



Clery Center's Clery Act Training Seminar: Title IX-related Content

NOTICE OF APPROVED USE

As a way to support institutions in their efforts to comply with section 106.45 of the final Title IX Rules, Clery Center has compiled all relevant Title IX training materials from CATS (Clery Act Training Seminar) into one comprehensive document.

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Clery Center embraces a multi-disciplinary approach to Clery Act compliance and recognizes there are areas wherein the Clery Act and Title IX intersect. However, we believe that only some training content could be interpreted as Title IX training. As such, institutions requesting materials used in the training of “Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process” are only permitted to download and share this document in the format provided, with Clery Center logo and branding intact and unchanged. Individuals and/or institutions are not authorized to alter, copy, adapt, crop, or otherwise change the materials in any way, nor may they use the materials for training or for any commercial purpose unless expressly provided to the institution by Clery Center for that purpose.

Timing/Structure of CSA Reporting

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- Build ongoing reporting into your culture
 - Communication & methods of reporting
- “Aggregate data” for Clery purposes
- Distinctions and intersections between Title IX and Clery Act reporting
 - State law considerations

CSA Training Best Practices

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Recommendations:

- Important to have formal system for identifying and training who is required to report (CSAs)
 - Make sure that CSAs know who they are
- Provide job training/description
 - Include information on additional reporting responsibilities (Title IX, child abuse, etc.)
- Give CSAs crime definitions and geographic areas
- Provide reporting materials/forms
- Emphasize the importance of timely reports

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Intersections

Learning Objectives

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- Recognize the intersections between Title IX, the Clery Act, and the VAWA Amendments to Clery.
- Identify Clery Act requirements for response to and disciplinary procedures for incidents of dating violence, domestic violence, sexual assault, and stalking (DVSAS).
- Evaluate policy statements for response to DVSAS to identify required content areas under the Clery Act.



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Activity:

