



Association of  
Title IX Administrators

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# Responsible Employee Training for Student Facing Roles

University of Louisiana System Title IX Summit

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# TRAINING OBJECTIVES



Identify the laws and institutional policies that create reporting responsibilities.



Define reportable behaviors covered under the laws and institutional policies.



Describe actions a mandated reporter should take when responding to a disclosure.



# **LAW AND POLICY OVERVIEW**

# FEDERAL AND STATE LAWS

Title IX of the Education Amendments of 1972

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (1990)

The Violence Against Women Act (VAWA) Section 304

Title VII of the Civil Rights Act of 1964

Louisiana Act 472 – Power-based Violence (2021)

# MANDATORY REPORTING LAWS

## Title IX

- Sexual assault
- Dating violence
- Domestic violence
- Sex-based stalking
- Sex discrimination
- Sexual harassment

## Clery Act

- Sexual assault
- Dating/Domestic violence
- Stalking (all)
- Criminal offenses
- Hate crimes
- Alcohol, drugs, and weapons

## VAWA §304

- Sexual Assault
- Dating Violence
- Domestic Violence
- Sex-based stalking
- Non-sex-based stalking

# MANDATORY REPORTING LAWS

## Title VII

- Race
- Color
- Religion
- Sex
- National Origin
- Disparate Treatment
- Disparate Impact

## PBV

- Domestic/Family violence
- Dating violence
- Sexual assault
- Sexual harassment
- Sexual exploitation
- Stalking



# WHAT MUST BE REPORTED?

- Title IX Prohibited Behaviors
- Clery Act Crimes
- Title VII Prohibited Behaviors
- CANRA Behaviors

# TITLE IX PROHIBITED BEHAVIORS

## Sex-Based Discrimination

- Pregnancy & Parenting Status
- Sexual Orientation
- Gender Identity
- Gender Expression

## Sexual Harassment

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

## Retaliation

- Protected Activity
- Adverse Action
- Causal Connection



# SEXUAL HARASSMENT

**Sexual Harassment** is conduct on the basis of sex meeting one of the following conditions:

- 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;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Recipient's education program or activity; or
- “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)  
“Stalking” as defined in 34 U.S.C. 12291(a)(30)

# SEXUAL ASSAULT\*

- **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 Complainant.
- **Fondling** – The touching of the private body parts of the Complainant (buttocks, groin, breasts) **for the purpose of sexual gratification**, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.
- **Incest** – Sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by [insert state] law.

# SEXUAL ASSAULT\* (CONT.)

- **Statutory Rape** – Sexual intercourse with a person who is under the statutory age of consent of [insert age in your state].

**Note:** Sexual Assault also includes having another person touch you sexually, forcibly, and/or without their consent.

\* This definition set is not taken from the FBI Uniform Crime Reporting (UCR) system verbatim. ATIXA has substituted Complainant for “victim,” has removed references to his/her throughout, and has defined “private body parts.” These are liberties ATIXA thinks are important to take with respect to the federal definitions, but practitioners should consult legal counsel before adopting them.

# DATING VIOLENCE

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant'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. For the purposes of this definition —
  - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - Dating violence does not include acts covered under the definition of domestic violence.

# DOMESTIC VIOLENCE

- A felony or misdemeanor crime of violence committed —
  - By a current or former spouse or intimate partner of the Complainant;
  - By a person with whom the Complainant shares a child in common;
  - By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
  - By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws [insert your state here];
  - By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of [insert your state here].

# DOMESTIC VIOLENCE (CONT.)

- To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

# STALKING

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to —
  - Fear for the person’s safety or the safety of others; or
  - Suffer substantial emotional distress.
- For the purposes of this definition:
  - **Course of conduct** means two or more acts, including, but not limited to, acts in 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.

# STALKING (CONT.)

- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the Complainant.
- **Substantial emotional distress** means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.
- The TIX regulations insist this definition not be interpreted to violate First Amendment.



# CLERY ACT CRIMES

## Reportable Criminal Offenses

- Homicide
- Sexual Assault
- Robbery
- Aggravated Assault
- Burglary
- Motor Vehicle Theft
- Arson

## Hate Crimes

- Disability
- Ethnicity
- Gender
- Gender Identity
- National Origin
- Race
- Religion
- Sexual Orientation

## Alcohol, Drugs, & Weapons

- Weapons Law Violations
- Drug Abuse Violations
- Liquor Law Violations
- Disciplinary Referrals

