



# The Title IX and Clery Act Implications of a Gender-Based Hate Crime

1<sup>st</sup> Annual Mid-Year Conference

**Bill Lafferty**

*Director of Federal Relations*

NACCOP

*Director, Regulatory Compliance and Public Safety Services*

D. Stafford & Associates

**Ann Todd**

*Consultant, Equity Compliance and*

*Civil Rights Investigations,*

D. Stafford & Associates

# Session Agenda



- Backdrop - Bias and Hate Crime incidents increasing;
- Understand Hate Crime reporting trends and how they have impacted College and University campuses;
- Hate Crimes through the lens of the Clery Act;
- Hate Crimes and Title IX;
- Articulate the Clery Act and Title IX Implications of a Gender-Based Hate Crime; and
- Understand how to better respond to, assess, investigate and classify incidents of bias.

## Backdrop—K-12

2021 GAO Study  
(2014-2019 data)

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1 in 5 students bullied

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1 in 4 bullied related to race, national origin, religion, disability, gender, or sexual orientation

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Over time, bullying due to national origin and race and doubled

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1 in 4 students saw hate words or symbols written in school

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Increased reports of sexual assaults

Government Accountability Office. (2021). Students' Experiences with Bullying, Hate Speech, Hate Crimes, and Victimization in Schools (GAO Publication No. 22-104341).

Backdrop –  
Higher ED

National Center  
for Education  
Statistics (NCES)

## Hate Crime Incidents at Postsecondary Institutions

(Last Updated: May 2021)

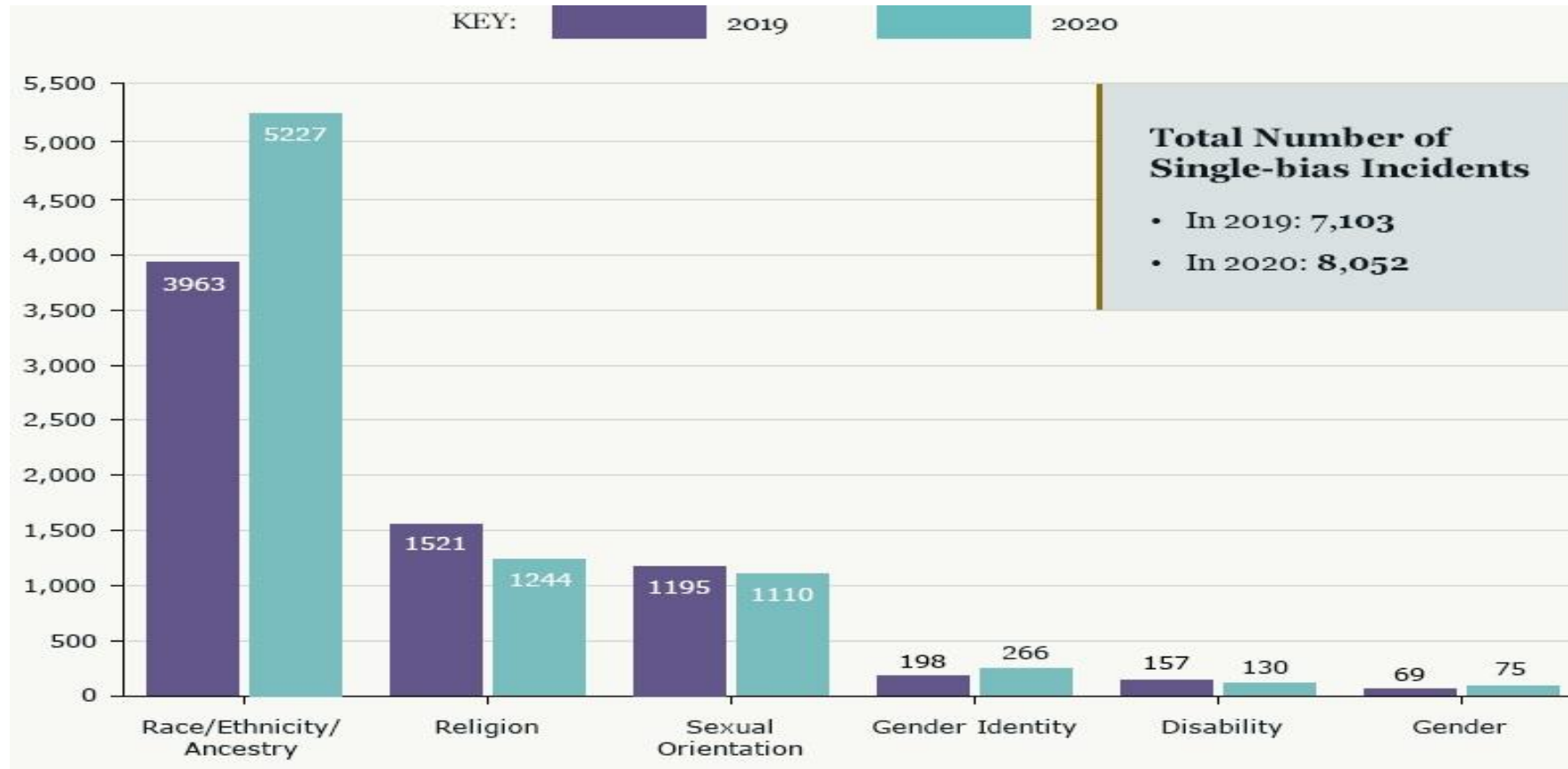
This indicator also appears under *School Crime and Safety*.

