



INSTITUTIONAL
COMPLIANCE SOLUTIONS

QUICKGUIDE

FEDERAL REGULATIONS ON
SEXUAL MISCONDUCT & RELATIONSHIP VIOLENCE

Title IX of the Education Amendments of 1972

Title IX prohibits discrimination on the basis of sex including sexual harassment or violence such as rape, sexual assault, sexual battery and sexual coercion.*

School Responsibilities: School has responsibility to respond promptly and effectively to address sexual misconduct. If school knows or reasonably should have known about sexual misconduct that creates a hostile environment, must take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.

Must promptly investigate to determine what occurred even if student does not want to file complaint.

Criminal investigation does not alleviate school of duty to resolve complaints promptly and equitably.

Must have at least one designated Title IX Coordinator (TIC) responsible for coordinating campus compliance with Title IX.

Must have and widely distribute a policy against sex discrimination and make the policy available on an on-going basis; must state that any inquiries concerning Title IX may be referred to the school's TIC or OCR.

Must have and make known procedures for students to file complaints of sex misconduct. Procedures must provide for prompt and equitable resolution of sex misconduct complaints; complainant has right to present his or her case, right to be notified of the time frame of resolution of the complaint; complaint decided using preponderance of the evidence standard; right to be notified, in writing of the outcome of the complaint (note: privacy laws limit disclosure of certain information but must disclose to complainant information about the sanction imposed on the accused when it directly relates to the harassed student including no contact orders); procedures may include voluntary informal methods; however, mediation is not appropriate in cases involving allegations of sexual assault. Accused and accuser entitled to simultaneous notification of the outcome of a hearing and appeal rights.

*Referred to collectively as sexual misconduct

Jeanne Clery Act

Every institution must collect, classify and count crime reports and crime statistics and provide the campus community with information necessary to make informed decisions about their health and safety (timely warnings for Clery Act crimes that represent an ongoing threat to the safety of students or employees – may include allegation of sexual assault; emergency notifications upon confirmation of a significant emergency or dangerous situation involving an immediate threat to health and safety).

Campuses that have campus police or a security department must keep a daily crime log of alleged criminal incidents and submit it to ED.

Campuses who have on-campus housing must disclose missing student notification procedures that pertain to students living in those facilities and disclose fire safety information related to those facilities (fire log, annual fire safety report, fire statistics reported to ED).

ASR: Institutions must annually, no later than Oct. 1, automatically disseminate an Annual Security Report to employees and students and also make it available to prospective students and employees by providing a notice of where the ASR may be accessed. Notice can be by mail or e-mail. ASR must include 3 years-worth of crime statistics and campus security policy disclosures.

Institutions must have emergency response and evacuation procedures in place – whether or not the institution has on-campus student residential facilities. ASR must include a summary of the emergency response policies, notification and testing:

- Statement of policy should contain a comprehensive synopsis of the institution's full procedure in a format that can be easily understood by an incoming student or employee without public safety expertise.
- Wide latitude on how to set emergency response procedures but they must address emergency notification of immediate threats, at least one test of the emergency response procedures annually and procedures for publicizing the procedures in conjunction with the annual test.
- Policy statement must articulate how the institution "will confirm there is a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus."
- Emergency warning can be targeted to a segment of campus at risk, unlike timely warning notifications that must be issued across the campus community.

Must designate and train Campus Security Authorities ("CSAs").

Campus SaVe Act/VAWA

Campus SaVe Act refers to the recent Violence Against Women Act (VAWA) amendments to the Clery Act: Expands legislation in terms of reporting, response and prevention education requirements around rape, acquaintance rape, domestic violence, sexual assault and stalking.

Institutions must compile statistics of incidents of these crimes that occur within Clery geography and are reported to CSAs.