Clery/ Title IX Intersections

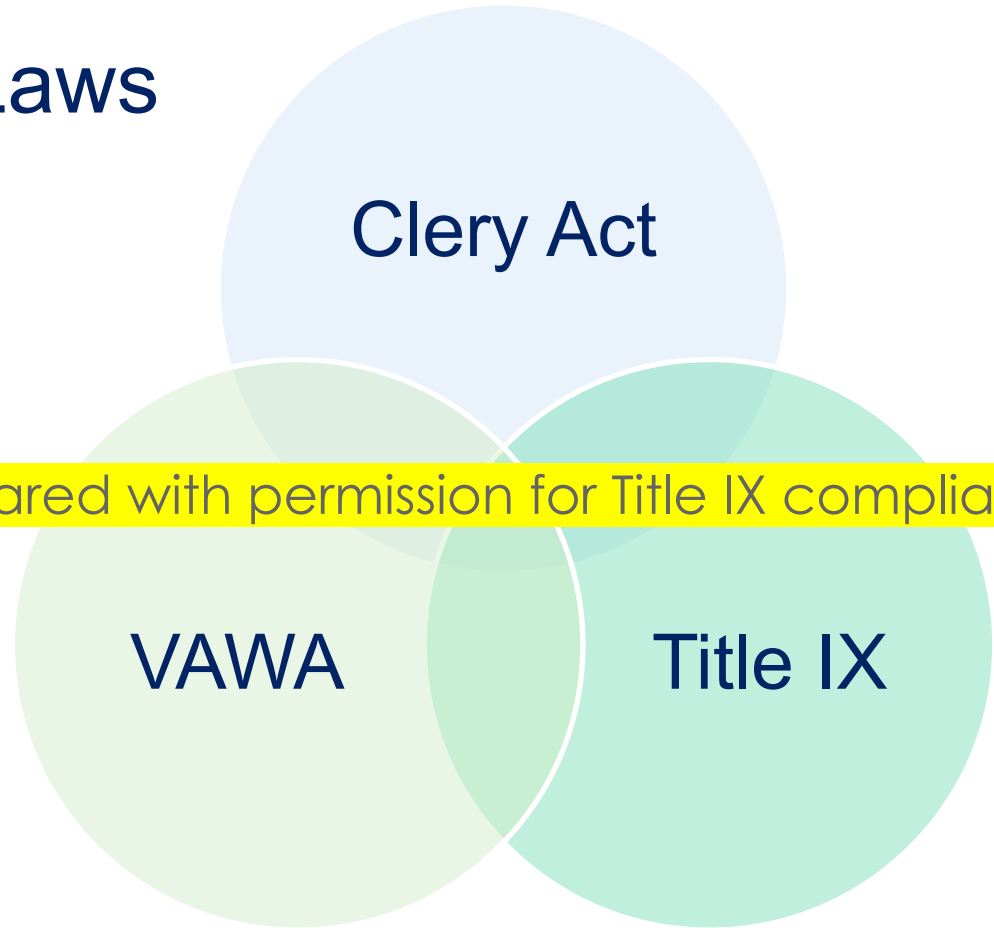
Clery/Title IX Intersections

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Open your workbook to the **Clery/ Title IX Intersections** activity. In your groups, you will have 10 minutes work through the three questions provided.

- You may find it helpful to use your institution's website or Annual Security Report.
- Be prepared to share your answers with the other groups.
- As we continue through this section, you may wish to add more examples that come to mind.

Intersections of Laws



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Intersections Overview

- Addressed Behaviors and Crimes
- Reporting Requirements

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- Accommodations and Supportive Measures
- Disciplinary/ Grievance Procedures
- Training for Employees
- Anti-retaliation Responsibilities

Addressed Behaviors and Crimes

The Clery Act

- Criminal Offenses
 - **Sexual Assault**
- Hate Crimes
- Arrests & Referrals
- Hazing
- VAWA Crimes
 - **Dating Violence**
 - **Domestic Violence**
 - **Stalking**

Title IX

- Discrimination on the basis of Sex
- Sex-based Harassment
 - Quid Pro Quo
 - Hostile Environment
 - **Sexual Assault, Dating Violence, Domestic Violence & Stalking**

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Title IX: Quid Pro Quo Harassment

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

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Title IX: Hostile Environment Harassment

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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;

Title IX: Crimes of DV/SAS

- Sexual assault as defined in ***the Clery Act***
 - includes: rape, incest, statutory rape, and fondling

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- dating violence, domestic violence and stalking as defined in the ***Violence Against Women Act***
 - same definitions as applied under the Clery Act

Clery Geography vs. Title IX Application

The Clery Act

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- **Geography**, broken down into 4 categories:
 - On-campus
 - On-campus student housing
 - Noncampus
 - Public property
 - Expands to “on and off campus” for response to DV/SAS

Title IX

- **Educational programs and activities**
- Substantial control of respondent and context
 - May be on or off campus
- Includes properties owned or controlled by recognized student organizations
- Must be in the United States

Identity of Involved Parties

The Clery Act

- Any individual within an institution's Clery Act Geography
 - Regardless of their relationship to the institution

Title IX

- Requires a relationship to the institution.
 - Both parties must be participating or attempting to participate in an educational program or activity
 - *Ex: students, faculty, staff, other employees, or third-party contractors.*

Reporting

The Clery Act

- Brought to the attention of:
 - Campus Law Enforcement/ Security
 - Local Law Enforcement
 - Campus Security Authority
- May come from:
 - Victim, Witness, Offender, or Third Party

Title IX

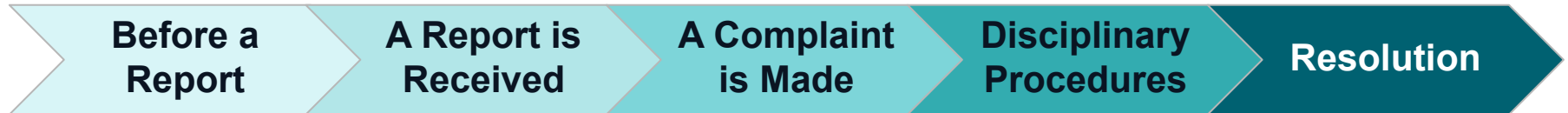
- Requires **Actual Knowledge**
- Individuals who create Actual Knowledge include:
 - The Title IX Coordinator
 - **Officials with Authority** to institute corrective measures on behalf of the recipient.

