Introduction

- Today’s webinar is being conducted by the National Association of Clery Compliance Officers and Professionals (NACCOP).
- It is sponsored by D.Stafford & Associates.
- Once the webinar begins and throughout the presentation, you may submit questions by typing them into the question box (Not chat) in the panel to the right of your screen. We will review questions and ask as many as possible at the end of the webinar.
- Although we will not be recording this webinar, we sent out the presentation slides prior to the webinar for your reference.
Join Us In Baltimore July 20-22!

9th Annual NACCOP Conference
In-Person in Baltimore, MD
Pre-Conference - July 19, 2022
Conference - July 20-22, 2022
Register now at:
https://www.naccop.org/nacco

Tracks for Clery Compliance Officers AND Title IX Coordinators

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- Director of Training and Compliance Activities for NACCOP
- Vice President, Equity Compliance and Civil Rights Services
- 17-year law enforcement veteran
  - University of Richmond (Operations Lieutenant)
  - Davidson College (Chief of Police)
  - Trinity Washington University (Chief of Police)
- 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
  - Procedural Justice Institute
- www.campusproceduraljustice.com

Clery Act Crime Categories
- Primary Crimes (UCR Part 1)
- Hate Crimes
- Arrests and Referrals for Drug, Liquor and Weapon Violations
- Dating Violence, Domestic Violence and Stalking Incidents (VAWA Crimes)
Overlapping Conduct Violations

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

CLERY
- Non-VAWA Clery Crimes (Assault etc.)
- Hate Crimes
- Non-VAWA Clery Crimes (Hate etc.)
- Other sex-based behaviors

Title IX Specific Prohibited Conduct

- Sexual Harassment
  - Quid pro quo
  - Hostile Environment
- Sexual Assault
  - Rape (including sodomy, sexual assault with an object)
  - Fondling
- Dating Violence
- Domestic Violence
- Stalking

Definition of Sexual Harassment

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;

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.

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

i. The existence of such a relationship shall be based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

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

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.
Stalking

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

A. Fear for the person’s safety or the safety of others; or
B. Suffer substantial emotional distress.

For the purposes of this definition—

A. Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any means—follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.

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.

Sexual Assault

The definition (from VAWA) of sexual assault.

- Sexual Assault: An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s Uniform Crime Reporting (UCR) program. Per the National Incident-Based Reporting System User Manual from the FBI UCR Program, a sex offense is “any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.”
Sexual Assault

- Rape: 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.
- Fondling: The touching of the private parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

Title IX Applicability/Jurisdiction

Who
Location
Educational program or activity

Mandatory Dismissal

For it to be covered under Title IX, it must meet:
- New Definitions
- Jurisdiction of person
- Jurisdiction of activity

If it does NOT meet these requirements…
- Mandatory dismissal
- Can go to a different resolution process
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

Limitations on Interim Action

Supportive Measures
- Non-punitive

Emergency Removal
- Immediate health and safety risk

Advisors

Throughout investigation
Role at hearing
Allegation Intersections

Non-Title IX Cases

Where do they go?

Student Code of Conduct
Employee Guide

VAWA PROCEDURAL REQUIREMENTS
Response Requirements for VAWA Offenses

Procedures victims of VAWA Offenses should follow

Procedures an institution will follow when offense reported

and make sure it is all in WRITING.

Written Explanation of Student or Employee’s Rights

(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...”

Written Explanation of Rights and Options

1. 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
2. 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
Written Explanation of Rights and Options

3. 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

4. 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

5. 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

7. 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)

8. 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)
Response to “Actual Knowledge”

<table>
<thead>
<tr>
<th>2020 Title IX Regulations</th>
<th>Clery Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Contact the Complainant</td>
<td>• Written explanation of victim’s rights and options including:</td>
</tr>
<tr>
<td>• Offer and/or implement supportive measures</td>
<td>• procedures to follow (preserve evidence, where report)</td>
</tr>
<tr>
<td>• Explain the process for filing a formal complaint</td>
<td>• information about confidentiality</td>
</tr>
<tr>
<td></td>
<td>• existing counseling, mental health, assistance etc.</td>
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<tr>
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<td>• access to law enforcement and no contacts etc.</td>
</tr>
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<td></td>
<td>• changes to academic, living, transportation and working situations, institutional procedures</td>
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<td></td>
<td>• process for Institutional disciplinary process</td>
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<td></td>
<td>• Assess for Timely Warning Notice OR Emergency Notification</td>
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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

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)
Advisor Requirement

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

- **Clergy Act**
  - Any standard of evidence must include in policy
  - Would not prohibit using different standards for different groups