Compliance reflected in Annual Security Report (ASR). ASR must include:

- A statement of policy regarding programs to prevent domestic violence, dating violence, sexual assault, stalking;

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- Procedures followed once an incident of these crimes is reported, including standard of evidence used during an institutional conduct proceeding; campus community.
- Educational programs to promote awareness of these crimes including primary prevention and awareness for all incoming students and new employees and on-going prevention and awareness programs;
- Possible sanctions the institution may impose; procedures victims should follow including information in writing about the importance of preserving evidence, to whom the alleged offense should be reported, reporting options;
- Procedures for institutional disciplinary action which include statements that proceedings shall provide prompt, fair, and impartial investigation and resolution, be conducted by officials who receive annual training on issues related to these crimes and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
- Accused and accuser entitled to same rights in hearing and to be simultaneously informed in writing of the outcome of the hearing, the appeal options, when the results become final.
- Must provide written notification to students about existing counseling, health, mental health, victim advocacy, legal assistance, and other services for victims;
- Must provide written notification to victims about options for changing academic, living, transportation and working situations, if requested and reasonably available, regardless of whether the victim chooses to report the crime to police;
- A student or employee who reports they are a victim of these crimes shall be provided a written explanation of their rights and options;
- All Campus Security Authorities should be educated on Campus SaVe Act requirements.

- School can share education records to other “school officials”: with a “legitimate educational interest”; official has legitimate interest if need to review education record to fulfill professional duties for school;
- May include discipline information in education record if safety risk, including officials at other institutions who have a legitimate educational interest in student’s behavior;
- May disclose final results of disciplinary proceeding if student is found to have committed a violation of school rules with respect to a crime of violence or a nonforceable sex offense;
- May provide results to victim even if not found responsible (name, violation and sanction); and
- May disclose information to officials of other institutions where a student seeks to enroll (must have this in FERPA notice and provide student opportunity to challenge)

FERPA & Considerations

FERPA provides that a school generally may not disclose personally identifiable information from a student’s educational records to a third party without written consent.

Exceptions:

- May share “knowledge of information as necessary to protect health and safety of student or others” – disclosure limited to parents if student is a dependent; violation of law or campus policy regarding use or possession of alcohol/drugs and under 21;
- Directory information which may include name, address, phone, dates of attendance, degree awarded, major, sports participation;

Quick Guide Response to Allegations

Intake

Ensure allegations fall under Title IX; provide notification to victim of rights/resources

Request of Confidentiality

Consideration of Campus Safety; no guarantee of confidentiality

Consideration Of Interim Measures

No contact order; change in housing; change in course assignment; interim suspension of accused, including measures involving athletic participation if accused is a student athlete and administrative leave of staff/faculty if necessary

Consideration of need for a *Timely Warning Notification*

Inquiry and Investigation:

Notification of process to accuser and accused

Parity during the process for accuser and accused, including appeal rights

Prompt inquiry and investigation – good faith

Respondent Consideration:

2017 Guidance: Must provide “meaningful notice” of allegations; respondents must be provided an opportunity to respond to investigatory report in writing before it becomes final.

Informal Resolutions:

2017 Guidance: Informal resolutions may be considered if both parties agree; note that 2001 guidance still states not appropriate in sexual assault cases

FERPA Considerations

Notification of outcome of process; requests for student records by opposing party; request for investigation report from third party.

*This is intended for general informational purposes only and is not meant to replace legal counsel. We urge you to consult an attorney for any issue regarding applicability or interpretation of any provision contained herein. This is not intended to be a complete survey of the law.



Courtney H. Bullard

Courtney has over ten years of experience representing institutions, including 8 years as a University system attorney. As in-house counsel, she served as a trusted advisor to the Chancellor, Vice Chancellors, Athletic Director, Director of Office and Equity and Diversity, Title IX Coordinator, Provost and other top level administrators on all legal matters affecting the institution. Her breadth of knowledge and familiarity with the unique aspects of a college campus provide a distinctive approach to partnering with institutions to assist with their legal needs.