# TITLE VII PROHIBITED BEHAVIORS

## **Discrimination against employees or employment applicants on the basis of:**

- Sex
- Race
- Color
- National Origin
- Religion

## **Includes behaviors that result in either:**

- Disparate Treatment
- Disparate Impact

# INTERSECTION OF POWER-BASED VIOLENCE

- Power-based violence means any form of interpersonal violence intended to control or intimidate another person through the assertion of power over the person
  - **Domestic violence** and family violence
  - **Dating violence**
  - **Sexual assault** (i.e., **rape, statutory rape, incest**, sexual battery, female genital mutilations, intentional exposure to HIV)
  - **Sexual Harassment**
  - Sexual Exploitation
  - Nonconsensual observation of another person's sexuality (i.e., voyeurism, nonconsensual disclosure of a private image, and peeping tom activities)

# INTERSECTION OF POWER-BASED VIOLENCE (CONT.)

- Power-based violence means any form of interpersonal violence intended to control or intimidate another person through the assertion of power over the person.
  - **Stalking** and cyberstalking
  - Catch-all – unwelcome sexual or sex-or-gender-based conduct that is objectively offensive, had a discriminatory intent, and lacks a bona fide academic purpose
- Conduct covered under power-based violence is broader than sexual harassment covered under Title IX.

# OTHER LAWS THAT DETAIL REPORTING REQUIREMENTS

- Abuse or Suspected Abuse of Minors
  - All employees are required to report abuse or suspected abuse of minors consistent with state law. This generally includes immediately reporting to law enforcement and to the state's child welfare agency.
- Additional state reporting requirements (e.g., elder abuse and felony reporting)



# REPORTING OBLIGATIONS

- Notice, Reporting, & Confidentiality
- Privilege v. Confidential v. Private
- Mandatory Reporting Requirements

# TITLE IX REPORTING OBLIGATIONS

- **Official with Authority (OWA)**
  - Any official who has the authority to institute corrective measures on behalf of the institution
  - Notice to an Official with Authority constitutes actual notice and the institution must investigate
- **Responsible Employees/Mandatory Reporters**
  - Designated by the institution
  - Must report incidents to the Title IX Coordinator and/or designee

# CLERY ACT REPORTING OBLIGATIONS

- **Campus Security Authority (CSA)**
  - An official who has significant responsibility for student and campus activities
  - CSA designation can include
    - Campus Police
    - Security Office Personnel
    - Title IX Officials
    - Student/Academic Affairs personnel
  - Department of Education defers to institution's designation of CSA
  - May or may not have other Title IX designations (OWA, Mandatory Reporter/Responsible Employee)



# POINT PERSON FOR REPORTS AND COMPLAINTS

- The Title IX Coordinator will be the individual designated to ensure the Title IX protocol is implemented and therefore should be the individual to whom all complaints or notice related to sex/gender harassment, misconduct, and discrimination should be directed
  - Contact information for Title IX Coordinator must be included on website and in all handbooks/catalogs given to applicants for admission and employment, students, employees, and unions
  - Recipient may designate multiple portals for receipt of information (e.g., Deputy Coordinators)
    - All employees are expected to report notice and complaints to the Title IX Coordinator

# POINT PERSON FOR REPORTS AND COMPLAINTS (CONT.)

- The Title IX Coordinator must ensure the institution is promptly engaging in:
  - Initiation of the initial assessment
  - Implementation of response to stop the alleged harassment/discrimination
  - Provision of supportive measures to the parties
  - Provision of information about how to make a formal complaint
  - Action to reasonably prevent the recurrence
- The Title IX Coordinator must **coordinate** all of these steps, often across administrative processes and institutional silos
- Importance of a centralized database

# NOTICE TO THE INSTITUTION

- **“Actual Knowledge”** is defined as a report being received by:
  - The TIX Coordinator; or
  - Any official who has authority to institute corrective measures on behalf of the Recipient (Often called “Officials With Authority” or “OWA”)
- This is only the standard for when OCR would deem a higher education institution to have received actual notice AND MUST investigate; it is the bare minimum requirement
  - What if Recipient receives notice in some other way?
  - Other types of liability may still exist for failure to act with constructive notice (e.g., tort)

# MANDATORY REPORTERS – TITLE IX

- ATIXA recommends that all employees\* report because this:
  - Enables institution to best support those who have experienced harassment or discrimination
  - Better enables tracking patterns
  - Ensures information gets to those trained to respond
  - Provides for simpler, uniform, and universal training and Reporting mechanisms
    - Institutions must ensure that all employees are trained regarding their obligation to report harassment to appropriate administrators as mandatory reporters

\*Can still have a small set of designated, trained employees who are not “mandatory reporters”

# PRIVILEGE VS. CONFIDENTIALITY VS. PRIVACY

## Privilege

- Granted by laws and professional ethics
- Attorneys, licensed professional counselors, medical professionals, pastoral counselors
  - To have privilege, these individuals must be:
    - Acting in the capacity for which they are employed,
    - Acting within the scope of their license, and
    - Receive the disclosure during the scope of that employment
  - Key exception is child abuse reporting