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Approximately 80 percent of the total reported on-campus hate crimes in 2018 were motivated by race, sexual orientation, or religion. Race was the motivating bias in 43 percent of reported hate crimes (347 incidents); sexual orientation was the motivating bias in 22 percent of reported hate crimes (176 incidents); and religion was the motivating bias in 16 percent of reported hate crimes (128 incidents).

National Center for Education Statistics (NCES), “Hate Crime Incidents at Postsecondary Institutions”, May 2021,  
<https://nces.ed.gov/programs/coe/indicator/a22>

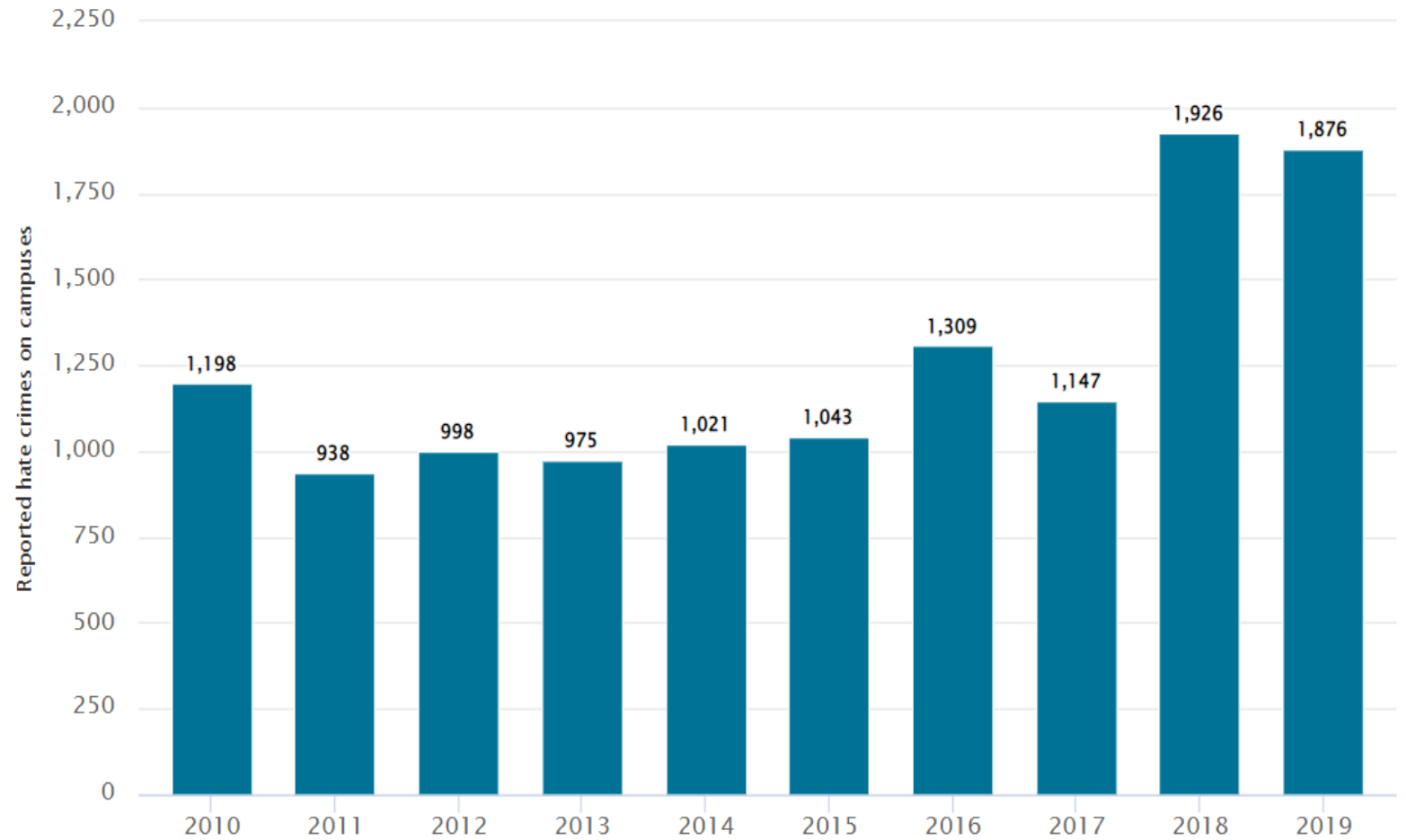
# Bias Motivation Categories in 2020



US Department of Justice, <https://www.justice.gov/hatecrimes/hate-crime-statistics>

