



Clery Act 101 & the Intersections with Title IX

10th Annual NACCOP Conference

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The Purpose of the Clery Act



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

Clery Compliance is an Institutional Responsibility



- Clery Act compliance should not be relegated only to a single person or office.
- *...the Clery Act is a campus security and crime prevention law with a consumer information and protection focus. Effective implementation requires the participation and cooperation of officials across the enterprise. Stated simply, the Clery Act is not merely a campus policing law. At most institutions, other offices ranging from residence life to student affairs will play an essential role in the overall campus safety program and are indispensable to compliance with the Clery Act. (Penn State University Campus Crime Final Program Review Determination, 2016, p. 10)*

Obtaining Additional Guidance



- Campus Safety and Security Help Desk
 - HandbookQuestions@ed.gov
 - 1-800-435-5985

- Clery Act Compliance Team
 - clery@ed.gov

Major Clery Act Requirements

2023 NACCOP 10TH ANNUAL CONFERENCE

-
- Campus Security Authorities
 - Clery Geography
 - Crime Statistics
 - Timely Warning Notices
 - Emergency Notifications
 - Daily Crime Log*
 - Produce & Distribute Annual Security Report
 - Test Emergency Response and Evacuation Procedures
 - VAWA Policies, Procedures & Programs
 - Fire Log**
 - Produce & Distribute Annual Fire Safety Report**
 - Missing Student Procedures**

Three Part Test

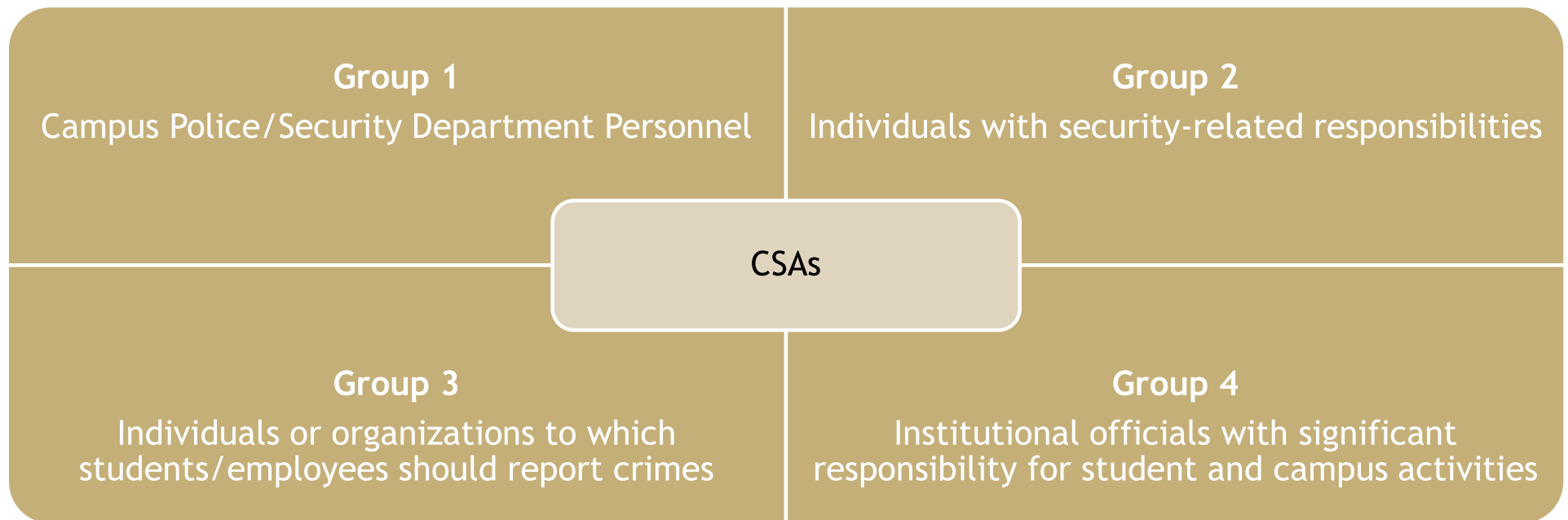


Was the crime reported to a Campus Security Authority?

Is the crime a Clery Act crime?

Did the crime occur on or within the institution's reportable Clery Geography?

Four Groups of Campus Security Authorities



A CSA's Primary Responsibility is...



*to report allegations of
Clergy Act crimes they
receive to the reporting
structure established by the
institution.*

When A CSA Reports a Crime...



Campus Security Authorities



- Institutions must:
 - identify;
 - notify;
 - train; and
 - collect crime statistics from all Campus Security Authorities on an annual basis.
- Institutions are advised to reevaluate the CSA status of all employees (including student employees) on at least an annual basis and document the rationale of the determinations.

Clery Geography



- The Clery Act requires institutions to disclose statistics for select crimes that occur:
 - On Campus,
 - on **Public Property** within or immediately adjacent to and accessible from the campus, and
 - in or on **Noncampus Buildings or Property** that the institution (or an officially recognized student organization) owns or controls
- **On-Campus Student Housing Facilities** are a subset of the On Campus category
- Institutions may have **Separate Campus** locations as well

Clery Geography



- Institutions must therefore assess any locations they (or their recognized student organizations) own or control, as well as the public property within and immediately adjacent to their campus, to determine how, if at all, these locations correspond to Clery Act-specific geographic categories
 - Note: Property owned or controlled by an institution-associated entity is considered to be owned or controlled by the institution for Clery Act purposes
- Define your “core campus”
- ED recommends development of a Clery Map for each campus, to clarify the institution’s Clery Geography

Separate Campus



- Your institution owns or controls the site;
- It is not reasonably geographically contiguous with the main campus;
- It has an organized program of study; and
- There is at least one person on site acting in an administrative capacity.
- If a location meets the criteria for a separate campus at any point during a calendar year, it should be treated as a separate campus for that full year.

