

### Campus response to Sexual Violence: Legal Foundations

- **Title IX** of the Educational Amendments of 1972, (20 USC § 1681, et seq; 34 CFR Part 106)
- **Section 504** of the Rehabilitation Act of 1973, (29 USC § 701, et seq.)
- Family Educational Rights and Privacy Act, (**FERPA**) (20 USC § 1232g; 34 CFR Part 99)
- Violence Against Women Act Reauthorization of 2013, (**VAWA**)(Pub. L. 113-4)-
  - Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (**Clery Act** amendment to the Higher Education Act) (20 USC § 1092f; 34 CFR 668.46)
  - Campus Sexual Violence Elimination Act (**Campus SaVE Act**) (20 USC § 1092f)

### Recent Change

- 2004 The Department of Education (DOE) announced aggressive enforcement planned for Title IX violations
- 2013 VAWA added prevention and reporting requirements
- Individual survivors started filing record numbers of complaints to the DOE
- 2015 Specific binding guidelines for compliance were published by DOE's Office of Civil Rights
- Fundamental rights and responsibilities not changed

**Title IX:**  
**prompt, Competent Institutional response (K-12, College)**

- Impartial, competent, prompt investigation of discrimination complaints
- Designated officer to manage compliance
- Notice to students/staff/ faculty/applicants of their rights, and procedures to file complaints
- Prompt action to remedy hostile climate
- Mitigation of harms to victims of discrimination
- Information on reporting options
- Clear grievance procedures with “preponderance of the evidence” standard
- Protect complainants from retaliation

**Preserving Academic status:**

Academic Accommodations and Section 504

- Title IX requires the mitigation of harm to a survivor
- Psychological trauma of sexual violence causes at least a short term disability in the majority of survivors. This adversely affects academic performance.
- Section 504 places the responsibility on a student to self- identify a disability and to seek documentation to prove that disability.
- Civil rights violations victims do not need to “prove” a disability and the burden is not placed on them to proactively self-identify as having a disability. The condition is likely new to them and may not be recognized at the onset of the disability.

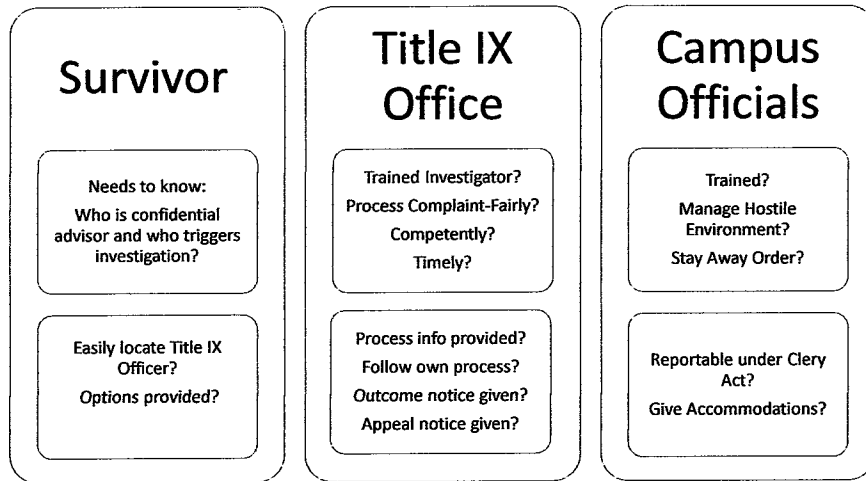
## Privacy: FERPA

- FERPA requires schools to confidentially hold private information in school records, including disciplinary files.
- Exemptions to FERPA include notification of complainants of the outcome of discrimination complaints, and notice of discipline that relates to them—such as campus stay away orders, and sanctions for the conduct in the complaint.
- Complainants have the right to privacy on issues related to their complaints. Schools may, in certain circumstances, determine that they have to proceed with investigations even when the complainant does not wish to proceed. Schools should attempt to honor the complainant's wishes to the greatest extent possible.

## Notifying the Campus Community: Clery Act

- Schools must annually report crimes that are reported to them. These reports are aggregated and do not contain names or identifying information.
- The annual campus crime statistics report is a public document and must be publically available.
- Campus police logs must be maintained for public review upon request.
- Schools must issue alerts when an offense presents a danger to the larger campus community.

## When There Is A Complaint:



## Institutional Betrayal: A Research Overview

- Occurs when a person either trusts, or is dependent upon, an institution and that institution causes them harm.
- May be by omission/commission and individual/systemic
- Impact is higher levels of trauma-related outcomes like anxiety, dissociation, etc.
- Institutional characteristics may lead to betrayal-such as exclusive membership, prestige, performance or reputation, all valued over well being of individuals
- Instrument for measuring- no proactive steps to prevent, environment where it's a common experience, environment where it's likely to occur, making it difficult to report, responding inadequately, punishing reporting person through loss of privileges or status

Smith and Freyd, 2014

## The Science and Practice of Apology

- In the medical context (where it's been heavily studied):
  - Patients are less likely to seek legal counsel if they have received an apology
  - Patients are more inclined to file lawsuits if they have been given no explanation, or incomplete explanations
    - Robbenholt, 2008
  - Functional MRI shows that an apology activates a portion of the brain associated with empathy and leads to better health outcomes.
    - Worthington, 2007

## Legislative Recommendations

- Reporting requirements:
  - Certification that minimum training on legal requirements (including mitigation of harm via safety and academic accommodations) and trauma-informed response has been provided to identified key personnel in the campus response system
  - Submission of campus sexual harassment policies showing compliance with Title IX and Clery
  - Submission of name and contact info for Confidential Reporter for each campus and Title IX Officer for each campus
  - Submission of name and contact information for advocate for survivors on each campus
  - Filing of updated list of on and off campus referrals provided to survivors
  - Submission of relevant training curriculums used on each campus and certification of dates provided
- State training requirements:
  - Role-related trauma-informed response to sexual harassment, stalking, dating violence, and domestic violence training for Title IX investigators, Campus Police, Designated Advocates, and Confidential Reporters
  - Role-related training on mitigation of hostile environment including accommodations for safety and academics