# HATE CRIMES REPORTED TO THE DEPARTMENT OF EDUCATION

## Reported Hate Crimes on College Campuses, 2010-19



Source: U.S. Department of Education, Office of Postsecondary Education, Campus Safety and Security (CSS) survey

# HATE CRIMES AND THE CLERY ACT



# General Crime Categories

Criminal Offenses (Primary Crimes)

Hate Crimes

Arrests and Referrals for  
Disciplinary Action

VAWA Offenses



# Hate Crimes



- A **hate crime** is “a criminal offense that manifests evidence that the victim was intentionally selected because of the perpetrator’s bias against the victim” (2016 Handbook, 3-25).
- **Bias** is “a preformed negative opinion or attitude toward a group of persons based on their race, religion, disability, sexual orientation, ethnicity, [national origin], gender, or gender identity” (FBI, 2015, p. 31).

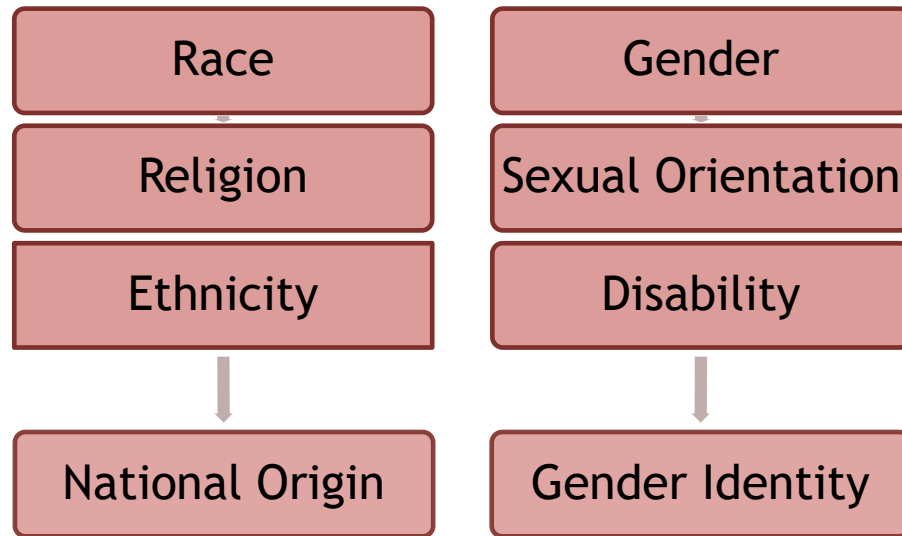
*Source for this section: FBI Hate Crime Data Collection Guidelines and Training Manual (2015)*

