules for conducting a proceeding
- Avoiding actual and perceived conflicts of interest

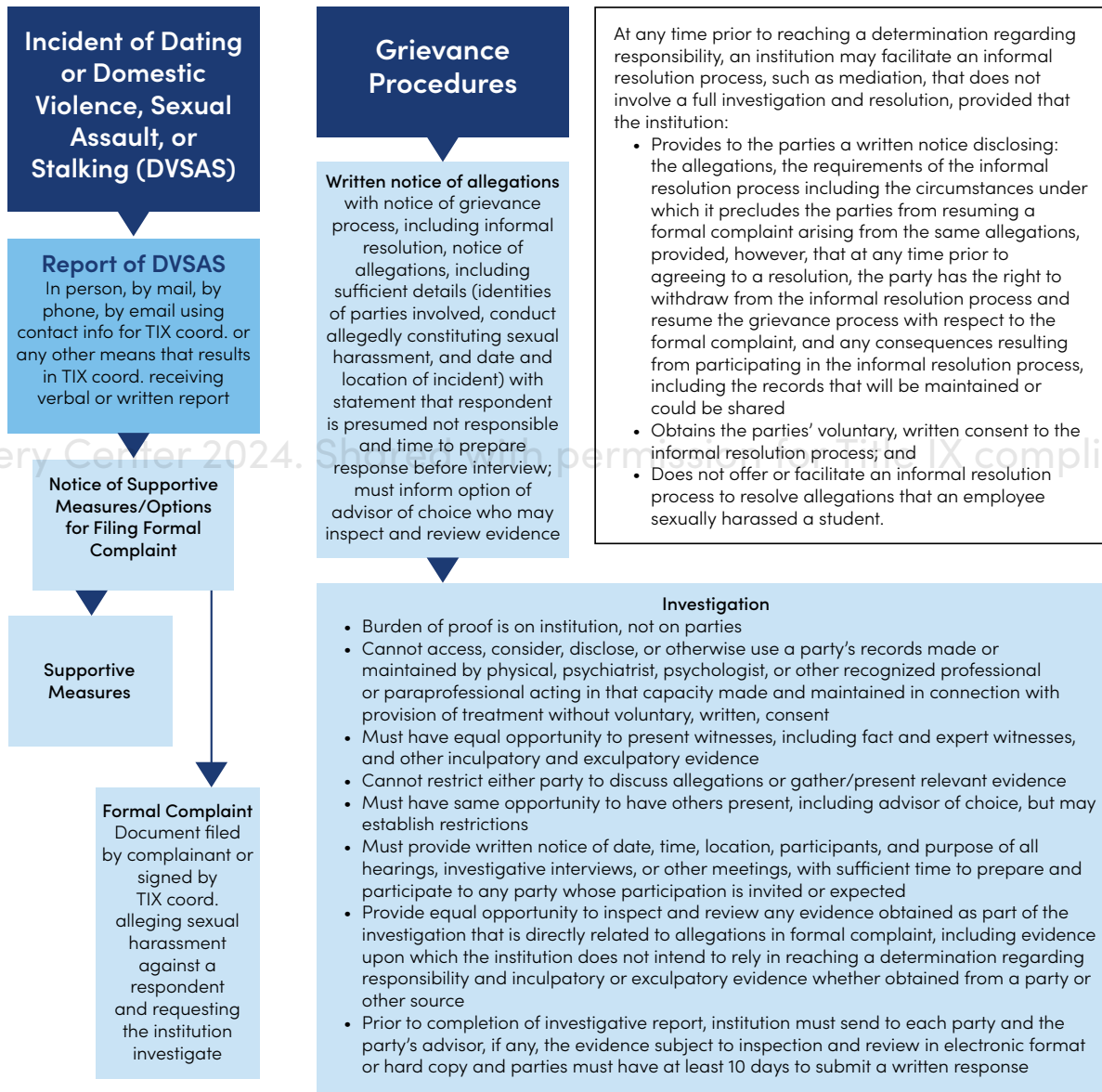
## Title IX

- How to serve impartially
- Training on technology to be used at a live hearing



at the heart of campus safety

# TITLE IX FLOW CHART



continued on next page



# TITLE IX FLOW CHART

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## Investigative Report

Summarizes relevant evidence and at least 10 days prior to a hearing sent to each party and party advisor in electronic format or hard copy for review and written response

## Live hearing

- Must permit each party's advisor to ask other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility
- Must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally (may be in separate rooms with technology enabling decision-makers and parties to simultaneously see and hear party or witness answering questions)
- Decision-makers first determine if question is relevant and explain any decision to exclude question
- If party doesn't have advisor, institution must provide one for cross-examination
- Questions and evidence about complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior behavior are offered to prove that someone other than respondent committed conduct or if questions and evidence concern specific incidents of complainant's prior sexual behavior with respect to respondent and offered to prove consent
- If party or witness does not submit to cross-examination at live hearing, decision-makers may not rely on any statement of that party or witness in reaching determination regarding responsibility but cannot draw inference about determination based on absence
- Must create audio or audiovisual recording or transcript of any live hearing and make it available to parties for inspection and review

## Determination Regarding Responsibility - Simultaneously in Writing

- Title IX Coordinator or investigators must issue written determination of responsibility applying institution's standard of evidence
- Must include identification of allegations possibly constituting sexual harassment; description of procedural steps taken from the receipt of the formal complaint through determination, including notice to parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held; findings of fact supporting determination; conclusions regarding application of institution's code of conduct to the facts; statement of and rationale for the result as to each allegation, including determination regarding responsibility, any disciplinary sanctions on respondent, and whether remedies will be provided to complainant, and procedures for appeal

## Appeal

- Must offer both parties an appeal from determination regarding responsibility and from institution's dismissal of a formal complaint or any allegations therein on following bases:
  - » Procedural irregularity that affected outcome;
  - » New evidence that was not reasonably available at time of determination;
  - » Title IX Coordinator, investigators, or decision-makers had conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter (may offer appeal equally to both parties on additional bases)
- Must notify other party when appeal is filed and implement appeal procedures equally for both parties
- Decision-maker cannot be same person that made original decision, the investigators, or Title IX Coordinator
- Must give parties reasonable opportunity to submit written statement in support of or challenging the outcome
- Must issue written decision describing result of appeal and rationale for result
- Must provide written decision simultaneously to both parties

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## REMINDERS: INTERSECTIONS

### Message To Your Campus

*When you return to your daily work, what key points will you share with students and employees related to campus response to dating violence, domestic violence, sexual assault, and stalking? What about a broader prevention and response effort?*

### Networking Reminders?

*(Who/for what/what follow-up)*

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### Remaining Questions?

*For each question, indicate who you will seek out/what you will do to get answers.*