





## Join Us In Baltimore July 20-22!



### 9th Annual NACCOP Conference

**In-Person in Baltimore, MD**

Pre-Conference - July 19, 2022

Conference - July 20-22, 2022

Register now at:

<https://www.naccop.org/naccopconference>



*Tracks for Clery Compliance Officers AND Title IX Coordinators*

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## Adrienne Meador Murray



- Director of Training and Compliance Activities for NACCOP
- Vice President, Equity Compliance and Civil Rights Services
- 17-year law enforcement veteran
  - University of Richmond (Operations Lieutenant)
  - Davidson College (Chief of Police)
  - Trinity Washington University (Chief of Police)
- Author and lead instructor of DSA training programs, including:
  - Sex Crimes Investigations for Campus Police & Public Safety Officers
  - Title IX Coordinator/Investigator Training
  - Investigation of Domestic Violence, Dating Violence and Stalking for Campus Police, Public Safety and Civil Rights (Title IX/Conduct) Investigations
- Procedural Justice Institute  
[www.campusproceduraljustice.com](http://www.campusproceduraljustice.com)

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## Clery Act Crime Categories



Primary Crimes (UCR Part 1)

Hate Crimes

Arrests and Referrals for Drug, Liquor and Weapon Violations

Dating Violence, Domestic Violence and Stalking Incidents (VAWA Crimes)

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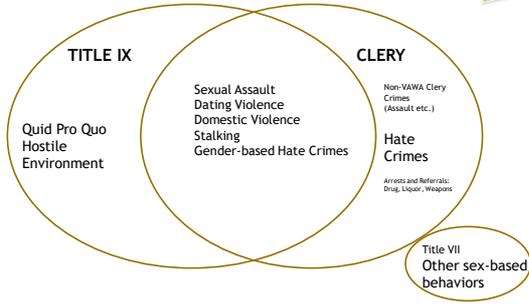
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## Overlapping Conduct Violations



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## Title IX Specific Prohibited Conduct



- Sexual Harassment**
  - Quid pro quo
  - Hostile Environment
- Sexual Assault**
  - Rape (including sodomy, sexual assault with an object)
  - Fondling
- Dating Violence**
- Domestic Violence**
- Stalking**

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## Definition of Sexual Harassment



**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).

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## Domestic Violence



A felony or misdemeanor crime of violence committed by:

- a current or former spouse or intimate partner of the victim,
- by a person with whom the victim shares a child in common,
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner,
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred OR
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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## Dating Violence



Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- The existence of such a relationship shall be based on the reporting party'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.

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## Distinguishing Between Dating and Domestic Violence



Per the Help Desk:

- **Domestic Violence** is intended to include situations where the victim and perpetrator currently have, or have had in the past, a relationship of a domestic nature. This means that they are currently or formerly married, have cohabitated as intimate partners, or have had an intimate relationship of a similar domestic nature.
- **Dating Violence** is intended to include situations where the victim and perpetrator have, or have had, a social relationship of an intimate nature, but have not entered into a domestic relationship as described above. The most common example is a dating relationship where the two parties do not live together, have never been married, and do not share a child in common.



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## Sexual Assault



- **Rape:** The 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.
- **Fondling:** The touching of the private parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

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## Title IX Applicability/Jurisdiction



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## Mandatory Dismissal



For it to be covered under Title IX, it must meet:

- New Definitions
- Jurisdiction of person
- Jurisdiction of activity

If it does NOT meet these requirements...

- Mandatory dismissal
- Can go to a different resolution process

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# Likely outside of Title IX



## Title VII

- Hostile environment harassment below Title IX bar

## VAWA Requirements

- Non-Sex-based Stalking
- Domestic violence involving family member

## Other Sex-based behaviors

- Gender-based discrimination
- *Sexual Exploitation*

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# Limitations on Interim Action



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# Advisors



Throughout investigation



Role at hearing

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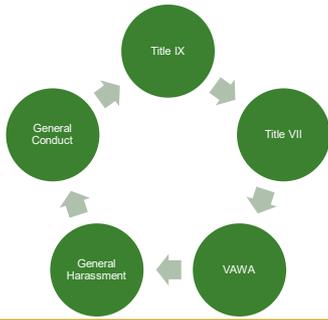
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### Allegation Intersections



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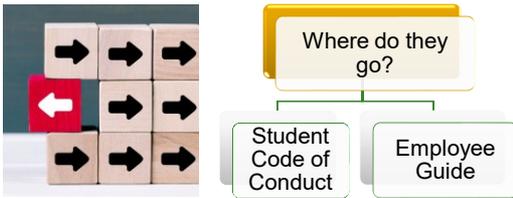
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### Non-Title IX Cases



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### VAWA PROCEDURAL REQUIREMENTS



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### Response Requirements for VAWA Offenses



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### Written Explanation of Student or Employee's Rights



(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. . . ."

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### Written Explanation of Rights and Options



- 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
- 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

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## Advisor Requirement



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## Standard of Evidence



### 2020 Title IX Regulations

- Either the preponderance of the evidence standard or the clear and convincing standard but must be the same for all sexual misconduct

### Clery Act

- Any standard of evidence ... must include in policy
- Would not prohibit using different standards for different groups



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## Informal Resolutions



### 2020 Title IX Regulations

- Can offer, but may not require
- Not allowed for "employee on student" sexual harassment
- Party may withdraw up to a point

### Clery Act

- Written information about procedures the institution will follow for VAWA offense (does not differentiate between formal vs informal)

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## Clery Requirements for Officials



- Training must be described in ASR
- Annual
- Should include (at a minimum):
  - Relevant evidence and how it should be used
  - Proper interview techniques
  - Basic procedural rules for conducting a proceeding
  - Avoiding actual/perceived conflicts
- Can be in person or electronic (webinar or video)

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## Bias Free and Training for "Officials"



### Title IX ("Title IX Personnel")

- Annual training on
  - the issues related to dating violence, domestic violence, sexual assault and stalking and on
  - how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability

### Clery ("Officials")

- Training for all on...**
  - definition of sexual harassment in § 106.30
  - the scope of the recipient's education program or activity
  - how to conduct an investigation and grievance process
  - how to serve impartially, including by avoiding prejudgment of the facts
- Decision Makers**
  - training on any technology and on issues of relevance
- Investigators**
  - relevance to create an investigative report that fairly summarizes
- Training materials must not rely on sex stereotypes**

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## Appeals



### 2020 Title IX Regulations

- Must offer both parties an appeal
- Based on specific grounds

### Clery Act

- Not required (but must provide notice if allowed along with appeal procedures)
- Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final

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## Recordkeeping



### 2020 Title IX Regulations

- 7 years

### Clery Act

- Retain all records used in compiling ASR for three years from the latest publication of the report to which they apply (in effect 7 years)

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## VAWA Education Requirements



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## Education and Prevention under Clery



Annual training for conducting "officials" (Investigators, Adjudicators, Appeals)

Primary Prevention and Awareness Programs for all incoming students and new employees

Ongoing Prevention and Awareness Campaigns for ALL students and employees

CSA Training and "Super" CSA Training

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