



1



Agenda

- How we got here
- The Rules

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Because You Didn't Have Anything Else To Do Over The Next Three Months?



- Worrying about the Global Pandemic?
- Trying to keep up with new pandemic-related orders & guidance from Federal, State, And Local Governments?
- Learning the joys of working from home?
- Worried about your own children?
- Working with students suffering from stress of online learning, loss of in-person experience at college, etc.?
- Trying to decide if your institution will be open this fall?

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How We Got Here

- Title IX prohibits discrimination on the basis of sex
- ED and the courts have interpreted Title IX to prohibit sexual harassment (including sexual assault)
 - Among other things, colleges and universities must investigate
 - allegations of sexual harassment and take appropriate disciplinary action

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How We Got Here (Cont.)

- Obama-Era ED guidance focused on protecting victims
 - Included the 2011 “Dear Colleague” Letter and
 - The mandatory “Preponderance of the Evidence” standard
- Trump/DeVos-Era ED has focused on the due process rights of the accused:
 - Rescinded Obama-Era guidance
 - Issued informal guidance (Including 2017 Q&A)
 - Engaged in Formal Rulemaking Process

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What ED Is Saying:

“We can continue to combat sexual misconduct without abandoning our core values of fairness, presumption of innocence and due process.”

- ~ Secretary DeVos
May 6, 2020



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What One Opponent Is Saying:



“Betsy DeVos has created a double standard that is devastating for survivors of sexual harassment and assault, who are overwhelmingly women and girls. We are suing to make sure this double standard never takes effect.”

– Rita Tabacco Mar
Director Of The ACLU’s
Women’s Rights Project

(Similar Litigation Is Expected To Follow)

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7

7

General Comments and Thoughts



26 pages of
Regulations
2033 page
• Preamble



Technical
assistance



Implementation
date of August
14, 2020



Possible delay

Litigation
Congressional Review
Act

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Preamble Highlights

- Codifying what was done as Guidance
- Brings into alignment with SCOTUS
- Victim and survivor mean there was a responsible finding
- Schools are not like workplaces
- Do not believe Rules will reduce reporting or investigations
- Focus is on sexual misconduct, not other Title IX aspects
- Use informal resolution for educational process
- Status of advisors should not impact school's compliance
- Training will combat prejudice we see in criminal justice system
- We DO have the authority (1311)
- "Many people" support changes

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§106.3 – Remedial Action



Fix it



No monetary damages

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§106.6 – Effect of Other Requirements and Preservation of Rights

The diagram consists of five colored rectangular boxes arranged in two rows. The top row contains three boxes: a red box labeled 'Constitutional Rights', a purple box labeled 'FERPA', and a blue box labeled 'Title VII'. The bottom row contains two boxes: a green box labeled 'Parents and guardians' and a brown box labeled 'State and local laws'.

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§106.8(a) Designation of Coordinator

The diagram features four icons with corresponding text labels below them. From left to right: a person icon labeled 'Title IX Coordinator', a megaphone icon labeled 'Notification of parties', a telephone handset icon labeled 'Contact information', and a bar chart icon labeled 'Reporting information'.

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§106.8(b) Dissemination of Policy



Notification do not discriminate



Title IX Coordinator contact information



Grievance procedure



United States

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§106.8(C) Adoption of Grievance Procedure

Prompt and equitable

Reports and complaints

Response

Educational materials

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Only applies to US

Use other policy

No Clery conflicts

§106.8(d)
Application
Outside of the
United States

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This slide features a vertical stack of three red buttons with white text: 'Only applies to US', 'Use other policy', and 'No Clery conflicts'. To the right is a large red rectangular area containing the text '§106.8(d) Application Outside of the United States'. A large, light gray watermark 'D. Stafford & Associates' is overlaid diagonally across the slide.

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Submit in writing

Specific tenant

Not required

Raise any time

§106.12 –
Religious
Institutions

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This slide features a vertical stack of four colored buttons with white text: 'Submit in writing' (brown), 'Specific tenant' (green), 'Not required' (blue), and 'Raise any time' (red). To the right is a large red rectangular area containing the text '§106.12 – Religious Institutions'. A large, light gray watermark 'D. Stafford & Associates' is overlaid diagonally across the slide.

16

§106.30 Definitions – Actual Knowledge


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§106.30 Definitions – Formal Complaint




Signed formal complaint



Title IX Coordinator



Third parties




Anonymous reports


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§106.30 Definitions – Sexual Harassment



Employee . . . conditioning aid, benefit, or service



Unwelcome conduct determined to be severe, pervasive, and objectively offensive . . . effectively denies equal access



Clergy

Sexual assault
IPV
Stalking

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20

Sexual Harassment under Title IX

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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PRONG 1: Quid Quo Pro

 "This for That" Harassment


 When favorable professional or educational treatment is conditioned on a sexual activity


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PRONG 2: The *Davis* Standard

 Hostile Environment +

 First Amendment protections

 Not a “zero tolerance” standard

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PRONG 3: The VAWA Crimes

 Sexual Assault

Rape
Fondling
Statutory Rape
Incest

 Intimate Partner Violence

Dating Violence
Domestic Violence





 Stalking

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**§106.30
Definitions –
Supportive
Measures**



-  Non-disciplinary
-  Both parties
-  Academic, housing, and athletic impact
-  No contact orders

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Schools

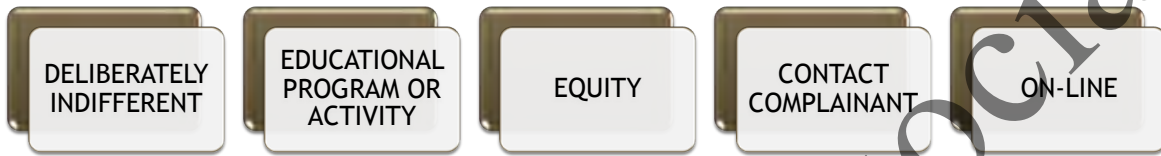
-  Elementary and secondary
-  Postsecondary

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§106.44 Recipient's Response to Sexual Harassment; (a) General Response to Sexual Harassment



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§106.44 Recipient's Response to Sexual Harassment; (b) Response, (c) Emergency Removal; (d) Administrative Leave



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§106.45 Grievance Process for Formal Complaints of Sexual Harassment (a) Discrimination, (b) Grievance Process

The diagram consists of two white rectangular boxes with rounded corners and a slight drop shadow, set against a dark brown background. The left box contains the word "Equity" in a large, black, sans-serif font. The right box contains the words "Grievance process" in a large, black, sans-serif font, with "Grievance" on the top line and "process" on the bottom line.