Separate Campus Requirements



- Publish a separate Annual Security Report, **OR**
- Publish a single Annual Security Report for all campuses, that includes:
 - Publishing a separate crime statistics chart in your Annual Security Report.
 - Addressing policy statements that are different from those of the main campus

Crime Reporting Requirements



- Institutions must:
 - Record
 - Collect
 - Classify
 - Count; and
 - Report (in both the ASR and in ED Data Collection site)

all Clery Act crimes occurring on or within an institution's Clery Geography which are made to Campus Security Authorities or local law enforcement agencies.

- Statistics reported in the Annual Security Report include the three most recent calendar years of crime statistics (for each campus)

Applicable Definitions and Standards



- Note that, although the law states that institutions must use the UCR Program definitions [for some offenses], *Clery Act* crime reporting does not have to meet all of the other UCR Program standards.
- Use definitions contained in the regulations: *Appendix A to Subpart D of Part 668—Crime Definitions in Accordance With the Federal Bureau of Investigation's Uniform Crime Reporting Program*

General Categories



- **Primary Crimes**
 - Murder/Non-negligent Manslaughter
 - Manslaughter by Negligence
 - Sexual Assault (Rape, Fondling, Incest & Statutory Rape)
 - Robbery
 - Aggravated Assault
 - Burglary
 - Motor Vehicle Theft
 - Arson
 - **VAWA Offenses**
 - Dating Violence
 - Domestic Violence
 - Stalking
 - **Arrests and Referrals for Disciplinary Action**
 - Liquor Law Violations
 - Drug Law Violations
 - Weapon Law Violations
 - **Hate Crimes**
 - All primary crimes (except Manslaughter by Negligence)
 - Larceny-Theft
 - Simple Assault
 - Intimidation
 - Destruction/Vandalism/Damage of Property
- + **Unfounded Crimes**

Hierarchy Rule



Applies To:

- Criminal Offenses (Primary Crimes) except Arson:
 - Murder and Non-negligent Manslaughter
 - Manslaughter by Negligence
 - Sexual Assault
 - Robbery
 - Aggravated Assault
 - Burglary
 - Motor Vehicle Theft

Note: If a Murder and a Sexual Assault occurs in the same offense, both crimes should be disclosed.

Does Not Apply To:

- Hate Crimes
- Arson
- Arrests and Referrals for Disciplinary Action
 - Liquor Law Violations
 - Drug Law Violations
 - Weapon Law Violations
- VAWA Offenses
 - Domestic Violence
 - Dating Violence
 - Stalking

Responsibility for Classifying Offenses

"The Department [of Education] must emphasize that the proper classification of an incident is not in any regard dependent on the label that a victim or witness uses to describe it. Rather, a competent institutional official with the requisite knowledge and experience must evaluate the available information and determine the crime classification(s) that apply to the particular set of case facts" (University of Saint Thomas FPRD, 2017, p. 10).

Requesting Statistics from Local Law Enforcement Agencies



- Make a good faith effort (early in the year) to obtain the statistics by requesting them in writing (and document any follow-up requests).
- The institution is permitted to rely on information provided by them by the local/state police.
- The institution is not responsible if the information is not provided or is inaccurate.
- Request for all of Clergy Geography (including Separate Campuses, if applicable)

What is a Timely Warning?



- “All of us want to be alerted promptly to potentially dangerous criminal situations near our homes or workplaces so that we have both the time and the information necessary to take appropriate precautions.
- Apply this to your institution, and you have the concept of the ‘timely warning’” (2016 Handbook, p. 6-12).

Timely Warning Requirements



- Develop, disclose (in the ASR), and implement certain policies and procedures that require institutions to assess the:
 - ✓ Clery crimes
 - ✓ that are reported to a Campus Security Authority or Local Law Enforcement Agency
 - ✓ that occurred on or within the institution's Clery Geography.

- Put out a timely warning notice if a reported crime is considered by the institution to represent a serious or continuing threat to students and employees.

Timely Warning Dissemination



- A Timely Warning is expected to be distributed quickly, i.e., as soon as pertinent information is available.
- It must be distributed community-wide, i.e., reasonably likely to reach the entire campus community.
- The goal is to aid in the prevention of similar crimes.
- Must be provided to students and employees in a manner that is timely, that withholds the names of victims as confidential.

When is an Emergency Notification Required?



- Develop, disclose (in the ASR) and implement certain policies and procedures to:
 - **immediately** notify the campus community
 - upon **confirmation**
 - of a **significant emergency or dangerous situation** occurring on the campus that involves an
 - **immediate threat** to the health or safety of students or employees.
- Minimum requirement of one initial message and one follow-up

Examples of Significant Emergencies or Dangerous Situations



- The types of incidents that may cause an immediate threat to the community (and therefore require an emergency notification) could include, but are not limited to:
 - ❑ an active shooter on campus
 - ❑ hostage/barricade situation
 - ❑ a riot
 - ❑ suspicious package with confirmation of a device
 - ❑ a tornado/earthquake
 - ❑ a fire/explosion
 - ❑ suspicious death
 - ❑ structural damage to a University owned or controlled facility
 - ❑ Outbreak of meningitis, norovirus, or other serious illness
 - ❑ biological threat (anthrax, etc.)
 - ❑ significant flooding
 - ❑ a gas leak,
 - ❑ hazardous materials spill, etc.
 - ❑ other risk factors, including ones that have been present in the environment for an extended period of time such as asbestos or lead paint

Timely Warnings vs. Emergency Notifications



	Timely Warning (TW)	Emergency Notification (EN)
Legal Standard:	Potential ongoing or serious threat	Immediate threat to health and safety
Circumstances:	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

Daily Crime Log



- Any institution, regardless of whether it's public or private, that has a campus police or security department, **must** create, maintain and make available a Daily Crime Log.
- It doesn't matter if your security staff is paid by your institution or by a contractor, or if you have one security officer or a police department. Any of these arrangements put your institution in the category of "having a security department."

