



The Clery Act, VAWA and Title IX

The Intersection and Keys to
Compliance

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The Purpose of the Clery Act

*To provide the campus community
with accurate, complete, and timely
information about crime and the
safety of the campus environment
so that they can make informed
decisions to keep themselves safe*

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Will you be audited?



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Before moving on....



What are the consequences for non-compliance?

- A suspension or limiting of the institution's Title IV funding
- The institution's name will be provided to Congress by Secretary of ED
- ED can issue civil fines up to \$35,000 per violation (increased from \$27,500 on October 2, 2012).
- Final Review Determination Reports are public records
- The institution will receive negative media attention and...
- Failure to comply with the Clery Act can be used in Court to demonstrate an indifference to security issues during a premises security liability litigation

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Recent Audit-University of Texas Arlington (4/2/13)



- Victim stated that an "unknown male grabbed her thigh and female intimate area through her clothing"
- ED Disagrees with UTA 's contention that Forcible Fondling requires evidence of a state of tumescence (becoming swollen) or utterance to indicate that the perpetrator's touching was for sexual gratification.
- ED fined UTA \$27,500 for this violation.

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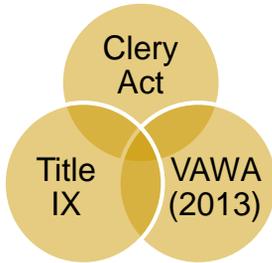
Recent Audit-University of Texas Arlington (4/2/13)



- UTA Police classified an incident as "Assault of a Family Member"
- Two females fighting, the aggressor holds the victim's head (by her hair) over a burner on a stove, she attempted to strangle her, and she pulled her earrings out of her ears
- ED says: "all of which resulted in fear, pain, injury and bleeding"
- ED fined UTA \$27,500 for this violation.

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The Intersections



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Key Requirements of the Clery Act



- Identify the Campus Security Authorities
- Report statistics for 15 Crime Categories
 - From Campus Public Safety, Local Police and CSAs
- Identify YOUR Clery Geographic Areas
- On Going Disclosures
 - Timely Warning Notices and Immediate Notifications
- Publish Daily Crime Log
- Publish Annual Security Report (95+ policies)
- Conduct Annual Test (Exercises and Drills)
- Publish Notice of Availability for Prospective and Current Students and Employees

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Key Requirements of the Clery Act



- If you have residential facilities
 - Publish Annual Fire Safety Report
 - Implement Missing Person Procedures and Gather Missing Person Contact Information

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15 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 Referrals for Disciplinary Action for:
 - Liquor Law
 - Drug Law
 - Weapons Law Violations.
- Domestic Violence
- Dating Violence
- Stalking
- Hate Crimes for *, plus
 - Larceny-Theft
 - Simply Assault
 - Intimidation
 - Destruction, Damage, or Vandalism of property

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UCR SRS: Rape-NEW FBI UCR DEFINITION (5/3/13)



- Definition: 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 perpetrator. (Rape now includes NIBRS Sodomy and Sexual Assault with Object Definitions)
 - This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol).
 - Physical resistance is not required on the part of the victim to demonstrate lack of consent.

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3 Part Test



1. Was the crime reported to a Campus Security Authority?
2. Is the crime a Clery reportable crime?
3. Did the crime occur in a Clery reportable geographic area?

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Clery

Campus Security Authorities

- Campus Law Enforcement and Public Safety
- Resident Assistants, Resident Directors, and Community Directors
- Dean of Students Office (Leaders in Student Affairs and Housing)
- Athletic Directors and Coaches (including Assistant ADs and Assistant Coaches)
- Faculty or Staff Advisors to Student Organizations on Campus
- Access Monitors
- Contract Security Officers and Event Security Officers
- Staff who provide safety escorts on campus (professional and student staff)
- Staff in the Student Center or Student Union Building
- Staff in the Student Activities Office (handling extracurricular activities)
- Coordinator of Greek Affairs (or related positions)
- Administrators at Branch/Satellite/Separate Campuses
- Study Abroad Coordinators
- Title IX Coordinator(s)
- Director of the Student Health Center

Title IX

Responsible Employees

- Teachers
- Law enforcement unit employees
- Administrators
- Counselors*
- General counsel employees
- Health personnel*
- Resident advisors

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The Key Requirements of VAWA

- 3 New Crime Categories
 - Domestic Violence
 - Dating Violence (even if not defined as crime by State Law)
 - Stalking
- Conducting and Reporting in ASR--Primary Prevention & On-Going Awareness Programs
 - Education Campaign
- Reporting 35+ New Policy Statements
 - Developing Policies and Procedures that stand behind them...