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§106.45 Grievance Process for Formal Complaints of Sexual Harassment. (b) Grievance Process(1) Basic Requirement

The diagram features five colored rectangular boxes with rounded corners and a slight drop shadow, arranged in two rows. The top row contains three boxes: a brown box with "Equity", a green box with "Objective Evaluations", and a blue box with "Impartiality and Training". The bottom row contains two boxes: a purple box with "Presumption of Not Responsible" and a red box with "Prompt Time Frames".

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§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process, (1) Basic Requirements

Range of sanctions and remedies

Standard of evidence

Appeal

Supportive measures

Respect privilege

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§106.45 Grievance Process for Formal Complaints of Sexual Harassment, (b) Grievance Process, (2) Notice

Notice requirements

Additional allegations

Clarifications

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32

§106.45(b)(3) Dismissal of a Formal Complaint

Must dismiss:

- Behavior does not constitute sexual harassment
- Did not occur in educational program or activity, not in the United States
- Notification
- The Department notes that recipients retain the flexibility to employ supportive measures

May dismiss:

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

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§106.45(b)(4) Consolidation of a Formal Complaint

Multiple
respondents

More than one
complainant
against one or
more respondent

One party
against other
party

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Burden of proof

Witnesses and facts

“Gag orders”

Advisor

Notice

Inspect evidence

Investigative report

§106.45
Grievance
Process for
Formal
Complaints of
Sexual
Harassment,
(b) Grievance
Process, (5)
Investigation

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§106.45(b)(6) Hearings

Live hearing

Cross-examination

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§106.45(b)(6) Hearings

- Advisor
- Relevancy
- Participation consequences
- “Physically present”

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§106.45(b)(7) Determination Regarding Responsibility

- Allegations
- Procedural steps
- Findings of fact
- Conclusion/application
- Rationale
- Appeal procedures


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Sanctions and Remedies



Sanctions



Remedies

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§106.45(b)(8) Appeals

- MUST have
 - Procedure
 - New evidence
 - Conflict of bias
 - That impacted outcome
- Additional grounds permitted
- No other role
- Reasonably prompt time frame

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§106.45(b)(8) Appeals

Notification of appeal

No conflicts

Equal opportunity to respond

Written outcome - rationale

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§106.45(b)(9) Informal Resolution

Notice

Voluntary

Not allowed for Employee/student

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§106.45(b)(10) Recordkeeping - Investigations

7 years

Investigation

Appeal

Informal resolution

Training materials

Determination
Recordings
Sanctions and remedies

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Intimidation, threats, coercions, discrimination

May use same grievance procedure

1st Amendment

False reports

§106.71
Retaliation
Prohibited

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44

Directed Questions and Other Miscellaneous Items

- Application to elementary and secondary schools
- Application based on type or age of parties
- Individuals with Disabilities
- Executive orders and other requirements
- Clery Act
- Conflicting standards

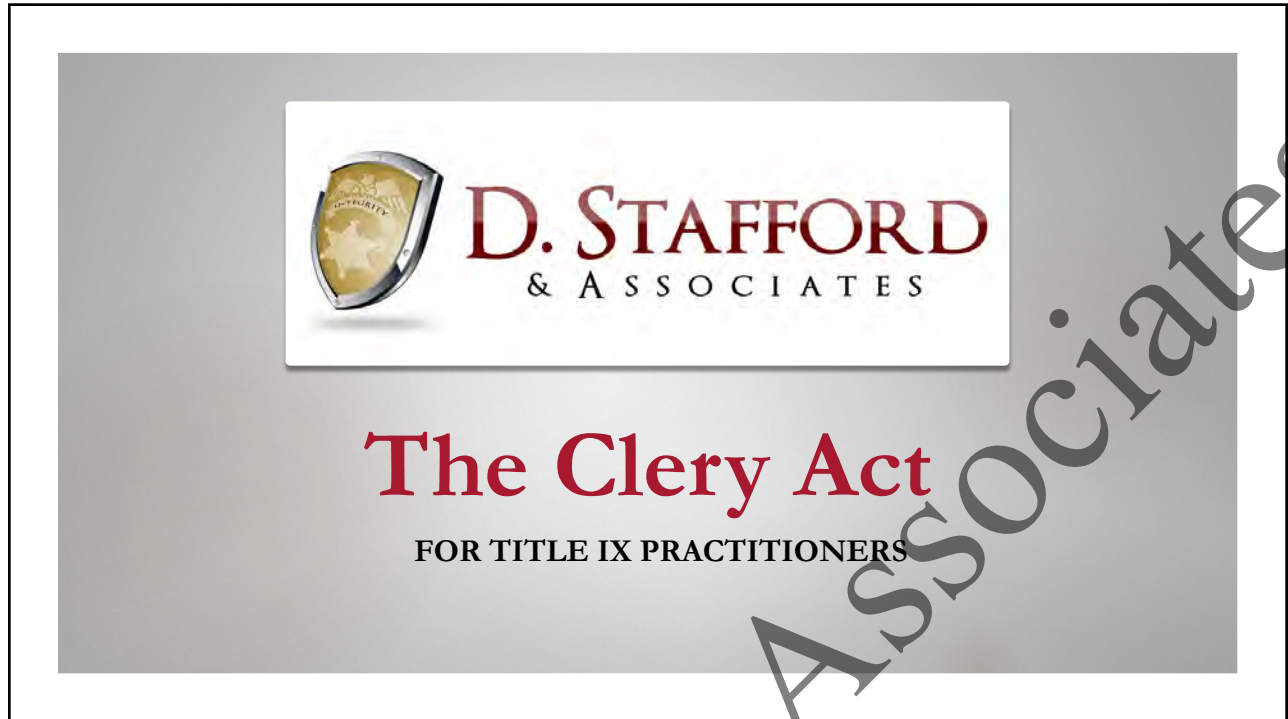
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1

