

Gender Discrimination in Education: Sexual Assault & Harassment

WHAT IS TITLE IX?

- ★ Title IX is an education amendment that prohibits discrimination on the basis of sex in education programs and activities. It states:

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance”

WHO DOES TITLE IX APPLY TO?

- ★ Title IX applies to all educational institutions that receive federal funds.
- ★ All students who attend these educational institutions are protected under Title IX

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The Clery Act

FAST FACTS

- The Clery Act requires colleges to report certain types of crimes that occur on their campuses.
 - ◆ These include stalking, sexual assault/harassment, dating and domestic violence, and also certain hate crimes (including gender identity and national origin).¹
- Information on these crimes are available in an Annual Security Report (ASR) published by the school.
- The Act requires that schools provide “timely warning” on any known risks to public safety on campus.
- Schools also need to explain their policies and procedures in instances of sexual assault, stalking, and dating or domestic violence.
- Finally, schools must also have programming on these issues for new students and faculty detailed in the report.

SOURCES

1. Know Your IX, <http://knowyourix.org/the-clery-act-in-detail/>

ADDITIONAL RESOURCES

1. Clery Center, <http://clerycenter.org/>
2. Know Your IX, <http://knowyourix.org/clery-act/>
3. The Handbook for Campus Safety and Reporting Requirement*, <https://www2.ed.gov/admins/lead/safety/handbook.pdf>

*Full updates to the handbook are pending

What Does the Clery Act Do?

Campus Crime Data

- ★ A direct link to the ASR must be provided to all current students and staff by Oct. 1 each year.
- ★ The data must include: criminal offenses, hate crimes, and arrests and referrals for disciplinary actions.

Resources

- ★ Schools must provide specific information, options, and resources to survivors of sexual violence such as housing or class accommodations or counseling and support services.

Policies and Procedures

- ★ Explanations must be provided for survivors for the following:
 - Who to report to
 - What types of consequences could result
- ★ During campus disciplinary proceedings, students also should be informed of their rights
 - To be kept updated during campus disciplinary proceedings.
 - To have an advisor present
 - To appeal a final decision
 - To have a final decision presented in writing at the same time as the accused

Under the Clery Act, schools have to collect and report data on crimes on campus and alert students to the crimes occurring in a “timely fashion” that may be on-going risks to their safety on campus. These warnings should be accessible to the whole campus and should not identify the victim.

Schools should provide clear and specific information on where and how survivors can access resources. These may overlap with resource requirements under Title IX.

They also need to explain their policies and procedures in instances of sexual assault, stalking, and dating or domestic violence.

All survivors are also guaranteed certain rights under the Act:

Campus Sexual Assault Victim’s Bill of Rights

- ❖ Survivors shall be notified of their options to notify law enforcement.
- ❖ Accuser and accused must have the same opportunity to have others present.
- ❖ Both parties shall be informed of the outcome of any disciplinary proceeding.
- ❖ Survivors shall be notified of counseling services.
- ❖ Survivors shall be notified of options for changing academic and living situations.

SOURCES

1. Clery Act Summary <http://clerycenter.org/summary-jeanne-clery-act>
2. Code of Federal Regulations, 34 C.F.R. 668.46(c)
3. VAWA Checklist http://clerycenter.org/sites/default/files/VAWA%20Checklist_0715.pdf

Filing a Clery Complaint

- ★ A complaint of a Clery Act violation is **administrative**.
- ★ There is no cost to file a complaint.
- ★ You can file a complaint anonymously, but it may be helpful to have a point person who is willing to be contacted on your behalf.
- ★ No attorney is necessary: a student can document the incident and any violations they believe occurred and filed with the **Department of Education** by emailing clery@ed.gov.
- ★ The complaint can be written in plain English and does not need to be formal.

Consequences for Violating the Clery Act

- ★ A college can be fined for **each** violation of the Clery Act.
- ★ Each fine has a \$35,000 maximum.
- ★ Schools can also lose their eligibility for federal student aid programming.