Purpose of Crime Log



- The Daily Crime Log must record all criminal incidents, and alleged criminal incidents reported to the campus police or security department, or to other CSAs, that occur within the institution's:
 - On-Campus locations,
 - Public Property locations,
 - Noncampus locations, and
 - within the agency's official expanded patrol jurisdiction.
- Must include the nature, date/time occurred, date reported, general location, and disposition of reported crimes

Log Maintenance & Availability



- Add entries within 2 business days of the initial report (unless prohibited by law or would jeopardize victim confidentiality)
- Update dispositions of most recent 60 days within 2 business days of the change
- The most recent 60 days must be available immediately on-site, free of charge, during normal business days/hours.
- Older logs must be available within 2 business days of a request for public inspection

ANNUAL SECURITY REPORT (ASR) POLICY STATEMENT OVERVIEW

- Reporting Crimes and Emergencies
- Preparing the annual disclosure of crime statistics
- Voluntary, confidential reporting options
- Security of and Access to Campus Facilities
- Campus Law Enforcement Policies
- Security Awareness & Crime Prevention Programs
- Crime of Violence Victim Notification
- Programs to prevent and respond to VAWA crimes
- Monitoring of Criminal Activity by Students at Noncampus Locations of Student Organizations
- Drug and Alcohol Policies
- Sex Offender Registration Policy
- Timely Warning Notice Policies
- Emergency Response and Evacuation Procedures
- Missing Person Policies*

General Guidelines



- **Accuracy.** Your statements or descriptions of policies must accurately reflect your institution's current procedures and practices. If your institution does not have a policy or program responding to one or more of the categories listed in the regulations, you must disclose this fact.
- **Required components.** Pay close attention to the requirements of each policy statement.
- **Missing policies.** Failure to have a required policy or to disclose all of the required policy statements means that your school is not in compliance with the law.

Say What You Do and Do What You Say (PSU)

- Institutions can and will be held accountable for adhering to any policies or procedures described in the ASR even if the specific policies or procedures are not required by the Clery Act.
- *When an institution voluntarily assumes a standard that goes beyond a specific regulatory requirement and announces that standard to the public, the institution will be held responsible for meeting its public commitment, lest the consumer protection and transparency goals of the Department be undermined and the public misled. (PSU FPRD, p. 132)*

Presenting Crime Statistics



- Disclose in the Annual Security Report all:
 - Criminal Offenses (Primary Crimes),
 - VAWA Offenses, and
 - Arrests and Referrals for Disciplinary Action for Liquor, Drug, and Weapon Law Violationsin a table or tables.

- You may present Hate Crime data in either a **tabular format** or in a **narrative or descriptive format**.

General Crime Statistics Presentation: Three Required Elements



- Calendar year in which crime was reported for each of the three most recent years
- Type of Crime
 - Primary Crimes
 - VAWA Offenses
 - Arrests and Referrals for Disciplinary Action
- Geographic area
 - On Campus Property
 - On Campus Student Housing Facilities
 - Noncampus Property
 - Public Property

Reporting Hate Crime Statistics



- Report Hate Crime statistics
 - for the three most recent calendar years.
 - by geographic location and
 - by category of prejudice
 - Race
 - Ethnicity
 - Gender
 - Gender Identity
 - Religion
 - Sexual Orientation
 - National Origin
 - Disability
- Do not attempt to combine your Hate Crime data with your general crime statistics.

Unfounded Crimes



- For each of the three years, you are required to report the total number of unfounded crimes across all *Clery Act* geographic categories and *Clery Act* crimes. You are not required to break down the number of unfounded crimes by geographic category or type of crime.

Figure 13. Examples of Descriptive Unfounded Crime Reporting

Example 1: Unfounded Crimes

2015: Five unfounded crimes.
2014: Ten unfounded crimes.
2013: Three unfounded crimes.

Example 2: Unfounded Crimes

There were three unfounded crimes in 2013, 10 unfounded crimes in 2014 and five unfounded crimes in 2015.

- Disclose the total number of unfounded crimes for each campus

Annual Test of Emergency Response & Evacuation Procedures



- Institutions must have an emergency plan, test it, evaluate it and publicize it.
- A “Test” is defined as *regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.*
- The annual test must address emergency response and evacuation on a campus-wide scale

Annual Test of Emergency Response & Evacuation Procedures



- Document, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced.
- Publicize emergency response and evacuation procedures in conjunction with at least one test per calendar year.
- Distribute it to the campus community; you can't simply put it on your website.

VAWA Requirements



- VAWA requires institutions to disclose certain procedures and programs in the ASR
- VAWA also requires institutions to implement those procedures and programs
 - VAWA procedures and programs must contain more proscriptive requirements than many other types of ASR policy statements

VAWA Disclosure Requirements



- VAWA requires institutions to disclose statements of policy in the ASR regarding:
 - ***educational programs*** the institution provides to students and employees to prevent VAWA offenses;
 - ***procedures victims should follow*** if a VAWA offense has occurred;
 - the ***procedures the institution will follow*** when a VAWA offense has been reported; and
 - ***disciplinary procedures*** that will be followed when a student or employee is accused of a VAWA offense.

VAWA Implementation Requirements



- VAWA also requires institutions to implement:
 - *educational programs and campaigns* that meet certain requirements;
 - Primary prevention and awareness programs
 - Ongoing prevention and awareness campaigns
 - *institutional procedures and practices* in response to a report of a VAWA offense, including those related to:
 - confidentiality,
 - supportive services,
 - accommodations, and
 - protective measures;

VAWA Implementation Requirements



- *a written notice of rights and options*, which must be provided to students or employees reporting a VAWA offense, and
- *disciplinary procedures* that must be followed when a student or employee is accused of a VAWA offense.

Missing Students



- Institutions with On-Campus Student Housing Facilities must:
 - issue a policy statement that addresses missing student notification for students residing in on-campus student housing; and
 - include procedures that your institution will follow if any of those students is determined to be missing for 24 hours.
- The essence of the requirement is that if a student who lives in on-campus student housing is determined to have been missing for 24 hours, you have only 24 hours after the determination in which to initiate specific notification procedures.