The slide has a dark red header with the title 'Key Requirements of the Clery Act' in white. Below the header are four light gray rectangular boxes, each containing an icon and a requirement: 1. A document icon with the text 'Collect, classify, and count Crime Reports/Statistics'. 2. A megaphone icon with the text 'Issue Campus Alerts'. 3. A document icon with the text 'Publish Annual Security Report'. 4. A graduation cap icon with the text 'Submit Crime Statistics to the Department'. A large, diagonal watermark reading 'D. Stafford & Associates' is overlaid on the slide. At the bottom left, there is a small copyright notice: '© 2020 D. STAFFORD & ASSOCIATES'. At the bottom right, there is a small number '2'.

2

Key Requirements (part 2)



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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COUNTING
CRIME
STATISTICS

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Gettysburg College

2019 - 2020 Academic Year Annual Security and Fire Safety Report

Prepared by the Department of Public Safety
Includes Crime Statistics for Calendar Years (CYs) 2016, 2017 & 2018



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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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Campus Security Authorities (CSA)

- Campus police/security
- Security responsibility
- Individual or organization where crimes should be reported
- An official with responsibility for student and campus activities

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Reporting Comparisons

Clery CSA

- Campus Law Enforcement and Public Safety
- RAs, RDs, other Housing officials
- Dean of Students Office/Student Conduct
- ADs and Coaches (including Assistant ADs and Coaches)
- Faculty or Staff Advisors to Student Orgs
- Access Monitors/Contract/Event Security Officers
- Safety escorts on campus (including students)
- Student Union/Student Activities Staff
- Greek Affairs staff
- Administrators at Branch/Satellite/Separate Campuses
- Study Abroad Coordinators
- Title IX Coordinator(s)
- Director of the Student Health Center

Title IX Responsible Employee

- Title IX Coordinator
- Others as deemed “official of the recipient who has authority to institute corrective measures on behalf of the recipient.”

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Who may not be a CSA?

- Faculty members who are not advisors of student groups (i.e., no responsibility for student or campus activities beyond the classroom)
- Most support staff
 - Clerical
 - Secretaries
 - Receptionists
 - Facilities Staff
 - Plumbers
 - Electricians
 - Food Service Workers
 - Cashiers
 - Cooks

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Who is never a CSA?



Professional Counselors

Includes individuals who are unlicensed and uncertified but acting under the supervision of an exempt counselor (e.g., a graduate student doing an internship)



Pastoral Counselors

NOTE: These positions are exempt only when acting within the scope of their duties as a counselor or trainee.

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REPORT

CSA FUNCTION

A CSA's function is to report allegations of Clery Act crimes made in good faith.

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CSA Reporting Recommendations

- CSA crime reports should include sufficient detail, such as dates and locations, and, where appropriate, personally identifying information, including name and contact information, if available.
- This is important for law enforcement purposes to ensure that all crimes are counted and to avoid double counting crimes.



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CSAs are responsible for reporting allegations of *Clery Act* crimes that are reported to them in their capacity as a CSA.

This means that CSAs are not responsible for investigating or reporting incidents:

- they overhear students talking about in a hallway conversation
- that a classmate or student mentions during an in-class discussion
- that a victim mentions during a speech, workshop, or any other form of group presentation
- that the CSA otherwise learns about in an indirect manner

Reporting Crimes

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D. Stafford & Associates
2020 Title IX Regulations: Policy Implications and Practical Application

COUNTING
CRIME
STATISTICS:
CLERY CRIMES

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

Calendar Years (CY) 2016 – 2018

Criminal Offenses or Primary Crimes (Crimes Reported By Hierarchy)	Calendar Year	On Campus (Including Residential)	Non-Campus	Public Property	Totals	On Campus (Residential Only)
Murder & Non-Negligent Manslaughter	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Manslaughter by Negligence	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Rape	2018	11	2	0	13	11
	2017	25	2	0	27	18
	2016	14	2	0	16	10
Fondling	2018	11	1	0	12	9
	2017	4	1	0	5	4
	2016	0	3	0	3	0
Incest	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Statutory Rape	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0
Robbery	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	1	1	0
Aggravated Assault	2018	3	0	1	5	1
	2017	4	0	0	4	4
	2016	3	1	0	4	3
Burglary	2018	32	9	0	41*	31
	2017	7	1	0	8	6
	2016	3	1	0	4	1
Motor Vehicle Theft	2018	0	0	0	0	0
	2017	0	0	0	0	0
	2016	0	0	0	0	0

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- 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 Reportable Crime Categories

- Murder/Non-negligent Manslaughter*
- Negligent Manslaughter*
- Sex Offenses* (Rape/Fondling)
- Sex Offenses* (Incest/SR)
- 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
 - Vandalism

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Counting Clery Crimes

If a crime is reported (and otherwise meets the three-part test) it is counted.

- Includes attempts
- Includes cases a DA would reject
- Includes cases of “not responsible”
- Does NOT include every conduct code violation

It is not the word used but the facts of the case that determine how it gets counted

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Clery Crime Categories

-  Primary Crimes
-  Hate Crimes
-  Arrests and Referrals for Drug, Liquor and Weapon Violations
-  Dating Violence, Domestic Violence and Stalking Incidents (VAVA Crimes)

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Rape

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. This definition includes any gender of victim or respondent.

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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 b/c of his/her age or temporary or permanent mental or physical incapacity.