SOURCES

1. Know Your IX: How to File a Clery Act Complaint <http://knowyourix.org/clery-act/how-to-file-a-clery-act-complaint/>
2. Know Your IX: Comparing Your Legal Options <http://knowyourix.org/i-want-to/change-my-school/comparing-your-legal-options/>

Campus SaVE Act

FAST FACTS

- The Campus SaVE Act amends the Clery Act by expanding the scope of the legislation. It has been in force since March 2014.
- Updates include:
 - ◆ Adding domestic or dating violence and stalking to the list of crimes that are covered under the Clery Act.
 - ◆ Including “national origin” and “gender identity” to the list of protected categories.
- Additionally, the SaVE Act adds specific information on how disciplinary hearings in cases of domestic or dating violence, sexual assault, and stalking cases, should occur.
- There must be a “statement of the standard of evidence” used.
- Officials conducting the proceeding must receive training on “protect[ing] the safety of victims” in the process of investigating and conducting hearings.
- Types of “sanctions or protective measures” used in these cases must be identified.

SOURCES

1. Know Your IX, Understanding the Campus Save Act <http://knowyourix.org/understanding-the-campus-save-act/>
2. VAWA Summary <http://www.acenet.edu/news-room/Documents/VAWA-Summary.pdf>

ADDITIONAL RESOURCES

1. The Campus Save Act FAQ <http://thecampussaveact.com/faq/>

SaVE Act Updates

- ★ Updates include the type of information school’s policies **must provide for survivor**. They include:
 - (1) Whether or not a survivor wants to notify or use assistance from law enforcement or school authorities, and
 - (2) What types of rights the survivor can expect from the school.
- ★ The Act also adds specific information on how disciplinary hearings in cases of domestic or dating violence, sexual assault, and stalking cases, should occur.
 - There must be a “statement of the standard of evidence” used.
 - Officials conducting the proceeding must receive training on “protect[ing] the safety of victims” in the process of investigating and conducting hearings.
 - Types of “sanctions or protective measures” used in these cases must be identified.
- ★ Both the accuser and the accused should have the opportunity to be accompanied by an “advisor” of their choice in all proceedings related to the incident
- ★ Both parties must receive, in writing and simultaneously, any changes to the results of the proceeding, the final results, and appeal procedures.

The SaVE Act also clarifies expectations on the types of awareness and prevention training programs offered to new students and new employees. Training programs must include the following:

- ❖ A statement from the institution prohibiting these offenses.
- ❖ The definition of the offenses (dependent on jurisdiction).
- ❖ The definition of consent in these offenses (dependent on jurisdiction).
- ❖ “Safe and positive” options for bystander intervention.
- ❖ How to recognize and avoid potential and actual abusive behavior.
- ❖ Ongoing campaigns on these issues for students and faculty.

SOURCES

1. Understanding the Campus SaVE Act <http://knowyourix.org/understanding-the-campus-save-act/>
2. VAWA Summary <http://www.acenet.edu/news-room/Documents/VAWA-Summary.pdf>

Sexual Harassment

FAST FACTS

- Title IX prohibits discrimination on the basis of gender or sex in educational programs receiving federal funding, which practically speaking means most (if not all) secondary schools must abide by the rules and regulations established by Title IX.
- Sexual harassment and violence can be a type of discrimination prohibited by Title IX.
- An institution violates its obligations under Title IX regarding sexual harassment if:
 - ◆ The alleged conduct is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's educational program, i.e. creates a hostile environment; and
 - ◆ The school, upon notice, fails to take prompt and effective steps reasonably calculated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

SOURCES

1. "Questions and Answers on Title IX and Sexual Violence," United States Department of Education, Office for Civil Rights, available at <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.
2. Revised Sexual Harassment Guide, Title IX, Department of Education, January 2001, available at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>
3. "Know Your Rights and Your College's Responsibilities," Title IX and Sexual Assault, American Civil Liberties Union, available at <https://www.aclu.org/files/pdfs/womensrights/titleixandsexualassaultknowyourrightsandyourcollege'sresponsibilities.pdf>

1

WHEN SHOULD A SCHOOL TAKE ACTION?