Missing Students



- You must provide all residential students with an annual option to identify a contact person or persons whom the institution will notify within 24 of the determination that the student is missing
- Students must be advised that:
 - their contact information will be registered confidentially,
 - that this information will be accessible only to authorized campus officials, and that
 - it may not be disclosed, except to law enforcement personnel in furtherance of a missing person investigation;

Missing Students



- Within 24 hours of the determination that the student is missing, the institution must notify:
 - Any missing person contact(s) supplied by the student
 - Custodial parent/guardian for missing students under 18 years of age who are not emancipated
 - The institution must notify the local law enforcement agency within 24 hours of the determination that the student is missing, unless the local law enforcement agency was the entity that made the determination that the student is missing.
- Your institution's policy and procedures must be addressed in the Annual Security Report

Fire Safety Disclosures



- An institution with on-campus student housing facilities is required to:
 - Maintain a **log** of all reported fires that occur in those on-campus student housing facilities,
 - Publish an **annual fire safety report** that contains fire safety policies and fire statistics for those facilities, and
 - Submit the **fire statistics** from the fire safety report annually to ED.



Annual Fire Safety Report

- Must include disclosures concerning:
 - Fire safety systems in each OCSHF
 - Number of fire drills in each OCSHF
 - Policies/rules on smoking, portable electrical appliances, and open flames
 - Fire evacuation procedures
 - Fire safety education/training programs (including procedures to be followed in the case of a fire)
 - Individual/office to whom fires should be reported
 - Future fire safety improvements
 - Fire statistics

Title IX



Title IX of the Education Amendment of 1972

“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 educational program or activity receiving federal financial assistance.”

Current Title IX Regs Give Flexibility for Employee Reporting

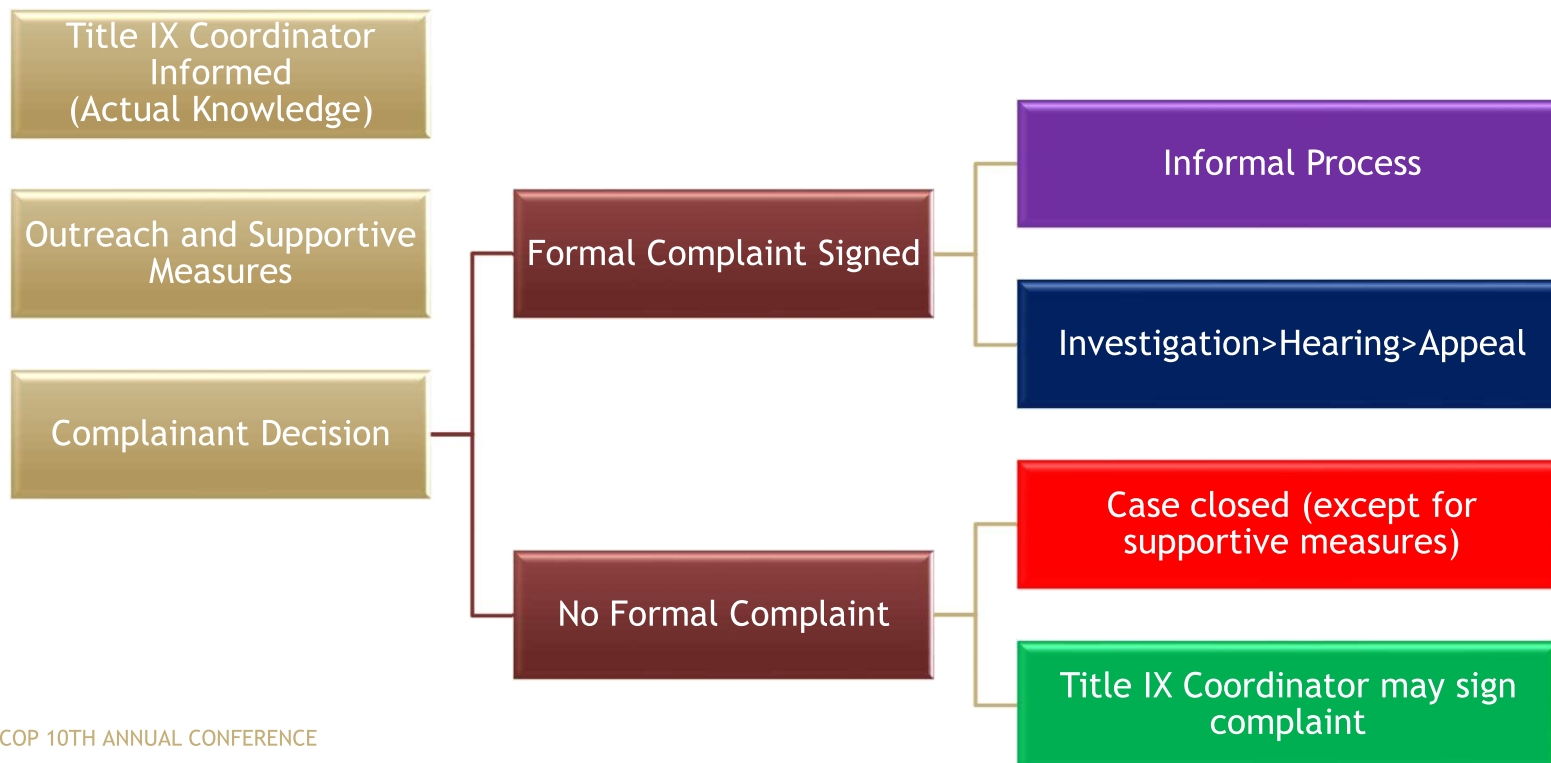


Title IX Coordinator

Officials with Authority to Institute Corrective Measures on Behalf of the Recipient