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CONSENT

- The Clery Act does not require any particular definition of consent
- ASR must include definition of consent as defined by jurisdiction (state law)
- Institution should have a definition in their institutional sexual misconduct policy



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“Non-Forcible” Sex Offenses

INCEST

Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

STATUTORY RAPE

Non-forcible sexual intercourse with a person who is under the statutory age of consent

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Date Rape Drugs

A case where it 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 perpetrator’s intent was to commit a sex offense)—the incident should be classified as a **Sexual Assault**.

A case in which there is no knowledge of the “intent” of the perpetrator should be classified as **Aggravated Assault**.

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Unfounded Crimes

An institution may not withhold, or subsequently remove, a reported crime from its crime statistics based on a decision by a court, coroner, jury, prosecutor, or other similar non-campus official.

An institution may withhold, or subsequently remove, a reported crime from its crime statistics in the rare situation where:

sworn or commissioned law enforcement personnel have fully investigated the reported crime and,

based on the results of this full investigation and evidence, have made a formal determination that the crime report is false or baseless and therefore “unfounded.”

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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 GEOGRAPHY

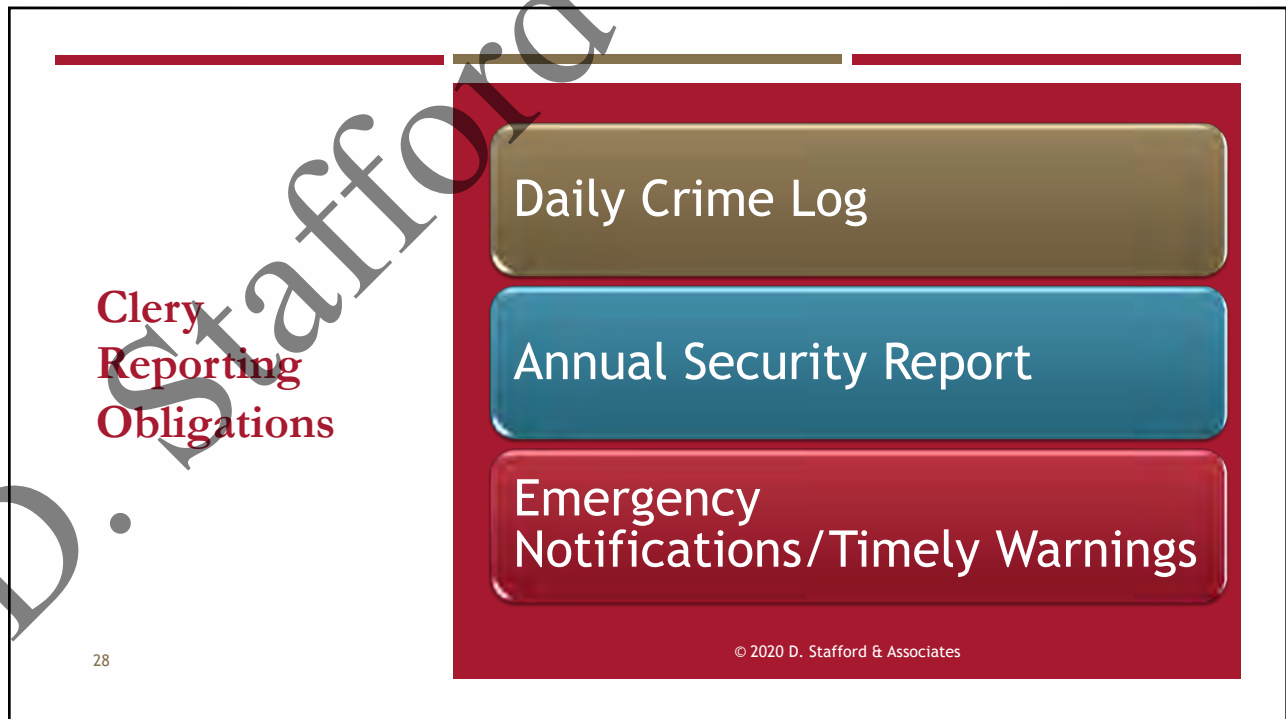
- On Campus
 - Residential Facilities
- Non-campus building or property
- Public Property

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27



28

Timely Warning/Emergency Notification

	TIMELY WARNING (TWN)	EMERGENCY NOTIFICATION (EN)
Legal Standard:	Serious or continuing threat	Immediate threat to health and safety
Circumstance:	Clery-reportable crimes that have been reported (occurred in past)	Clery-reportable crimes as well as other types of emergencies (happening right now or about to happen)
Audience:	Community-wide	Can send to a segment of the community, if appropriate
When Issued:	As soon as pertinent information is available	Upon confirmation of emergency (when possible)
Follow-Up:	Not Required	Required

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Timely Warning Decisions

EVERY Clery-reported crime must be assessed on a case by case basis for timely warning purposes.