# Bias vs Hate



## Bias

- Preformed negative opinion toward a group of persons based on:



## Hate Crimes

- Must first meet the elements of a Clery Act Primary Crime:
  - Murder and Non-negligent Manslaughter
  - Sexual Assault
  - Robbery
  - Aggravated Assault
  - Burglary
  - Motor Vehicle Theft
  - Arson
- And any incidents of Larceny-Theft, Simple Assault, Intimidation, or Destruction/ Damage/ Vandalism of Property

# Caveats



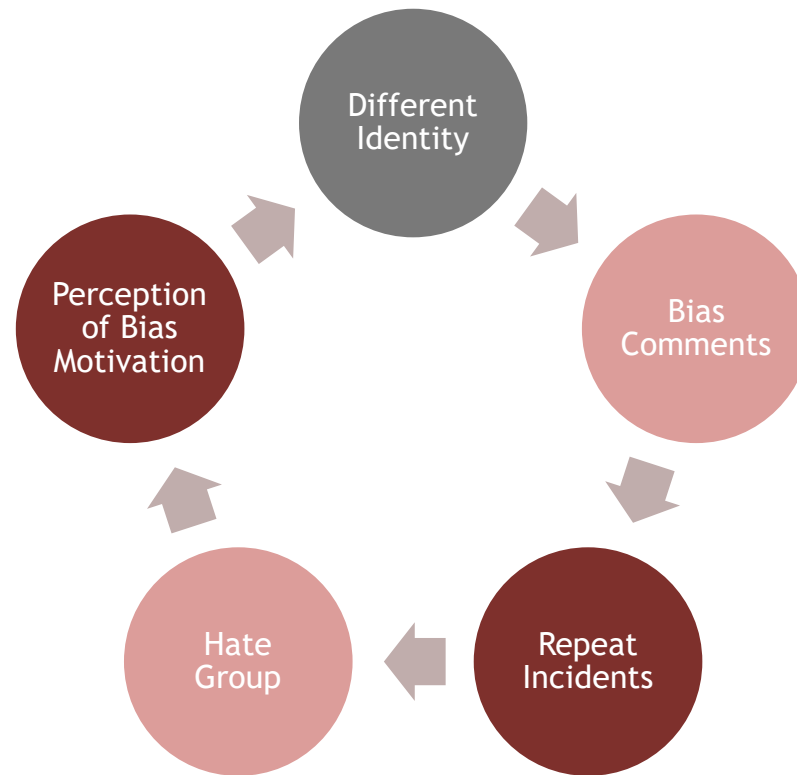
Assess  
Separately

Misleading  
and Feigned  
Facts

Victim's  
Perception

Offender's  
Motivation

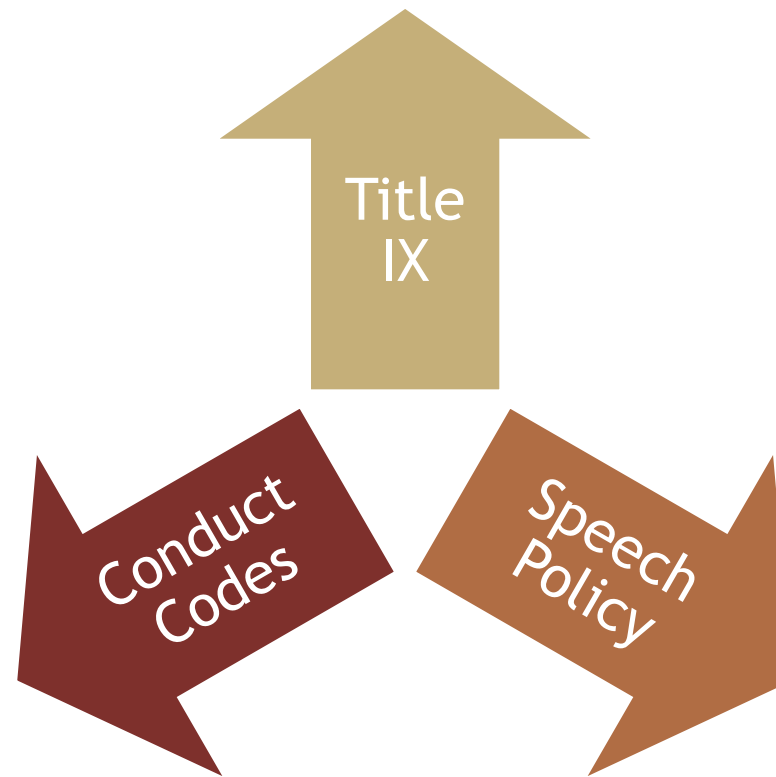