Response to Reports of DVSAAS

- The next slides will review Clery Act and Title IX requirements in response to reports of DVSAAS.

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- The timeline below will show which part of the process we are considering as we walk through the response and disciplinary proceedings for a report of DVSAAS.



Before a Report: Title IX

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- **Publish prominently on the institution's website:**
 - Non-discrimination policy based on sex
 - Training materials used in training all Title IX Coordinators, administrators, hearing officials and investigators.
 - Title IX Coordinator contact information; and distribute their info in handbooks and catalogs

A Report is Received: Title IX

When a report is received under Title IX, the institution must respond promptly and in a manner that is not Deliberately Indifferent.

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- ***Deliberately Indifferent*** is when an institution's "response to sexual harassment is clearly unreasonable in light of the known circumstances."



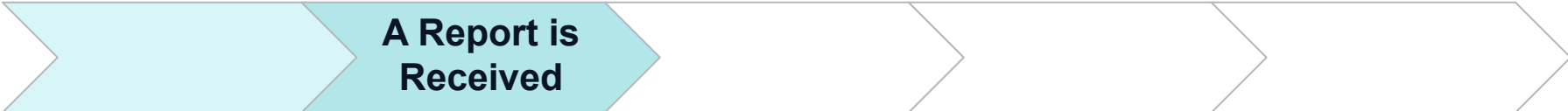
A Report is
Received

A Report is Received: Title IX

- Ensure complainant and respondent are treated equitably
- Contact the complainant to discuss:
 - the availability of supportive measures
 - the availability of measures regardless of a complaint
 - the complainant's wishes regarding implementing
 - the process for filing a formal complaint under Title IX

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- If no complaint filed, determine if fact pattern should lead Title IX Coordinator to sign a formal complaint.



**A Report is
Received**

Accommodations vs. Supportive Measures

The Clery Act

Accommodations

- Must be provided in writing
- Options for, available assistance in, and how to request changes to:
 - Academic, Living, Transportation, Working and Protective Measures

Title IX

Supportive Measures

- Must be offered to complainant **and** to a respondent
- Before or after the filing of a formal complaint, or where no formal complaint has been filed
- Designed to restore or preserve equal access to educational program and activity.



**A Report is
Received**

Accommodations vs. Supportive Measures

The Clery Act **Accommodations**

- If requested by the victim and reasonably available
- Regardless of whether the victim chooses to report to campus police or local law enforcement

Title IX **Supportive Measures**

- Non-disciplinary, non-punitive individualized services offered as appropriate.
 - Reasonably available.
 - Without Fee or Charge
- Doesn't require a formal complaint for complainant to receive support.



**A Report is
Received**

Comparing In-Text Examples

The Clery Act

- Academic
- Living
- Transportation
- Working
- Protective Measures

Title IX

- Counseling;
- Extension of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Campus escort services;
- Restrictions on contact between the parties;
- Changes in work or housing locations;
- Leaves of absence;
- Increased security and monitoring of certain areas of the campus;
- Other similar measures.



**A Report is
Received**

Moving from Report to Complaint

- A report is information being disclosed that an incident, crime or behavior occurred; whereas:

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- A formal complaint under **Title IX** is a “formal document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment...and requesting that the recipient investigate the allegation”.

