



SESSION #2: Clery & Title IX: Partnering to Meet VAWA Disclosure Requirements in the Annual Security Report

1st Annual Mid-Year Conference

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She IS a CSA! Why doesn't she report information to me (and in a timely way?)
She is making me crazy!

I have to update the ASR and I need to know ALL policies and procedures we have to resolve the VAWA offenses so I can describe them in the ASR.

I promised confidentiality...I am not providing information about the reports I receive...

I gave you the Title IX policy and procedure. I don't know who else you need to speak with to determine how other departments manage their complaints.



The background of the slide is a photograph of a grand, classical building's entrance. It features a wide, sweeping staircase made of light-colored, rectangular marble steps. At the top of the stairs, several large, fluted marble columns stand in a row, supporting an unseen entablature. The lighting is bright, casting soft shadows and highlighting the texture of the marble.

TITLE IX CONSIDERATIONS

Definition of Sexual Harassment 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).*



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

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 different resolution process

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

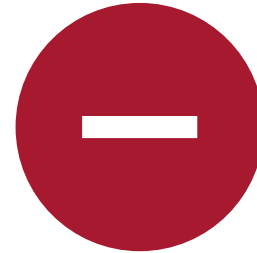
- Gender-based discrimination
- Sexual Exploitation

Limitations on Interim Action



Supportive Measures

Non-punitive



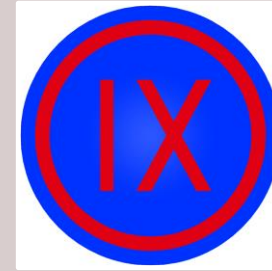
Emergency Removal

Immediate health and safety risk

Advisors



From Intake through conclusion of Investigation
RIGHT TO ADVISOR OF CHOICE,
BUT NOT REQUIRED



From Investigative Report through Live Hearing
MANDATORY; CANNOT PROCEED WITHOUT-
SCHOOL MUST APPOINT; CROSS EXAMINATION

Adjudication

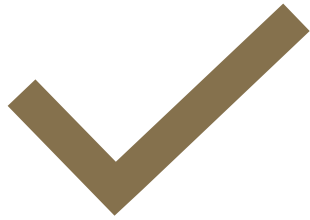


Requires a
Hearing

Cross-
examination by
advisor

Non-
Participation
limits evidence
reliance

Standard of Evidence



Options

Preponderance
Clear and Convincing



Must match other discipline

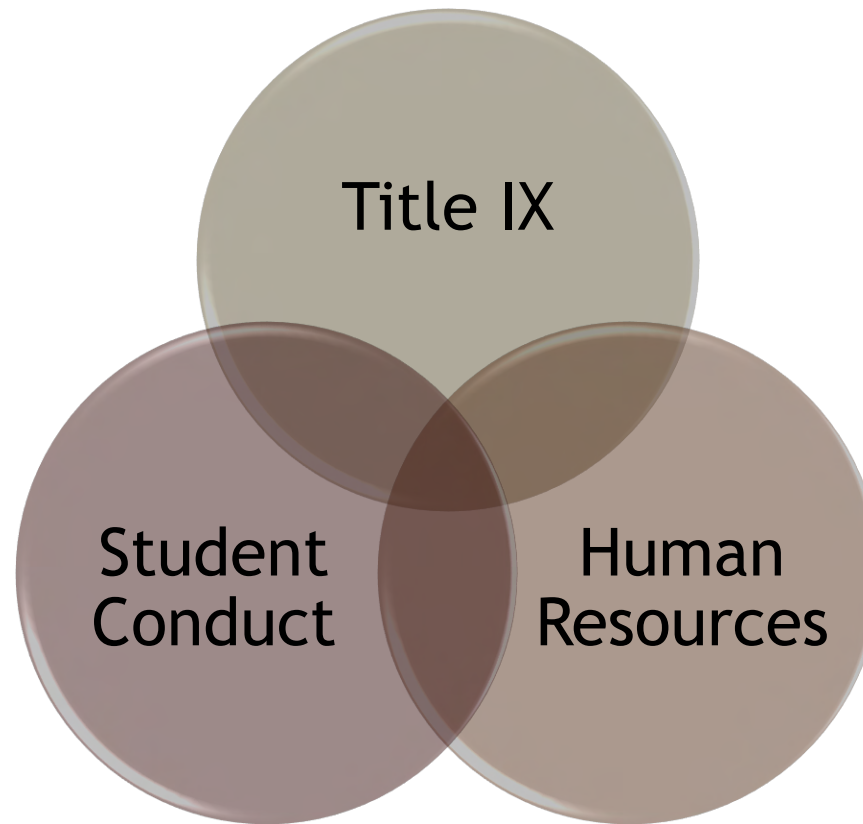
Student codes
Employee/Faculty codes
Collective Bargaining