# FBI Hate Crime Data Collection – Examples of Possible Bias Motivation



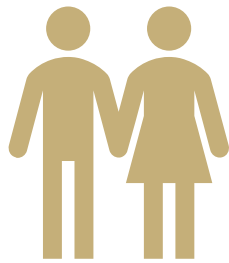


# Title IX

# Addressing via Campus Processes



# Possible Sexual Misconduct Policies



Title IX Sexual  
Harassment



Non-Title IX Sexual  
Harassment



Sex-based  
Discrimination

# Definition 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).*



# Hate Crime Categories and Title IX



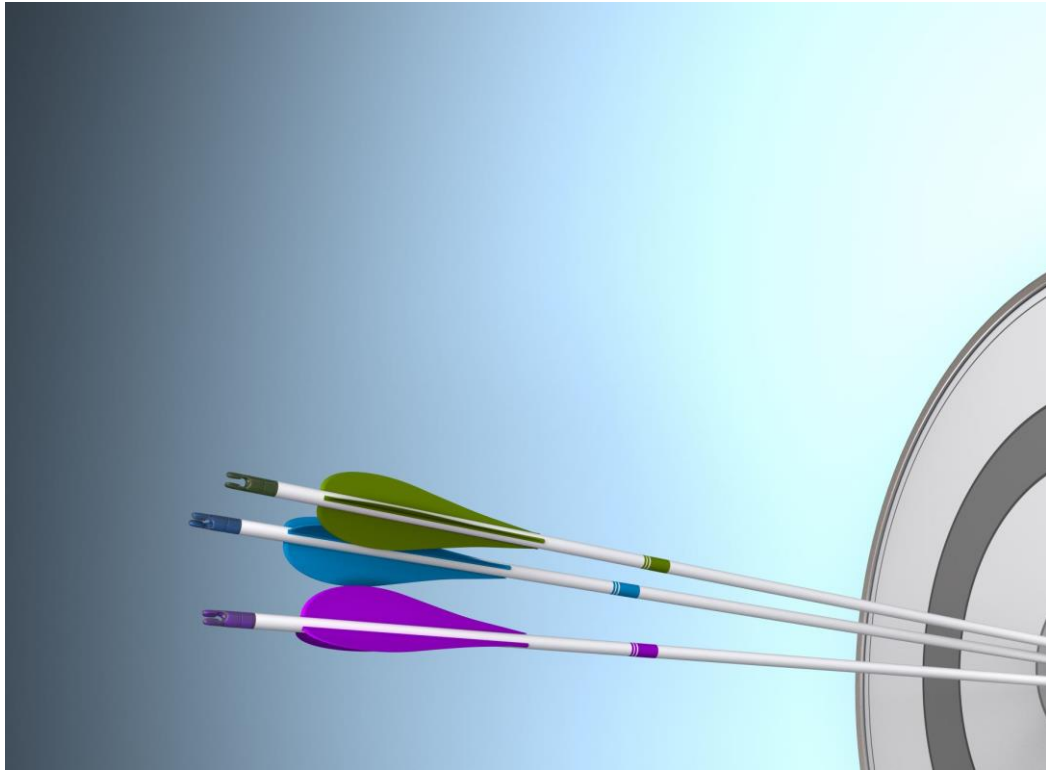
U.S. Department of Education Confirms Title IX  
Protects Students from Discrimination Based on  
Sexual Orientation and Gender Identity  
JUNE 16, 2021