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

**Clergy Act**

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

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>- Treat equitably with goal to restore/preserve access to education; due process for respondent;</td>
<td>- Prompt, fair, and impartial investigation and resolution</td>
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<tr>
<td>- Include presumption of not responsible;</td>
<td>- Anticipated timeframes</td>
</tr>
<tr>
<td>- Include any discipline for false statements</td>
<td>- List all possible sanctions for each offense (employees and students)</td>
</tr>
<tr>
<td>- Reasonably prompt time frames*;</td>
<td>- Consistent with policy and transparent</td>
</tr>
<tr>
<td>- Describe the range of sanctions;</td>
<td>- Not required to list all protective measures</td>
</tr>
<tr>
<td>- Describe range of supportive measures</td>
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</tbody>
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### Formal (Live Hearing)

<table>
<thead>
<tr>
<th>2020 Title IX Regulations</th>
<th>Clery Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Requires live hearing with cross examination by advisor</td>
<td>- Clery is silent regarding live hearing</td>
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</tbody>
</table>

### Written Determination

<table>
<thead>
<tr>
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<th>Clery Act</th>
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<tbody>
<tr>
<td>- Identification of the allegations</td>
<td>- Result (include any sanctions and rationale for results and sanction)</td>
</tr>
<tr>
<td>- Notifications to the parties</td>
<td>- Appeals procedures</td>
</tr>
<tr>
<td>- Interviews with parties and witnesses</td>
<td>- Any change to the result</td>
</tr>
<tr>
<td>- Site visits</td>
<td>- When such results become final</td>
</tr>
<tr>
<td>- Methods used to gather other evidence</td>
<td>- When results become final (post appeal)</td>
</tr>
<tr>
<td>- Hearings held</td>
<td></td>
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</tbody>
</table>
Clery Requirements for Officials

- 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)

Bias Free and Training for “Officials”

Title IX ("Title IX Personnel")
- 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

Clery ("Officials")
- 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
  - training to create an investigative report that fairly summarizes
  - training materials must not rely on sex stereotypes

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
Recordkeeping

2020 Title IX Regulations

- 7 years

Clergy 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)

VAWA Education Requirements

Education and Prevention under Clery

Annual training for conducting "officials" (Investigators, Adjudicators, Appeals)

Primary Prevention and Awareness Programs for all incoming students and new employees

Ongoing Prevention and Awareness Campaigns for ALL students and employees

CSA Training and “Super” CSA Training
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

Primary Prevention & Awareness

“The institution’s primary prevention and awareness programs for all incoming students and new employees, which must include...”

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

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
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

Clery Act Compliance Training Academy

Register at www.dstaffordandassociates.com

Massachusetts Institute of Technology in Boston, MA
June 13-17, 2022

North Seattle College in Seattle, WA
October 10-14, 2022

Oakton Community College in Chicago, IL
August 1-5, 2022

VIRTUAL OPTION:
December 5-9 and December 12-16, 2022

DSA Advanced Clery Act Training Academy:
Practical Application

The ADVANCED Clery Act Compliance Training Academy is a 3 ½ day training program that provides an opportunity for attendees to build upon the foundation provided in the D. Stafford & Associates Clery Act Compliance Training Academy through a combination of instruction, discussion, and group-based learning activities that explore how to practically apply relevant laws and ED guidance to some of the most vexing issues facing practitioners. This experience is designed to be interactive, with attendees participating in group analysis and exercises throughout the 3 ½ days. Participants will be able to assess their ability to competently apply the law to specific scenarios and problems while evaluating pertinent operating procedures and practices that relate to complying with the Clery Act.

VISIT OUR WEBSITE FOR MORE INFORMATION ABOUT IN-PERSON CLASSES IN 2022
www.dstaffordandassociates.com
Title IX/Investigation of Sexual Misconduct: Virtual and In-Person Options

Combined Sexual Misconduct and Dating/Domestic Violence and Stalking Investigation Training
VIRTUAL Class
11:00 am to 5:00 pm each day
- April 25-29, 2022
- August 8-12, 2022

Advanced Investigations in Sexual Misconduct Training Course-
IN PERSON
Prince George’s Community College in Largo, MD (Outside Washington, D.C.)
June 13-17, 2022

Title IX Coordinator/Investigator Training—IN PERSON CLASS
Wentworth Institute of Technology in Boston, MA
May 23-26, 2022

T9 C/I: VIRTUAL OPTION:
October 10-14, 2022

Introduction to Title IX
LIVE, VIRTUAL CLASSES ONLY:
August 3, 2022
November 16, 2022

Questions?

Thanks to our sponsors!