POLICY CONSIDERATIONS

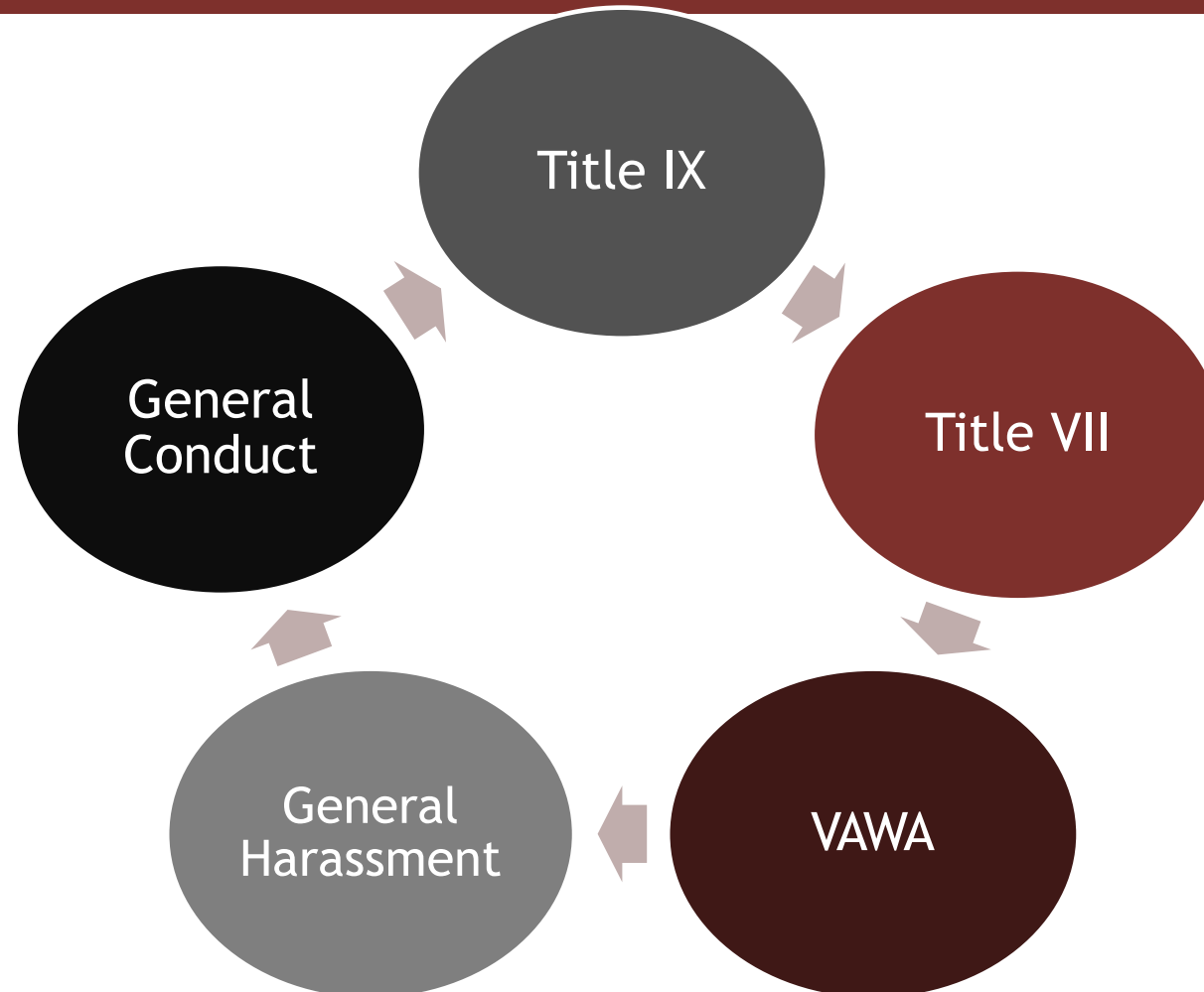
Notes

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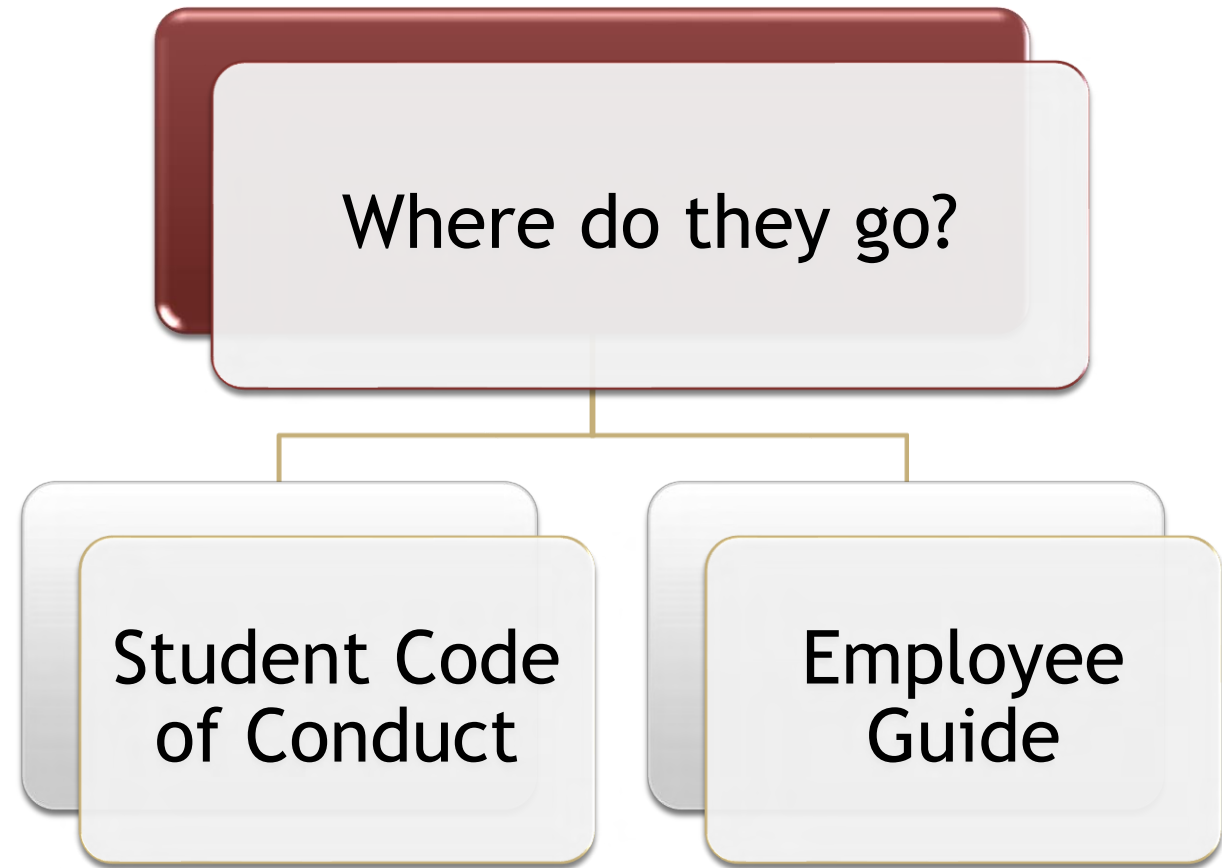
Departmental Intersections



Violation Intersections



Non-Title IX Cases



Models

Title IX Only

Other sexual misconduct
is referred to different
policies

Sexual Misconduct - Same Resolution Process

Covers all sexual
misconduct

Resolution process
follows Title IX
regulations

Resolution process is
same for employees and
students

Sexual Misconduct - Multiple Resolution Processes

Covers all sexual
misconduct

Diverts at resolution
stage based on Title IX
criteria and respondent's
status

Related Policies



Retaliation
Policy

False
Statements
Policy

Consensual
relationships
policy

Definition of
student

Gender
discrimination



VAWA POLICY STATEMENTS IN THE ASR

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VAWA Requirements



- VAWA requires institutions to disclose certain procedures and programs in the ASR
- VAWA also requires institutions to implement those procedures and programs
 - VAWA procedures and programs must contain more proscriptive requirements than many other types of ASR policy statements
- We will begin by reviewing some general VAWA ASR Policy Statements.