***Other Employees as Designated by the Institution (pulls in requirements of State law)**

Title IX Case Flowchart

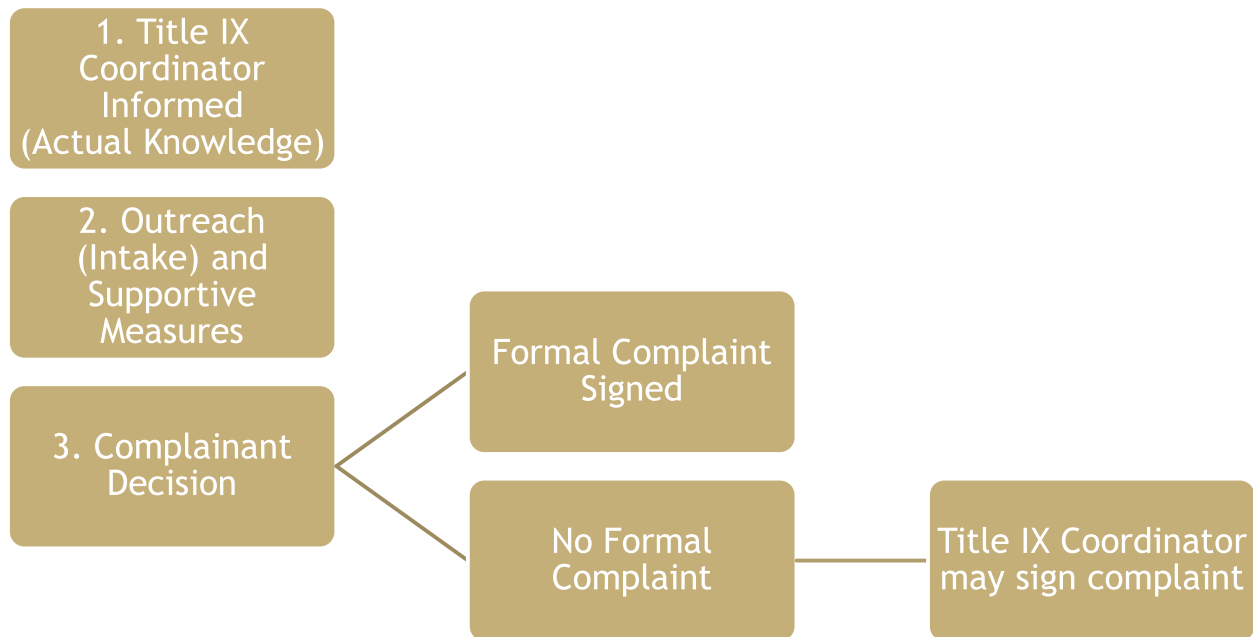


“REPORT” VERSUS “SIGNED FORMAL COMPLAINT”

WHAT IS THE
DIFFERENCE
BETWEEN A REPORT
AND A SIGNED
FORMAL COMPLAINT?



Title IX Case Flowchart



Supportive Measures



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- Change in class
- Change in housing
- Increased security
- Dual no contact directives
- Academic accommodations
- Withdrawal without penalty
- Modified activities or campus access (as long as not punitive to respondent)

Written Explanation of Student or Employee's Rights-Clery Act Requirement



(b)(11)(vii) “When a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section. . .”

Written Explanation of Rights and Options



1. **The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order**
 - Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide later
2. **How and to whom the alleged offense should be reported**
 - List any person or organization that can assist the victim
 - Recommended: Also include community organizations

Written Explanation of Rights and Options



3. **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
4. **The rights of victims and the institution's responsibilities for**
 - Orders of protection;
 - "No contact" orders;
 - Restraining orders; or
 - Similar lawful orders issued by a criminal, civil, tribal, or institutional

Written Explanation of Rights and Options



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5. To students AND employees about existing:

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

6. Options for, available assistance in, and how to request changes to (if requested and reasonably available)

- Academic, Living, Transportation, Working

Written Explanation of Rights and Options



7. Confidentiality

- 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)

8. Disciplinary Procedures

- An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required by paragraph (k)

Determining Jurisdiction to Proceed



1. Offense Meets Definition

2. Jurisdiction of Persons

3. Jurisdiction of Program of Activity

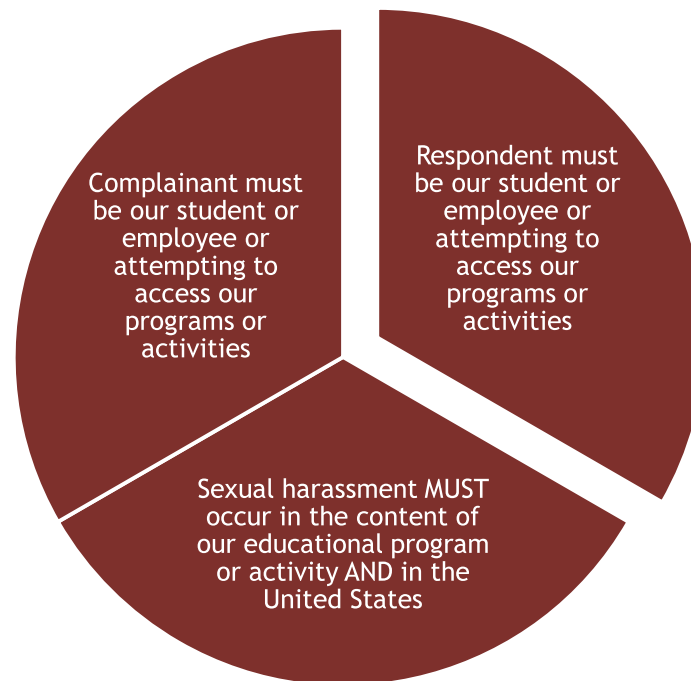
1. Definition of Offense-Sexual Harassment under Title IX



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).*

2-3. Definition of Persons and Programs/Activities



Employees must have same process



- Expectation that recipients handle any formal complaint that occurs through education program or activity in the United States through the Title IX compliant grievance process

Dismissal of Formal Complaints



Must Dismiss:

Behavior does not constitute sexual harassment
Did not occur in educational program or activity, not in the United States



May Dismiss

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



Notification and appeal

Dismissed-You Cannot Policy Shop



- If dismissed because the complainant doesn't want to proceed, it is STILL a Title IX complaint and cannot be remanded to a different policy or procedure.
- If dismissed because it did not rise to the level of sexual harassment as defined by Title IX, the complaint may be referred to another policy/procedure.
 - Student Conduct
 - HR-Title VII
 - Other school specific?