2

WHAT SHOULD A SCHOOL DO IN RESPONSE TO A COMPLAINT?

3

MUST THE SCHOOL INVESTIGATE ALL COMPLAINTS?

4

CAN THE SCHOOL TAKE INTERIM MEASURES WHILE IT INVESTIGATES?

- ❖ An institution is obligated to investigate an alleged incident of sexual harassment or violence if:
 1. If a student filed a grievance with school's Title IX coordinator;
 2. If an individual reported an incident to a teacher or another responsible employee;
 3. If a responsible employee witnessed the sexual violence; or
 4. If there is notice through indirect means, such through social networking sites.

- ❖ Title IX investigation must be impartial, and prompt and include the opportunity for both parties to present evidence. The investigation may include a hearing to determine whether the conduct occurred, but Title IX does not require a hearing.

- ❖ Under Title IX, a school is obligated to respond to all complaints of sexual violence, regardless of where the conduct occurred, to determine whether the alleged misconduct occurred in the context of an educational program or had continuing effects on campus.

- ❖ Title IX requires a school to ensure equal access to its education programs and activities. Thus, if the institution feels that circumstances prevent the complainant from benefitting from educational programs and activities it can take interim measures before the final outcome of an investigation.

5 WHAT HAPPENS IF THE INVESTIGATION PROVES THAT SEXUAL HARASSMENT OR SEXUAL VIOLENCE OCCURRED?

- ❖ If an investigation into an incident of alleged sexual harassment or violence proves that the incident occurred, then the school is obligated to end the sexual violence, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

6 CAN I FILE BOTH A POLICE REPORT AND A REPORT WITH THE TITLE IX COORDINATOR?

- ❖ If someone files notice of an incident with a school's Title IX coordinator, it does not preclude them from also filing a police report or pursuing a criminal investigation.

7 WHAT IS THE DIFFERENCE BETWEEN A TITLE IX INVESTIGATION AND A CRIMINAL INVESTIGATION?

- ❖ A criminal investigation can be initiated at the discretion of the law enforcement authorities whereas a Title IX investigation is not discretionary. A school has a duty under Title IX to resolve complaints promptly and equitably, but its decision does not hold the weight of law. A criminal investigation, on the other hand, can lead to legal consequences for the assailant including a criminal indictment, trial and possible jail time. However, because the standards for pursuing and completing criminal investigations are different from those for Title IX investigations, the termination of a criminal investigation does not affect the school's Title IX obligations (although they can influence the school's final decision).

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WHAT ARE THE TITLE IX REMEDIES FOR SEXUAL HARASSMENT AND VIOLENCE?

- ❖ If an investigation shows that the sexual harassment or violence took place then the school must take action to remedy the hostile environment, which could include disciplinary action against the perpetrator, providing counseling for the perpetrator, remedies for the complainant and others, as well as changes to the school's overall services or policies.

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WHAT ARE YOUR RIGHTS UNDER TITLE IX?

- ❖ However, as noted above, a Title IX investigation is not the same as a criminal investigation, so a complainant's rights in a Title IX investigation can be limited. For example, a school is not required to have a hearing, maintain full confidentiality or offer an appeals process. While you cannot rely on all these "due process" rights in a Title IX investigation, all these practices are encouraged, in order to meet all the obligations of fair resolution.

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HOW DOES A TITLE IX INVESTIGATION CONCLUDE?

- ❖ Title IX requires both parties to be notified, in writing, about the outcome of both the complaint and any appeal. Furthermore, Federal civil rights law makes it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by Title IX.

Cases and Resources

J.K. V. ARIZONA BOARD OF REGENTS

The plaintiff in this case, an Arizona State University (“ASU”) student, was raped by an ASU football player in her dorm room, The football player was expelled for sexual harassment but readmitted shortly thereafter with no restrictions. The case was litigated and then settled favorably with the University agreeing to review and reform its policies regarding investigations into incidents of sexual harassment and violence and awarding the plaintiff damages and fees.

SIMPSON V. UNIVERSITY OF COLORADO

FITZGERALD V. BARNSTABLE SCHOOL COMMITTEE