Caveat

- While up until this point we have focused significantly on policies and procedures to resolve the VAWA offenses, don't forget that there are a lot of other things the institution must do and must discuss in the ASR.
- These cannot be found in policy and will require you to create processes whereby you can collect accurate information from the correct sources.



VAWA Offenses

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- VAWA offenses include, for purposes of policies, procedures, and programs, any incidents of:
 - Domestic Violence,
 - Dating Violence,
 - Sexual Assault, or
 - Stalking.
- Sexual Assaults are reported in the Criminal Offenses category for *Clery Act* statistical reporting purposes only. For all other *Clery Act* purposes, Sexual Assaults are considered VAWA offenses.

VAWA Programs and Procedures

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- In accordance with 34 CFR§668.46(b)(11), the Annual Security Report must contain:

*A statement of policy regarding the institution's **programs** to prevent dating violence, domestic violence, sexual assault, and stalking, as defined in paragraph (a) of this section, and of **procedures** that the institution will follow when one of these crimes is reported.*

VAWA ASR Policy Statements



- A statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking, as defined in paragraph (a) of this section. The statement must include—
- A statement that the institution of higher education prohibits the crimes of domestic violence, dating violence, sexual assault, and stalking;

VAWA ASR Policy Statements



- The definition (from VAWA) of dating violence.
 - *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.*

VAWA ASR Policy Statements



- The definition (from VAWA) of domestic violence.
 - *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.*

VAWA ASR Policy Statements



- The definition (from VAWA) of sexual assault.
 - *Sexual Assault: An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting (UCR) program. Per the National Incident-Based Reporting System User Manual from the FBI UCR Program, A sex offense is "any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent."*

VAWA ASR Policy Statements



- *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.*

VAWA ASR Policy Statements



- The definition (from VAWA) of stalking.
 - *Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—*
 - *Fear for the person's safety or the safety of others; or*
 - *Suffer substantial emotional distress.*

VAWA ASR Policy Statements



- *For the purposes of this definition—*
 - *Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.*
 - *Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.*
 - *Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.*

VAWA ASR Policy Statements



- The definition, in the applicable jurisdiction, of the following terms; *(If your local jurisdiction does not define one of these terms, you must state that there is no definition):*
 - dating violence,
 - domestic violence,
 - sexual assault, and
 - stalking.

VAWA ASR Policy Statements



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- The definition of consent, in reference to sexual activity, **in the applicable jurisdiction;** (If your local jurisdiction does not define consent, you must state that there is no definition)

VAWA ASR Policy Statements



- The institution's definition of consent (if one exists) AND the purposes for which that definition is used.



VAWA ASR Policy Statements

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- A description of safe and positive options for bystander intervention; (*Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene*)

VAWA ASR Policy Statements

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- Information on risk reduction (*Risk reduction means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence*). (Information about risk reduction must not be presented in a manner that encourages victim blaming).

VAWA Programs and Procedures



- **The disclosures required by 34 CFR§668.46(b)(11) must include:**
 - A description of the institution's educational programs and campaigns;
 - The procedures victims should follow if a VAWA offense occurs;
 - Information regarding how the institution will protect the confidentiality of victims and others;
 - A statement that the institution will provide students and employees written information regarding campus and community victim services;

VAWA Programs and Procedures



- A statement that the institution will provide students and employees written information regarding available accommodations and protective measures;
 - An explanation of the procedures for institutional disciplinary action in cases involving VAWA offenses; and
 - A statement that the institution will provide victims with a written notice of rights and options
-
- **We will review each of these requirements in more detail on the slides that follow.**
 - First, we will review some key definitions of terms related to VAWA education programs

VAWA Programs and Procedures

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- *Programs to prevent dating violence, domestic violence, sexual assault, and stalking* means
 - i. comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that—
 - A. Are
 - culturally relevant,
 - inclusive of diverse communities and identities,
 - sustainable,
 - responsive to community needs, and
 - informed by research or assessed for value, effectiveness, or outcome; and

VAWA Programs and Procedures

Consider environmental risk
and protective factors as
they occur on the
individual,
relationship,
institutional,
community, and
societal levels.