Determine Emergency Removal



Individualized safety and risk analysis



Immediate threat to physical harm



Notice and opportunity to challenge

Proceeding with “Multiples”-Consolidation of Complaints

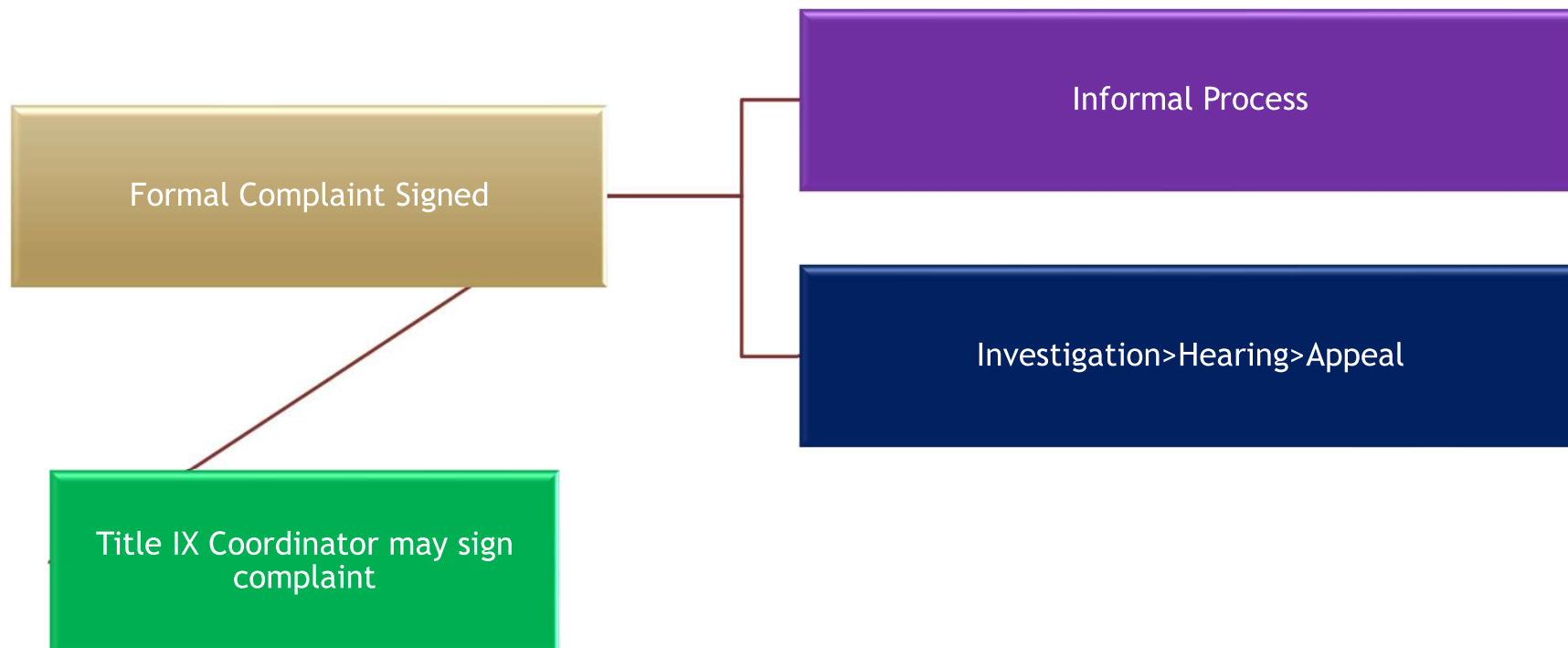


Multiple Respondents

More than one complaint against one or more respondents

One party against another party

Title IX Case Flowchart



INFORMAL RESOLUTION

- School must determine that informal resolution is the appropriate means to resolve
- Both parties must agree
- Cannot resolve employee on student complaints in this way (must go formal)
- Either party can stop at any time prior to written agreement
- Parties who have proceeded to formal process can change their minds and shift back to informal any time prior to conclusion of hearing



Notice Requirements



Grievance
process

Sufficient details
and sufficient
time to prepare

Identities of the
parties, alleged
conduct

Date and
location of
incident

Presumed not
responsible

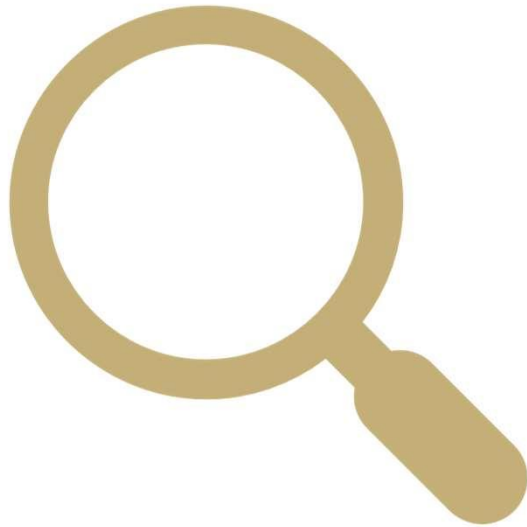
Advisor of choice

False statements

Updates as
needed

Other:
Accommodations
Retaliation
Police too!