RECOGNIZING INTERSEX AWARENESS DAY AND  
ANNOUNCING A NEW RESOURCE TO SUPPORT  
INTERSEX STUDENTS  
October 26, 2021

On the Basis of Sex includes

- Sexual Orientation
- Gender Identity

# Jurisdiction under Title IX



Jurisdiction of Behavior

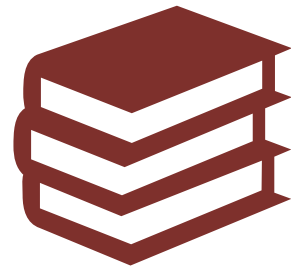


Jurisdiction of Person



Jurisdiction of  
Location/Educational  
Activity

# Report vs. Complaint



## Actual Knowledge (Report)

Outreach by Title IX Coordinator  
Information about options/process  
Supportive Measures



## Formal Complaint

Formal Resolution Process  
Informal Resolution Process



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## Case Study

A student reports to the institution's Title IX Coordinator being initially “bullied” by other students because of their gender identity, which they state escalated into an incident at an on-campus party where they were physically assaulted.

# Clery Act and Title IX Implications



A student reports to the institution's Title IX Coordinator being initially “bullied” by other students because of their gender identity, which they state escalated into an incident at an on-campus party where they were physically assaulted.

## Clery Act

- What do we know?
- What would we like to know?
- Based on the original report, what are we thinking from a Clery perspective?
- Other responsibilities/actions?

## Title IX

- What do we know?
- What would we like to know?
- What are the potential policy violations?
- What responsibilities/actions are triggered?

# How Does this Change your Assessment?



- Cyber-bullied via social media by students from Greek system during fall semester
- Bullying involved name calling, direct threats to their personal safety and consistent harassment directed toward their identity
- They expressed fear for their personal safety
- During a social event at XYZ fraternity house (owned by the college), they were pushed, shoved and punched resulting in the loss of two teeth

# Clery Act and Title IX Implications



A student reports to the institution's Title IX Coordinator being initially “bullied” by other students because of their gender identity, which they state escalated into an incident at an on-campus party where they were physically assaulted.

## Clery

- Three Part Test
  - Timeliness of Report
- First and Second Tier Review of Incident
  - What was Offender's Motivation?
- Determination Based on Objective Facts
- Ongoing Disclosure/Transparency
  - TW, EN, DCL

## Title IX

- VAWA implications
- Do we have Actual Knowledge?
- Do we have Title IX “Jurisdiction?”
- Do we have a Formal Complaint?

# Responding to Hate Crimes



Health & Safety (victims and witnesses)