The nature and type of the crime

The continuing danger to the campus community

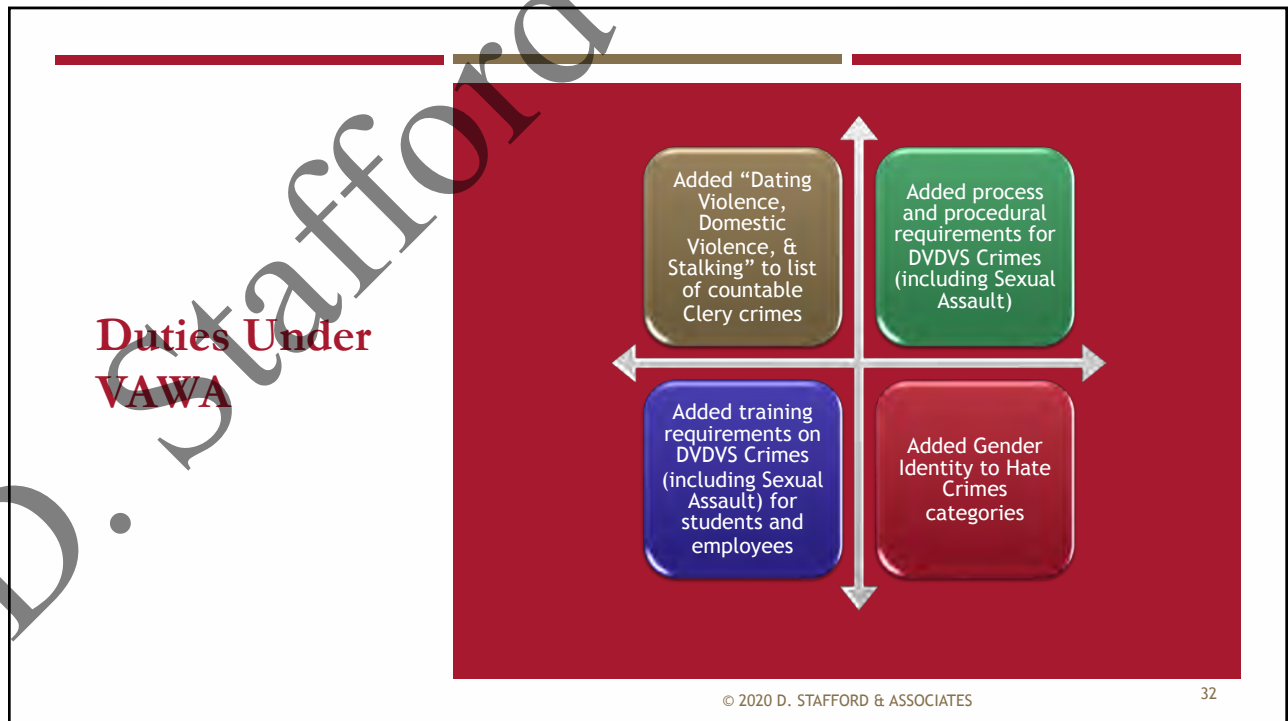
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30



31



32


Clery Crime Categories

- Primary Crimes
- Hate Crimes
- Arrests and Referrals for Drug, Liquor and Weapon Violations
- Dating Violence, Domestic Violence and Stalking Incidents (VAWA Crimes)

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Domestic Violence



A photograph of a restraining order form. The form is white with black text and has a blue pen resting on it. The title "RESTRAINING ORDER" is prominently displayed in large, bold, black letters. Below the title, there are several lines of text for filling out the form, including "IN THE (STATE) _____ COURT OF _____", "Plaintiff/Person: _____", "vs Defendant/Respondent: _____", and "QUALIFIED ORDER". A blue pen is lying diagonally across the bottom right of the form. In the background, a black calculator and some papers are visible.

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A felony or misdemeanor crime of violence committed by:

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

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Dating Violence

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

- i. The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- ii. For the purposes of this definition -
 - i. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - ii. Dating violence does not include acts covered under the definition of domestic violence.

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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.

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Stalking



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- a) *Course of conduct* means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
- b) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
- c) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

37

37

What's Missing?

- There are behaviors that may be policy violations (or crimes) that are not covered in Clery:
 - Sexual exploitation
 - Psychological or emotional harm
 - Sexual harassment (Title IX but not Clery)
 - Gender-based harassment (Title IX but not Clery)

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VAWA Procedural Requirements

39

Process Requirements under VAWA

Procedures victims should follow if a crime or dating violence, domestic violence, sexual assault, or stalking has occurred

AND

procedures your institution will follow in the case of alleged dating violence, domestic violence, sexual assault or stalking.

Make sure it is all in WRITING.

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“Information about the importance of preserving evidence that may assist...”



- Evidence to prove the alleged criminal offense occurred
- Evidence that may be helpful in obtaining a protective order
- Includes digital evidence as well (Social media, cell phone, etc.)
- Not required, but ideal:
 - Where to obtain forensic exams
 - Specific contact information
 - Info that completing forensic exam does not require police report
 - Can have exam now, decide later

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“How and to whom the alleged offense should be reported”

- List any person or organization that can assist the victim
- Include institutional resources as well as community organizations
- Include specific contact information
 - Rape crisis centers
 - Coalitions against domestic violence



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“Options about the involvement of law enforcement and campus authorities”

- “Notification of the victim’s option to
- Notify proper law enforcement authorities, including on-campus and local police;
- Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
- Decline to notify such authorities”



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“Rights of victims for orders of protection, ‘no contact’ orders or similar lawful orders...”

- Do you issue them on campus?
- What options are in your jurisdiction?
- How do you file (at your institution or externally)?
- What is your responsibility to comply with/enforce orders?

44

“How the institution will protect the confidentiality of victims and other necessary parties”



- 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)

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“Existing services available for victims, both within the institution and in the community”

- Counseling
- Health
- Mental Health
- Victim Advocacy
- Legal Assistance
- Visa and Immigration Assistance
- Student Financial Aid
- Other services available for victims

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“Options and how to request changes to accommodation and protective measures”



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- Academic, living, transportation, working
- Must make them if requested and reasonably available
- Regardless of whether the victim chooses to report

47

47

Providing support for the accused

- **ED Clarification in Federal Register**
- Allegations (whether police or school conduct) may be stressful for the accused as well as the accuser.
- *“Therefore, institutions should consider providing the accused with information about existing counseling, health, mental health...”*
- *“Although we encourage institutions to provide written notification of this sort to an accused student or employee, the statute does not refer to or support requiring it.”*



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“Describe each type of disciplinary proceeding”



- Anticipated timelines
- Decision-making process
- 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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“State the standard of evidence, all possible sanctions, and range of protective measures”

- Can use any standard but must then use in all cases
- Must list all sanctions for each offense and be specific
- Not required to list all protective measures
 - Orders of protection (all types)
 - Transportation help or escorts
 - Modification to class or schedule
 - Changes in living/working situations



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“Completed within reasonably prompt timeframes designated by the institution’s policy”



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- Allow for the extension of timeframes
 - for good cause;
 - with written notice to the accuser and the accused of the delay and the reason for the delay;
- Policy must have timeframes for different steps

51

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“fair, and impartial proceeding...”