Investigations and Evidence Gathering



- Burden of proof
- Witnesses and facts
- “Gag orders”
- Advisor
- Notice
- Inspect evidence
- Investigative report

Evidentiary Standard



Clear and Convincing

- Substantially more likely than not to have occurred
- High probability that a particular fact is true
- Higher than preponderance, but not as high as “beyond a reasonable doubt”

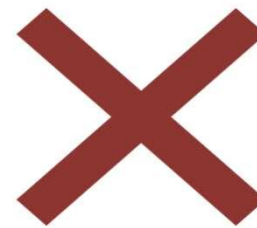
Preponderance of the Evidence

- More likely than not
- 50% and a feather

Hearings



Live hearing



Cross-examination

Live Hearing



- Required element for all post-secondary grievance procedures
- “Single investigator” prohibited
- In person or virtual
- Must be recorded or transcribed, with recording or transcript available to parties for inspection and review

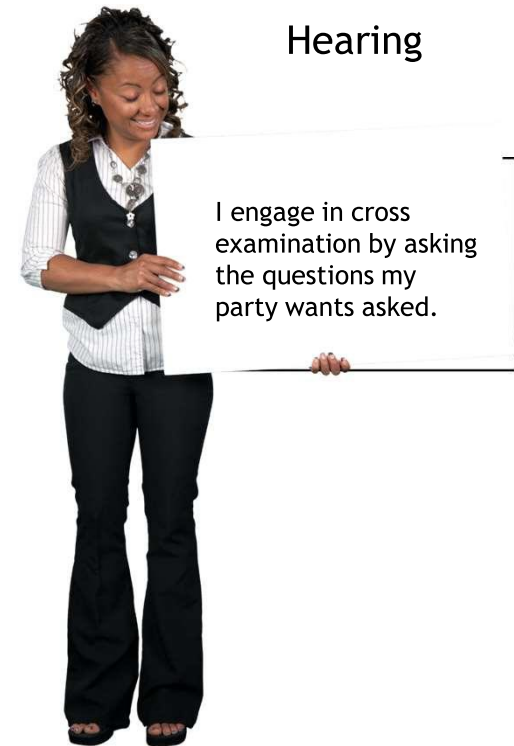
Advisor-Two Separate Duties



Pre-Hearing



Hearing



Cross-Examination



Advisor

Relevancy

Participation

Decision-Maker's Written Determination



- Decision-maker(s) must issue written determination that
 - Identifies allegations
 - Describes procedural steps
 - Includes findings of fact
 - Includes conclusions applying facts to code of conduct
 - Includes rationale for conclusion regarding each allegation
 - Describes appeal procedures



Appeals



MUST have

- Procedure...
- New evidence...
- Conflict or bias... that impacted outcome

Additional grounds permitted

Appeal decision-maker must have had no other role

Must be done in a reasonably prompt time frame



Administrative Capability

§ 668.16. Standards of Administrative Capability

- To begin and to continue to participate in any Title IV, HEA program, an institution shall demonstrate to the Secretary that the institution is capable of adequately administering ...the standards established in this section.

The Secretary considers an institution to have that administrative capability if the institution—

- “Administers the Title IV, HEA programs in accordance with all statutory provisions of or applicable to Title IV of the HEA, all applicable regulatory provisions prescribed under that statutory authority....” -- 34 C.F.R. § 668.16(a)

668.16 Standards of administrative capability.



The Secretary considers an institution to have that administrative capability if the institution—

- “uses an adequate number of qualified persons to administer the Title IV, HEA programs in which the institution participates” -- 34 C.F.R. 668.16(b)(2)
- “has written procedures for or written information indicating the responsibilities for the various offices with respect to...the preparation and submission of reports to the Secretary [of Education]” -- 34 C.F.R. 668.16(b)(4)

668.16 Standards of administrative capability.



The Secretary considers an institution to have that administrative capability if the institution—

- “administers Title IV, HEA programs with adequate checks and balances in its system of internal controls” -- 34 C.F.R. 668.16(c)(1)
- “establishes and maintains records required under this part and the individual Title IV, HEA program regulations” -- 34 C.F.R. 668.16(d)(1)

668.16 Standards of administrative capability.



The Secretary considers an institution to have that administrative capability if the institution—

- “shows no evidence of significant problems that affect...the institution’s ability to administer a Title IV, HEA program” -- 34 C.F.R. 668.16(j)
- “does not otherwise appear to lack the ability to administer the Title IV, HEA programs competently.” -- 34 C.F.R. 668.16(j)

Lack of Administrative Capability



“Impaired administrative capability...may result in an institution’s systemic failure to provide students and employees with important campus crime information and services that are essential to their safety and security...

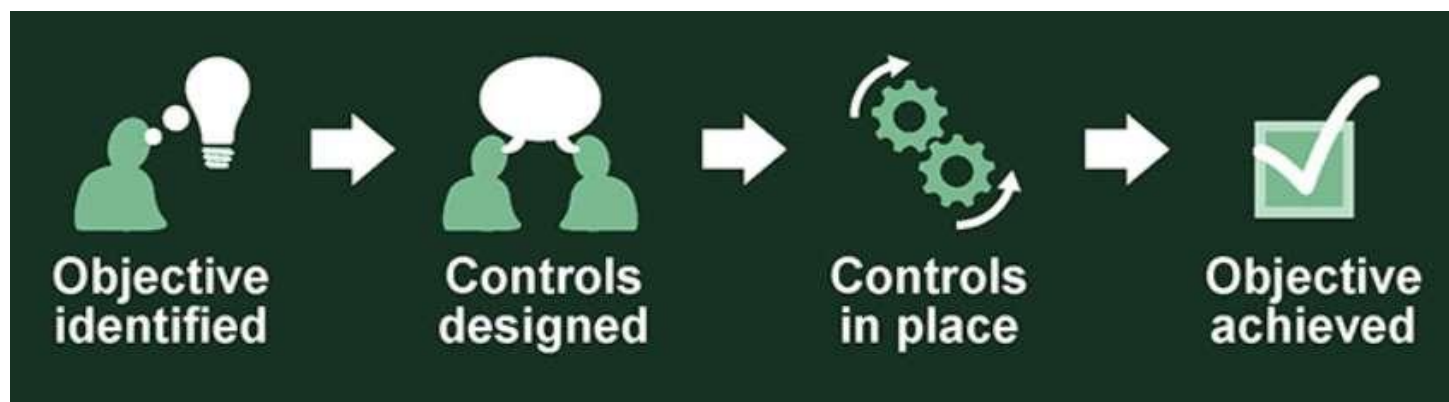
Impaired administrative capability and weak internal controls are an indication that an institution lacks the ability or willingness to comply with Federal regulations.” (PSU FPRD, 2016, p. 39-40)



What is Internal Control?