Crime Scene considerations

Future implications to community



# Common Hate Crime Issues



**VICTIM:**  
Injury and  
Ongoing fear

**FRIENDS/FAMILY:**  
Powerless &  
Frustrated

**ASSOCIATED  
IDENTITIES:**  
Victimized and  
Vulnerable

**CAMPUS:**  
Escalation and  
Retaliation

**COMMUNITY:**  
Unrest and  
Anger

# Challenges in Response



Issues with  
Reports

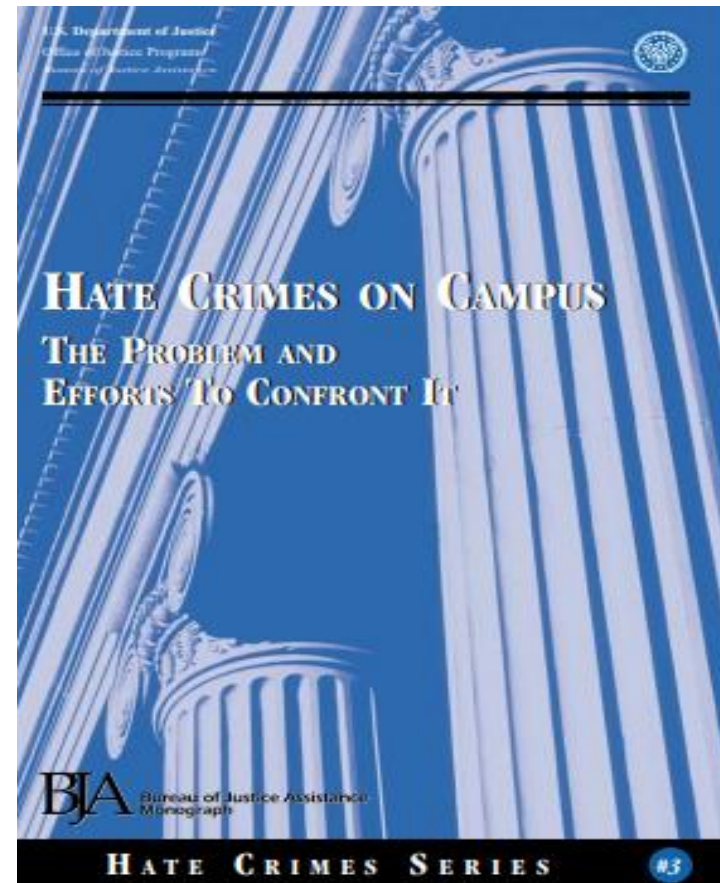
Pressure to  
Responding

School Response  
and  
Communications

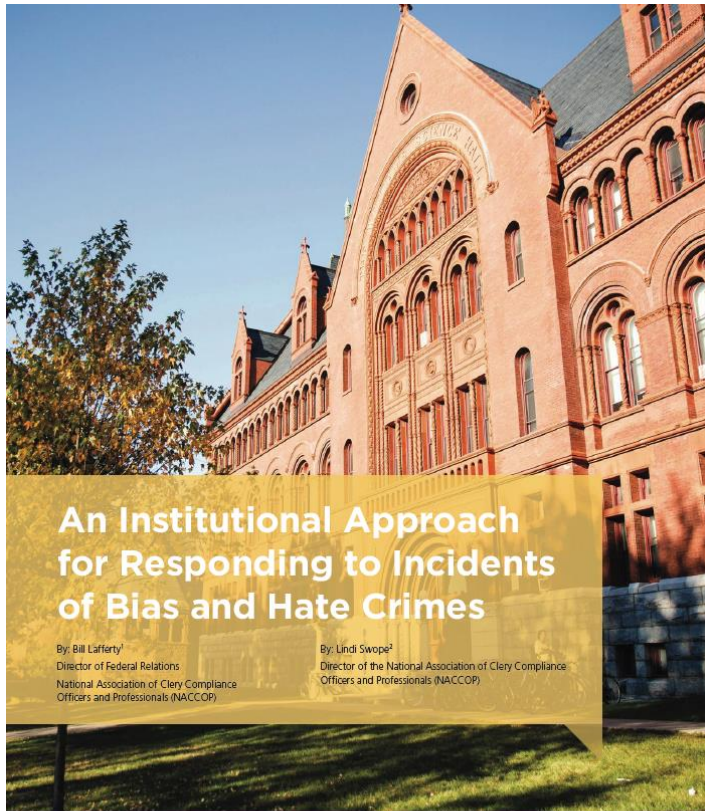
# Hate Crimes on Campus - Monograph



- Hate Crimes and Bias Incidents on Campus
- Response to Campus Hate Crimes and Bias Incidents
- Promising Efforts: Responding to and Preventing Hate Crimes



# NACCOP White Paper



- “An Institutional Approach for Responding to Incidents of Bias and Hate Crimes”
- To access, visit: [www.stanleysecurity.com/hatecrimescleryact](http://www.stanleysecurity.com/hatecrimescleryact)

Presented by:



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