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VAWA Policy Statement Categories

- Defining "Big 4" and Procedures for Victims to Follow
- Procedures that the Institution will Follow
- Reporting Options
- Victims Rights and Available Accommodations
- On and Off Campus Resources
- Procedures for Disciplinary Process and Action
- Due Process Considerations
- Protective Measures

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VAWA Policy Statement Categories



- Information about notification and distribution of results of disciplinary process
 - MUST list each and every possible sanction in ASR
- Standard of evidence
- Annual Training Requirements
 - Investigators (criminal and civil rights)
 - Adjudicators and Others Involved in Disciplinary Process

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Key Requirements of Title IX



In addition to those requirements now enumerated in VAWA:

- Identify Responsible Employees
 - Train them in their reporting responsibilities
- Designate a Title IX Coordinator and widely distribute name and contact information
- Distribute an annual notice of non-discrimination

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Key Requirements of Title IX



In addition to those requirements now enumerated in VAWA:

- Implement a procedure for intake and resolution of complaints of sex-based discrimination
 - In addition to Sexual Harassment and Sexual Assault, include other verbal, nonverbal and physical acts of aggression perpetrated against a person based on sex

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Key Requirements of Title IX



In addition to those requirements now enumerated in VAWA:

- Investigate or otherwise determine what occurred and take appropriate action.
 - Take prompt and effective steps to end the sexual violence,
 - Prevent its recurrence, and
 - Address its effects.

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Keys to Managing Compliance with the Clery Act:



- Do you have a Clery Compliance Committee?
- Have you officially designated a Clery Compliance Officer and given them the authority and responsibility to manage compliance with the Clery Act on behalf of your institution?
- Has the Clery Compliance Officer received in-depth training to properly manage Clery Act compliance?
- Do you have appropriate operating procedures to back up your policy statements in the ASR, especially in key areas like TWN, Immediate Notification, etc.

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Does your institution have a Clery Compliance Committee?



- Public Safety/Police Department
- General Counsel's Office
- Compliance and Internal Audit
- Student Conduct
- Dean of Student Affairs
- Student Activities
- Residence Life and Housing
- Environmental Health and Safety
- Risk Management (Fire Safety Engineer)
- Human Resources
- Admissions
- Study Abroad Office
- Title IX Coordinator/Sexual Assault Response Team Leader
- Director of Student Health
- Provost/Academic Affairs Office

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Keys to Managing Compliance with the Title IX and VAWA:



- Do you have a Title IX Coordinator?
- Has the Title IX Coordinator received in-depth training?
- Have you identified investigators who do not have a perceived conflict of interest (such as Conduct Officers and General Counsel)?
- Have the investigators been thoroughly trained in conducting civil rights investigations?
- Do you have a Sexual Misconduct Policy that is in Compliance with all of the requirements of the OCR Dear Colleague Letters and VAWA?

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How we are helping VA campuses:



- NACCOP-Is your Clery Compliance Officer a member?
- Training-national training courses and ongoing partnership with VA DCJS to provide most courses in Virginia (except*):
 - Sex Crime Investigation Course (new annual recert)
 - Domestic/Dating Violence and Stalking Investigation Course (new annual recert)
 - Advanced Clery Act Training Class
 - *Title IX Coordinator/Investigator Course

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How we are helping VA campuses:



- DSA has on-line training available for Campus Security Authorities and Responsible Employees.
- Assist with conducting independent audits of Clery and/or Title IX Compliance.
- Provide on-site training classes for key staff members at your institution in Clery Act (including VAWA) and/or Title IX Compliance.

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