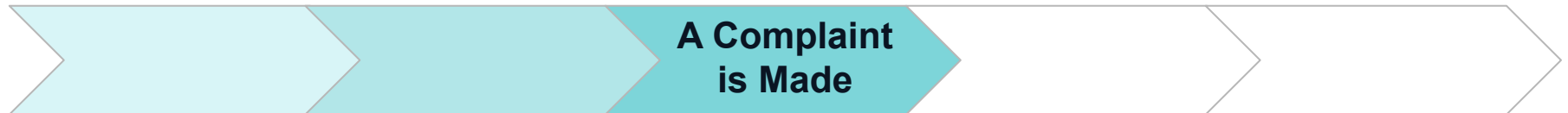


**A Report is
Received**

A Complaint is Made: Title IX

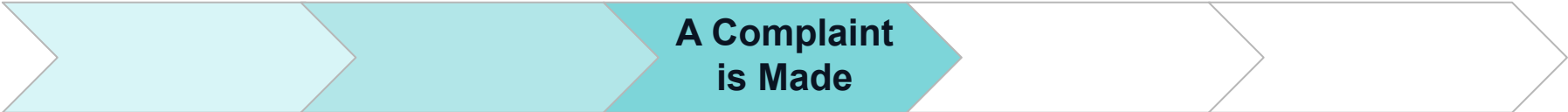
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- Under Title IX, a formal complaint is a written and signed document by:
 - **a complainant** who is participating or attempting to participate in an educational program or activity; or
 - **the Title IX Coordinator**, if the nature of the alleged behavior is severe enough to warrant investigation to prevent deliberate indifference in response.
- It may be filed in person, by mail, or electronically



A Complaint is Made: Title IX

- TIXC must offer Supportive Measures to the Respondent.
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- Provide written notice to the both parties that includes:
 1. Grievance Procedures & Informal Resolution Processes
 2. Notice of the alleged behavior constituting harassment, including date, time and location of alleged behaviors if known
 3. Identities of known parties
 4. Statement of presumed innocence of respondent
 5. Notice of an advisor of choice, who may be an attorney
 6. Notice of right to inspect and review evidence
 7. Notice that false statements or evidence is prohibited



**A Complaint
is Made**

Assessing for Dismissal: Title IX

Must be dismissed

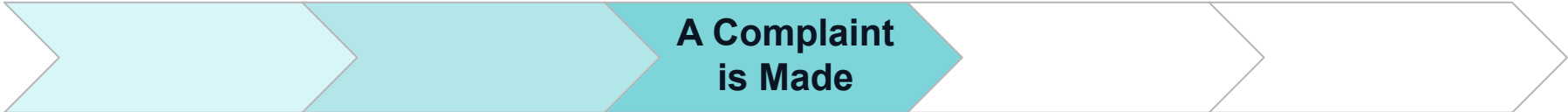
- is not sexual harassment
- did not occur in an educational program or activity
- did not occur against a person in the United States

Dismissing does not prohibit addressing the behavior under other codes of conduct.

May be dismissed

at **any point** prior to the resolution if:

- the complainant notifies the TIXC they would like to withdraw
- the respondent is no longer enrolled or employed by the institution
- gathering sufficient evidence to reach a determination becomes impossible



**A Complaint
is Made**

Disciplinary Procedures: Title IX

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- Could be formal grievance procedures or informal resolutions
- May consolidate multiple complaints
- Must be prompt and equitable
 - Equal Opportunity to present witnesses
 - Equal Opportunity to inspect and provide evidence
 - Equal Opportunity to presence of an advisor of choice



Disciplinary Procedures: Title IX

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- Requires minimum time for parties and advisor to review and respond to investigation report before the live hearing.
- Hearings must allow for live cross examination of parties and witnesses by the advisor
- Live hearings may use technology to allow individuals to appear virtually.



Disciplinary Procedures: Title IX

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- Provide a simultaneous written notification of outcome including:
 - The allegations potentially constituting harassment
 - The procedural steps taken
 - Findings of fact supporting the determination
 - Conclusions regarding the application of the code of conduct
 - Statement and supporting rationale of results to each allegation
 - Appeal procedures



Advisor of Choice

- Both Title IX and the Clery Act allow for an advisor of choice.