- “Internal control is a process effected by an entity’s oversight body, management, and other personnel that provides reasonable assurance that the objectives of an entity will be achieved” (GAO, 2014, p. 5).

Achieving Objectives Through Internal Control



Source: United States Government Accountability Office (GAO). 2014. *Standards for Internal Control in the Federal Government*. GAO-14-704G

Internal Control – Reconciling Crime Statistics



Creating Internal Controls to Prepare Compliant Crime Statistics

- identify and train CSAs,
- establish a simple mechanism for CSAs to quickly forward reports they receive to the reporting structure of the institution;
- proactively, at least once each year, solicit CSAs to confirm they have submitted reports for crimes brought to their attention;
- Request crime statistics from LLEAs;
- Have a process to reconcile various reports made to the primary receivers of reports like Title IX, Student Conduct, Housing, and others,
- Maintain an audit trail of all Clery-reportable offenses to substantiate the accuracy and completeness of crime statistics.

Requirement to Disclose Statistics



- §668.46 Institutional security policies and crime statistics.
- (c) *Crime statistics—(1) Crimes that must be reported and disclosed.* An institution must report to the Department and disclose in its annual security report statistics for the three most recent calendar years concerning the number of each of the following crimes that occurred on or within its Clery geography and that are reported to local police agencies or to a campus security authority...

34 CFR §668.46(c)

What is an “Audit Trail”?



- A document that identifies the *subset* of crimes reported to a CSA or local law enforcement agency that an institution plans to include in its annual Clery Act statistical disclosures.
- An audit trail also depicts the Clery Geography category in which each reportable crime should be disclosed.
 - This allows the institution to identify which reports have been classified as Clery crimes and therefore support the statistical totals reported in each Clery crime category and in each Clery Geography.

Function of Audit Trails



- An audit trail helps an institution to document the *accuracy* and *completeness* of the institution's campus crime statistics (helps demonstrate administrative capability).
- Internally, a campus police/public safety department's audit trail can be used to reconcile crime reports made to other units (such as Student Conduct, Title IX, CSAs, etc.).
- Audit trail can be used to input statistical totals in ASR and CSSDACT (there should *always* be a 3-way match).

Audit Trail Sample



Crime Category: _____

Police/Public Safety Case Number	Conduct Case Number	Reporting Office/ Agency	Incident Date	Incident Time	Reported Date	Location	OC	NC	PP	Total	RF	Name of Subject(s)	Comments	TWN	Unfounded

Rationale for Internal Control



“An effective internal control system helps an entity adapt to shifting environments, evolving demands, changing risks, and new priorities.

As programs change and entities strive to improve operational processes and implement new technology, management continually evaluates its internal control system so that it is effective and updated when necessary.”

(GAO, 2014, p. 1)

Roles in Internal Control System



Oversight Body

Oversees management's design, implementation, and operation of ICS

Management

Designs, implements, and operates ICS.
Responsibility for ICS lies with management.

Personnel

Help management design, implement, and operate ICS

Consider Developing an MOU for Title IX & Clery Act Compliance Purposes



CLERY ACT PURPOSES

- Reporting, Collecting, Classifying, Counting, Reconciling and Disclosing Crime Statistics
- Information Sharing and Records Retention
- Timely Warnings
- Daily Crime Log
- Education Initiatives (VAWA, Crime Prevention, Security Awareness)

Title IX PURPOSES

- Define roles when concurrent investigations are being conducted
- Educate Stakeholders on Information Sharing
- Extension of supportive services to victims, both on and off campus
- Representation by the institution and off campus stakeholders in meetings, trainings, and teams (like SARTs)

Key Considerations

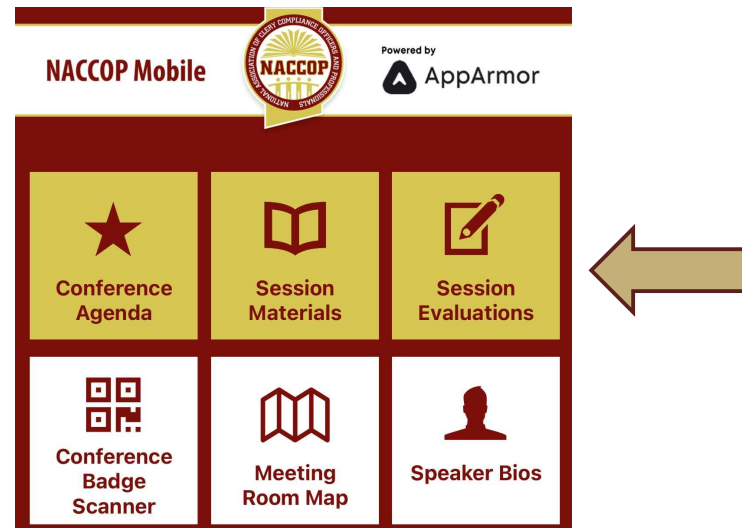


- Formalize relationships between Title IX Coordinators & Clergy Compliance Officers
- Provide relevant training opportunities
- Establish responsibilities and procedures to support compliance
- Formalize written procedures, policies or protocols



Session Evaluation

1. Select the “Session Evaluations” button in the NACCOP Mobile App



2. Or, visit <https://www.surveymonkey.com/r/NACCOP2023> to evaluate this session.