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Grievance Procedure

- Is transparent and consistent with policy
- Timely notice of meetings
- Timely and equal access to parties and officials any information that will be used during disciplinary meetings and hearings
- Conducted by officials without conflict of interest or bias

52

52

Requirements for Officials



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“Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused”

“Be conducted by officials who, at a minimum, receive 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 victims and promotes accountability”

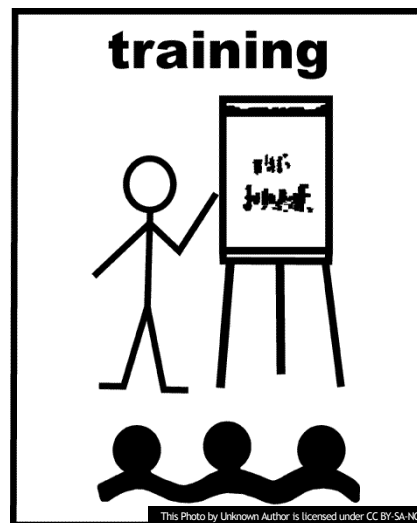
53

53

Requirements for Officials

- Training must be described in ASR
- Updated annually
- 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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“Provide the accuser and the accused with the same opportunities to have others present ... including the opportunity to be accompanied ... by the advisor of their choice”



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Advisor Requirement

- Advisor - individual who provides support, guidance, or advice
- Do not limit the choice of advisor
- May restrict participation if applied 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)

55

55

“Simultaneous notification, in writing...of the results”

- Results = initial, interim, and final decisions by any official
- Results must include Sanctions and Rationale
 - How evidence was weighed
 - How evidence supported results and sanctions
- Notice must include
 - Appeals procedures if available
 - Change to the result
 - When the result becomes final



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VAWA Education Requirements

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Education and Prevention

-  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

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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—”



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

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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

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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”



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- 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

61

61

CSA Training (recommendations, not requirements)

- Role of a CSA
- Provide Reporting materials
 - map of Clery geography
 - list of Clery crimes
 - forms for documenting
- Importance of documentation
- Need for timely reporting
- “Super CSAs?” Do in person

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Drafting the Policy

1

Agenda

- Important considerations
- Policy sections
- Additional considerations

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Important Considerations

- Scope
- Related policies
- MOUs
- Multiple campuses
- Jurisdiction
- Minors

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EEO policies

Employee Handbooks

Conduct policies

Title IX

Clery

Sexual Harassment

Rape

Sexual Assault

Domestic Violence

Stalking

Dating Violence

Gender-based Harassment

and criminal

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Multiple Policies

Conflict

Application

Role of the respondent

Jurisdiction

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LAW	WHO	WHAT	ENFORCEMENT
TITLE VI	STUDENTS	RACE, COLOR, OR NATIONAL ORIGIN	OCR
TITLE VII	EMPLOYEES	RACE, COLOR, RELIGION, SEX	EEOC
TITLE IX	STUDENTS/EMPLOYEES	BASIS OF SEX	OCR
504	STUDENTS	DISABILITIES	OCR
ADA/ADAA	EMPLOYEES (TITLE I) STUDENTS (TITLE II/III)	DISABILITIES	EEOC/DOJ
ADEA	EMPLOYEES	AGE (40+)	EEOC
PDA	EMPLOYEES	PREGNANCY/TITLE VII	EEOC
USERRA	EMPLOYEES	VETERANS	DOL/DOJ

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MULTIPLE VOICES TO CONSIDER

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Competencies

-  Laws and legal issues
-  Cultural competencies
-  Campus climate
-  Campus politics
-  Approval process

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Policy Sections

- Statement of policy
- Related policies
- Applicability/Jurisdiction
- Grievance procedures
- Title IX Coordinator
- Employee responsibilities
- Definitions
- Prohibited conduct
- Reporting options
- Resources and supportive measures
- Interim Action
- Education and prevention
- Record management

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Additional Considerations

- Inappropriate relationships
- Minors on campus
- 1st Amendment
- Accommodation and interpretive service requests
- Interpretation and revision
- State laws

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Statement of Policy

Mission of the institution

Intent of the policy

Behaviors

Presumption of responsibility

Equity

Other

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Related Policies

FERPA

Code of Conduct

Retaliation

Employee handbook

Minors on campus

Inappropriate relationships

Vendor contracts

Collective bargaining agreements

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Applicability/Jurisdiction

Who Location Educational program
or activity

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Grievance Procedures (more on this later)

Title IX Grievance Procedure:
Formal
Informal Referrals:
Students
Employee Academic Medical
Centers High School
Programs

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Title IX Coordinator



Role Contact information Additional coordinators/deputies?

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Employee Responsibilities



Reporting Participation in the process

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Definitions

Actual knowledge	Advisor	Appellate administrator	Business Day	Complainant
Conduct file	Contractor	Decision maker	Designee	Employee
Evidence - Inculpatory Exculpatory		Formal complaint		

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Definitions

Incident database	Investigator	Program or activity	Remedies	Respondent
Sanctions	Standard of evidence	Student	Supportive measures	Third party
Vendor		Volunteer	Witness	

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18

<h1>Prohibited Conduct</h1> <p>© 2020 D. STAFFORD & ASSOCIATES</p>	<ul style="list-style-type: none">■ Discrimination■ Discriminatory harassment■ Harassment based on sex<ul style="list-style-type: none">■ Employment■ Severe, pervasive, and objectively offensive . . . effectively denies access or program or activity<ul style="list-style-type: none">■ Gender-based■ Sexual exploitation■ On-line■ Clery Crimes■ Implications of Title VII and Title IX <p>19</p>
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19