# PRIVILEGE VS. CONFIDENTIALITY VS. PRIVACY

## Confidentiality

- Designated by the institution
- Do not have to report harassment or discrimination of which they become aware
- Allows for provision of services and support without concern of reporting
- Examples: Victim advocates/sexual assault-related services, gender-based resource centers, Advisors during resolution processes, ombudspersons
- Must still follow state reporting laws

**ATIXA recommends confidential employees report aggregate, non-identifiable data for Clery and Title IX statistical purposes**

# PRIVILEGE VS. CONFIDENTIALITY VS. PRIVACY

## Privacy

- Anyone who does not meet the institution's definition of a "Mandatory Reporter" can maintain privacy.
  - If using the OWA standard, then notice to those deemed "Private" does not constitute "Actual Knowledge" for OCR enforcement.
- May report incidents without identifying the parties
- Common Examples: Administrative Assistants, Non-supervisory employees
- Must still follow state reporting laws

# HOW TO DESCRIBE YOUR DUTY TO REPORT

- Notify the person of your obligation to report incidents of discrimination, harassment, or violence
- Explain that the information will be kept private, not confidential (unless you are a confidential resource)
- Frame your duty to report as an opportunity to provide support and resources
- Reinforce that you want the person to share the information with you



# EXAMPLE SCRIPT

“Thank you for sharing this information with me. I want to you know that I and others at the College are here to help and support you.

It is also important for you to know that I have an obligation to report any incidents that involve things like [sex-or-gender-based discrimination, harassment, or violence] when I become aware of them. So, I’ll need to share this information with the College’s Title IX Coordinator.

Our process is private, which means that only people who need to know this information will know.

The Title IX Coordinator can talk with you about your options, provide resources, and answer your questions.”

# MANDATORY REPORTER RESPONSIBILITIES

- Upon receiving a disclosure
  - Make sure the person is safe
  - Thank the person for sharing the information with you
  - Inform the person of your obligation to report
  - Promptly make a report
- Reports should include:
  - Names of those involved
  - Student ID (if available)
  - Date, time, location of the incident (if known)
  - Everything else known about what occurred

# REPORT VS. COMPLAINT

- Distinguish between a “report” and a “formal complaint”
- Upon receiving a “report” (either from the would-be Complainant or a third party), the Title IX Coordinator must:
  - Reach out and provide support.
  - Provide supportive and interim measures to the person alleged to have experienced the harassment. May also offer to the would-be Respondent.
  - Explain process to make a formal complaint.
    - Must be in writing and signed by the Complainant but can be made in any format (on paper or electronic) and made at any time
    - Also explain option to report to law enforcement (VAWA requirement)

# REPORT VS. COMPLAINT (CONT.)

- Upon receiving a “formal complaint:”
  - Conduct initial assessment to determine jurisdiction
  - Triggers obligation to follow “grievance process” including investigation and hearing

# FORMAL COMPLAINT

## Formal Complaint

- Document or electronic submission
- Filed by Complainant or signed by TIX Coordinator
  - TIXC does not become a party to the complaint
- Alleging sexual harassment
- Requesting an investigation
- Complainant must be participating or attempting to participate in the Recipient's education program or activity at the time of filing
- Initiates mandatory grievance process (investigation and hearing)

# REQUESTS FOR CONFIDENTIALITY

## **If a Complainant requests confidentiality and/or does not want the institution to investigate:**

- The Complainant should be notified of the following:
  - The process will still be available to them, regardless of how long they wait
  - The institution can provide resources and supportive measures to limit the effect of the behavior on the Complainant
  - If information is brought to the attention of the institution that may involve a threat to the community, the institution may be forced to proceed with an investigation, but that the Complainant will be notified of this process

# REQUESTS FOR CONFIDENTIALITY (CONT.)

- The institution's responsive action/remedial abilities may be limited based on the level of confidentiality or privacy requested by the Complainant
- Privacy cannot be guaranteed if doing so would jeopardize the safety of the Complainant or others
- Only those with a need to know will be informed
- If the Respondent is an employee, the institution may need to proceed due to Title VII

# REQUESTS FOR CONFIDENTIALITY (CONT.)

- The institution should take all reasonable steps to respond consistent with the Complainant's request
  - Provided that doing so does not prevent the Recipient from responding effectively and preventing the harassment of other students or the Complainant
- Title IX Coordinators will use the PPTVWM analysis to determine whether to honor a Complainant's request for confidentiality
- Proceeding without a Complainant's participation has due process implications for the Respondent





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# Questions?

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