



USING THE CLERY ACT WHERE THE NEW TITLE IX REGULATIONS FAIL

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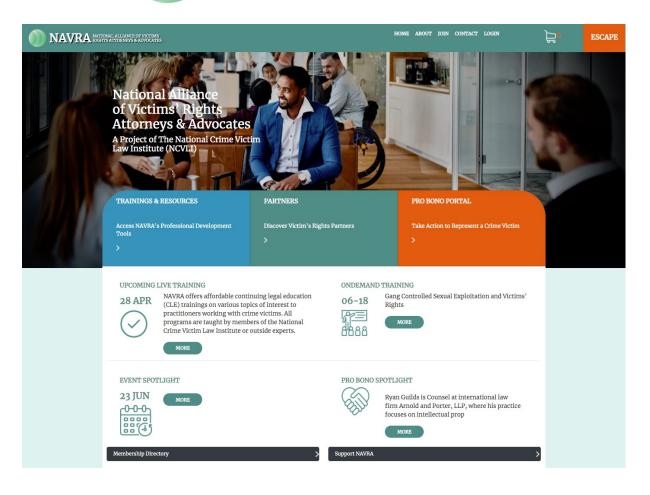
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Agenda

Title IX Overview

- Rights and remedies
- Procedural requirements
- Gaps in protectionClery Act Overview
- Rights and remedies
- Procedural requirements
- Stop-gap measures re: Title IX

Title IX



20 U.S.C. 1681(a)

"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"





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Sexual harassment, 34 C.F.R. 106.30

- Dating violence and abuse
- Sexual exploitation
- Stalking

Sexual violence

Sex or gender-based discrimination

Sex or gender-based harassment

Sex or gender-based violence

Retaliation





Civil Liability

Sex Discrimination - where school or officials act in a discriminatory, harassing or violent manner

Deliberate Indifference - when school or official response is clearly unreasonable under known facts

Erroneous Outcome - bias disciplinary process

Selective Enforcement - actions by school or officials

Retaliation - adverse action taken against participant



Title IX Legal Remedies

U.S. Department of Education - Office for Civil Rights

Paper or electronic email- based filing with OCR regional offices

File online by anyone with standing (parents, students, employees)

Process: (1) determination whether to investigate; (2) data collection and interviews during investigation; and (3) outcome with appeal

Alternative: Facilitated Resolution by Both Parties (a.k.a. mediation)





34 C.F.R. 106.8(a) & (b) - designate Title IX coordinator and disseminate policy

34 C.F.R. 106.8(c) - "prompt and equitable" grievance process for students and employees

34 C.F.R. 106.44 - requires equitable response; allows emergency removal or administrative leave for accused





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34 C.F.R. 106.45(b) - formal process

- Prompt timeframes with good cause extension
- State standard of evidence used (presumption not responsible)
- Disability accommodations & language assistance
- Notice upon receipt of formal complaint
- No confidentiality protections
- Equal opportunity for others to be present and present evidence
- Notice of hearings and meetings with advisor right
- Investigative report 10 days prior to hearing



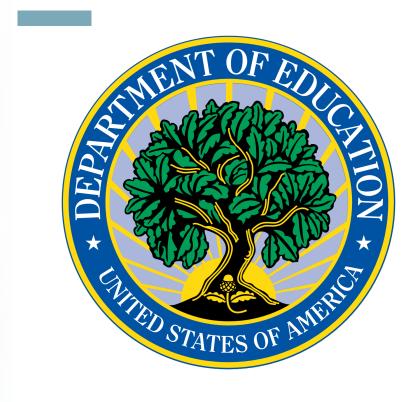


34 C.F.R. 106.45(b) - hearing

- Access to evidence and hearing recordkeeping
- Cross-examination during live hearing
- Written outcome right
- Right to appeal:
 - Procedural irregularity to affect outcome
 - New evidence not reasonably available
 - Conflict of interest or bias
 - Other grounds
- Right to respond to any appeal

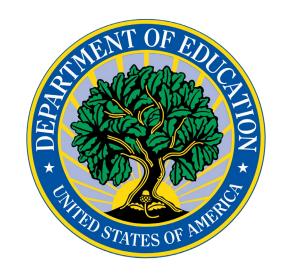
Gaps in Title IX

- Gender-violence occurring outside educational or schoolbased programs and activities, 34 C.F.R. 106.45(b)(3)
- Actual notice occurring after victimized student has left the educational institution, 34 C.F.R. 106.30(a)



Common Issues

- Dismissing Title IX complaints and proceedings in favor of the general campus disciplinary process, which are allegedly confidential.
- Failing to provide victim all relevant evidence or to participate in the general campus disciplinary process.



Clery Act - Key Differences

- Unlike its crime data reporting requirements, recipients must respond to reports of gender violence regardless of the location of the offense.
- Students and employees are entitled to participate in the campus disciplinary process regarding gender violence reports.
- Any "accuser" (even if they are not a student or employee) is entitled to the enumerated rights under the Clery Act.







20 U.S.C. 1092(f) - Annual Security Report

- Dating violence
- Domestic violence
- Sexual assault
- Stalking
- Retaliation
- "whether the offense occurred on or off campus"

Clery Act Process



34 C.F.R. 668.46(k)

- Disciplinary Proceedings Must Be:
 - Prompt
 - Fair
 - Impartial
- From Initial Investigation to Final Result

Clery Act Process



34 C.F.R. 668.46(k)

- "Advisor of Choice"
- Reasonably prompt, designated timeframes
- Consistent with written policies
- Transparent to parties
- Simultaneous written outcome notifications
- Broad access to information used
- No bias or conflict of interest

Clery Act Remedies

- Online complaint with Clery Group CleryComplaints@ed.gov
- No standing required
- Process: (1) "Complaint Assessment" or investigation; (2) outcome notice to Complainant; and (3) Formal Program Review
- Alternative: No mediation option, but recipients can agree to "Technical Assistance" as part of resolution



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