<h1>Prohibited Conduct</h1> <p>© 2020 D. STAFFORD & ASSOCIATES</p>	<ul style="list-style-type: none">■ Sexual Assault<ul style="list-style-type: none">■ Definitions■ Consent■ Dating Violence■ Domestic Violence■ Stalking <p>20</p>
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20

Prohibited Conduct

- Retaliation
- Assist and encourage
- Amnesty for other violations

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Reporting Options

- Preservation of evidence
- Law Enforcement
- Institution
- Confidentiality
- Amnesty

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Resources and Supportive Measures




- On and off campus
- Clery requirements
- Orders of protection
- Supportive measures

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Interim Action



- Emergency Removal
- Administrative Leave

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Primary and on-going

Bystander

Risk reduction

Annual training

Education and Prevention

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Record Management

Reports

Training material

Data custodian

Record retention

Duration

Access

Graduation

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26



27

28

Minors on Campus

Definitions Reporting procedures High school programs

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1ST AMENDMENT

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Accommodation and Interpretation Requests



Disability resources



Interpretive services



Student responsibility

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31

31

Interpretation and Revision



FINAL DECISION
MAKER



REVIEW PROCESS



DATE OF
APPROVAL



REPORTS IN
PROGRESS

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32

32

Potential conflicts

Preemption

State and Local Laws

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This slide features a white background with a red horizontal bar at the top. On the left, there is a brown warning triangle icon above the text 'Potential conflicts'. In the center, there are two black gear icons above the text 'Preemption'. On the right, there is a large red vertical rectangle containing the text 'State and Local Laws' in white. A large, light gray watermark 'D. Stafford & Associates' is overlaid diagonally across the slide.

33

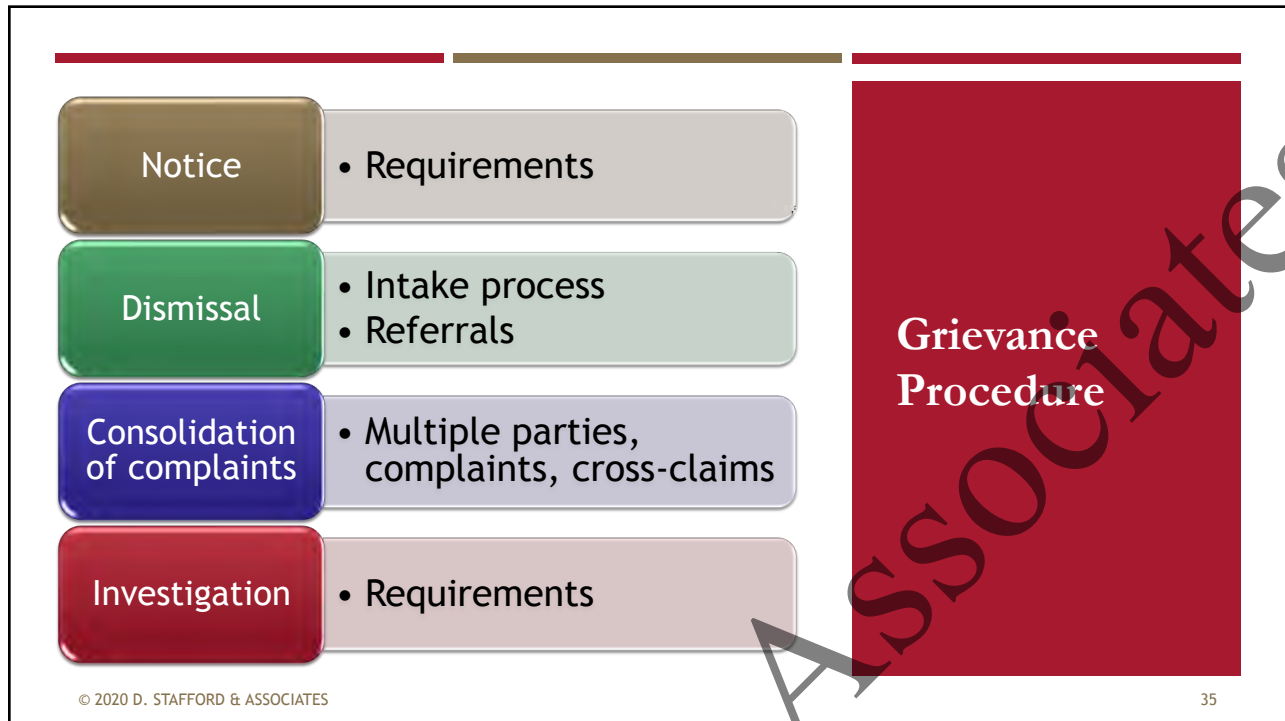
Grievance Procedures

- Introduction
- Equity
- Objective evaluation of evidence
- Training
- Presumption of not responsible
- Prompt timeframes
- Range of sanctions and remedies
- Standard of evidence
- Appeal
- Range of supportive measures
- Privileged information