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- Clery Act: Cannot limit who is selected, but can limit how they are allowed to participate
- Title IX: “may be, but is not required to be, an attorney”



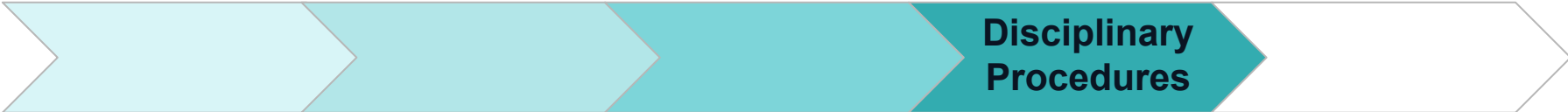
Standard of Evidence

The Clery Act

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- Must describe the standard of evidence that will be used

Title IX

- Must state which standard is used: “**preponderance of the evidence**” or “**clear and convincing**”; and
- Must be same standard for all formal complaints of sexual harassment, regardless of respondent’s role (*i.e. faculty, staff, student, union employee, etc.*)



Disciplinary
Procedures

Sanctions & Remedies

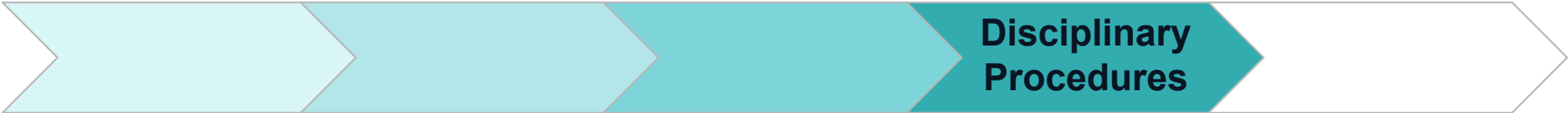
The Clery Act

- Must list all possible sanctions
- Must describe range of protective measures

Title IX

- Must describe range of sanctions, ***but...***
- Must describe range of remedies

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**Disciplinary
Procedures**

Resolution: Title IX

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- Must allow appeals for: procedural irregularities, new evidence, or conflicts of interest/bias from TIXC, investigators, or decision-makers
- Notify the other party in writing when an appeal is filed
- Have a decision-maker who was not the hearing decision-maker, dismissal decision-maker, the investigator, or the Title IX Coordinator
- Give both parties the chance to submit a written statement
- Provide written notice of the decision simultaneously to both parties



Who Must Be Trained?

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The Clery Act

- ***Officials who conduct disciplinary proceedings*** to address crimes of:
 - Dating Violence
 - Domestic Violence
 - Sexual Assault
 - Stalking

Title IX

1. Title IX Coordinators
2. Investigators
3. Decision-makers (hearings & appeals)
4. Any person who facilitates an informal resolution process

“Officials who conduct disciplinary proceedings” includes all individuals who also must be trained under Title IX requirements.

Annual Training Components

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The Clery Act & Title IX

- Relevant evidence and how it should be used during a proceeding
- Proper techniques for interviewing witnesses
- How to serve impartially
- Avoiding actual and perceived conflicts of interest

Just Title IX

- Definitions in policy and scope of programs
- Procedures for investigations, informal resolutions, and hearings
- Technology used in hearings
- Training materials may not rely on sex stereotypes
- Must publish all training materials for public online

Anti-Retaliation Responsibilities

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The Clery Act

- Institutions must protect individuals from being retaliated against:
 - for exercising one's rights, or
 - carrying out the responsibilities of any portion of the Clery Act
- Does not create a mechanism for how to address this retaliation

Title IX

- May not retaliate for anyone for participating or refusing to participate
 - Includes complainants, respondents, witnesses, advisors, etc.
- Retaliation complaints are filed under the same grievance procedures for sex discrimination.