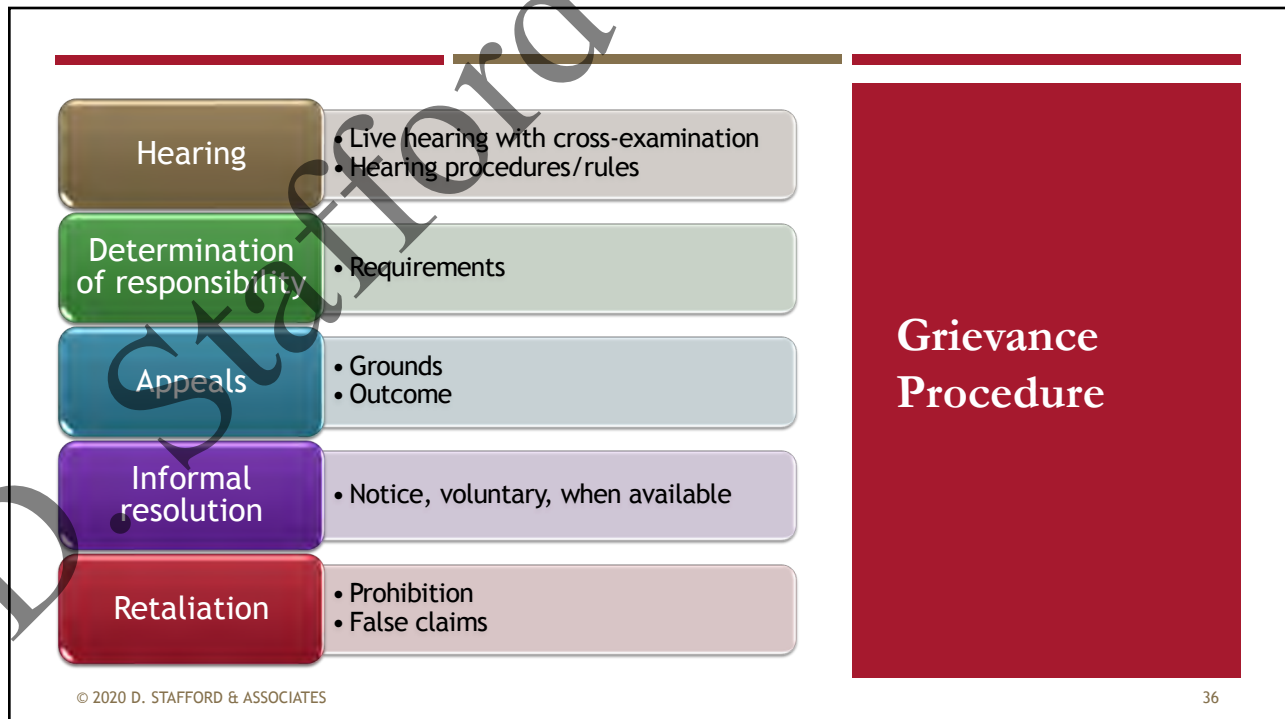
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34



35



36

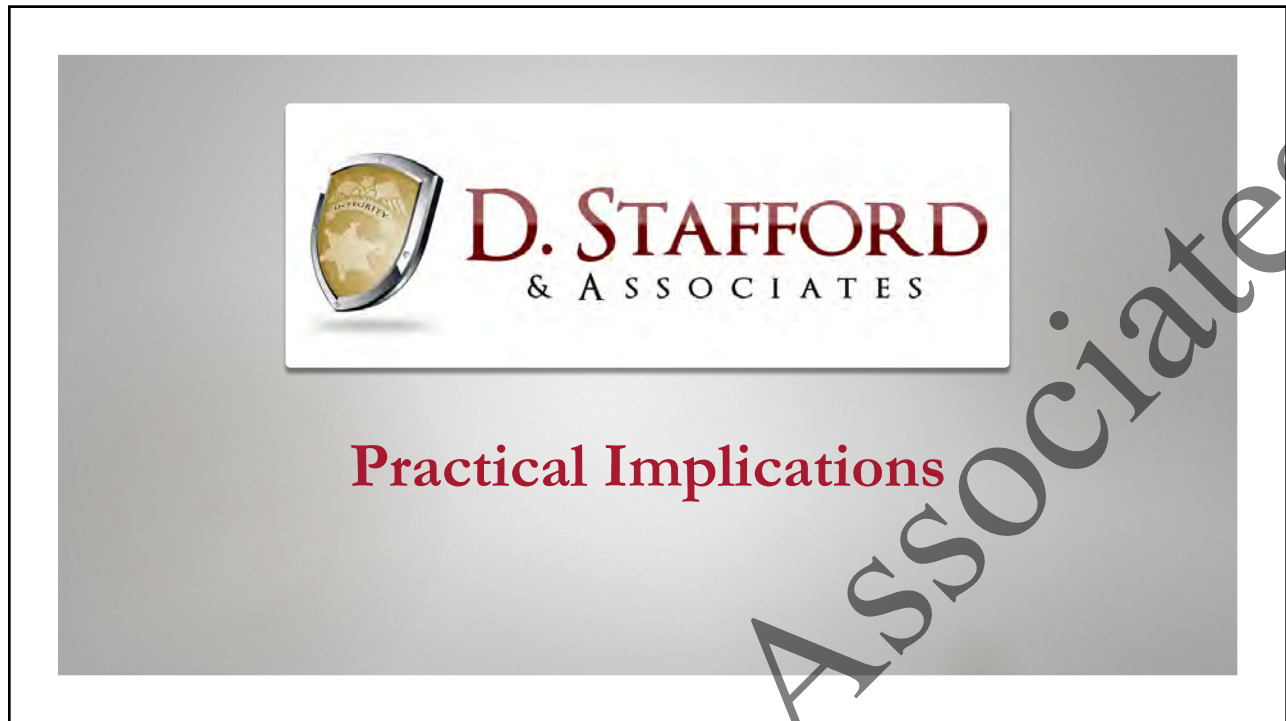


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1



Agenda

- Group Discussion - Issues
- Report Out
- Questions & Answers

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2

Group Discussion



Breakout groups

Each group will be assigned a breakout room

Identify a reporter who will present back to the larger group



45 minutes of group discussion



Reporting out

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3

Topics	Assignment	Questions
<ol style="list-style-type: none">1. Hostile Environment+2. Intersection of Title IX policy with employee/student code processes3. Title IX personnel4. Investigators5. Live hearings6. Advisors	<ol style="list-style-type: none">1. Identify the issues, challenges, and opportunities associated with the new regulations.2. What are the major changes that will need to occur at your institution?3. What is in place at your institution that will assist in implementation?	<p>You can send questions to the chat while you work, and we will discuss them in the reporting out phase.</p>

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4

Report out



HOSTILE ENVIRONMENT+

EMPLOYEE/STUDENT PROCESSES

TITLE IX PERSONNEL

INVESTIGATORS

LIVE HEARINGS

ADVISORS

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5



QUESTIONS

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6

6