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VAWA Programs and Procedures



- ***Primary prevention programs*** means programming, initiatives, and strategies
 - informed by research or assessed for value, effectiveness, or outcome
 - that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur
 - through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.

VAWA Programs and Procedures

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-
- *Awareness programs* means community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

VAWA Programs and Procedures



- *Ongoing prevention and awareness campaigns* means programming, initiatives, and strategies that are
 - sustained over time, and
 - focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking,
 - using a range of strategies
 - with audiences throughout the institution, and
 - including information described in paragraph (j)(l)(i)(A) through (F) of this section (CFR §668.46 Institutional security policies and crime statistics).

Two Categories of Programs to Prevent VAWA Offenses



Primary Prevention & Awareness Programs

- In-person workshops
- Theater performances
- Online interactive trainings
- Webinars

Directed at incoming students & new employees

Ongoing Prevention & Awareness Campaigns

- Social media posts
- Group presentations
- Take Back The Night events
- Safe Walk/Ride Services
- Bulletin Board Notices
- Posters
- Faculty led discussions

Directed at all current students & employees

VAWA Programs and Procedures



- ii. Procedures victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including written information about -
 - A. The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or is occurring or may be helpful in obtaining a protection order;
 - B. How and to whom the alleged offense should be reported;
 - This refers to any person or organization that can assist the victim, such as a rape crisis counselor. You must include specific contact information for these resources or other information about how victims can report the alleged offense.

VAWA Programs and Procedures



- C. Options about the involvement of law enforcement and campus authorities, including notification of the victim's option to -
 - 1) Notify proper law enforcement authorities, including on-campus and local police;
 - 2) Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and
 - 3) Decline to notify such authorities; and
- You must provide appropriate and specific contact information for the authorities, for example, your campus police or a local law enforcement agency. Your statement must explain what is involved in making a police report.

VAWA Programs and Procedures



- D. Where applicable, the rights of victims and the institution's responsibilities for orders of protection, "no contact" orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution.
- You must let students know what legal options are available to them and under what circumstances.
 - You must tell students how to request information about the available options and provide specific contact information. You must also provide instructions for how to file a request for each of the options.
 - You must also provide clear information about what the victim should do to enforce an order of protection.
 - If your institution does not issue orders of protection, state that the institution does not issue orders of protection.

VAWA Programs and Procedures



iii. Information about how the institution will protect the confidentiality of victims and other necessary parties, including how the institution will—

- A. Complete publicly available recordkeeping, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the victim, as defined in section 40002(a)(20) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(20)); and
 - Disclose your procedures for ensuring that the victim's personally identifying information will not be included in any publicly available recordkeeping, including Clery Act reporting and disclosures such as the annual security report and the daily crime log.

VAWA Programs and Procedures



- ***Personally identifiable information*** means individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including:
 - A. a first and last name;
 - B. a home or other physical address;
 - C. contact information (including a postal, e-mail, or Internet protocol address, or telephone or facsimile number);
 - D. a social security number, driver license number, passport number, or student identification number; and
 - E. any other information, including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual.

VAWA Programs and Procedures



- B. Maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures;
- Your policy should state who is responsible for determining what information about a victim should be disclosed and to whom this information will be disclosed.
 - Your policy should also state how this decision will be made.
 - Institutions may disclose only information that is necessary to provide the accommodations or protective measures in a timely manner.

VAWA Programs and Procedures



- A statement that the institution will provide written notification to students and employees about existing resources available for victims within the institution:
 - counseling,
 - health,
 - mental health,
 - victim advocacy,
 - legal assistance,
 - visa & immigration assistance,
 - student financial aid, and
 - other services available for victims

VAWA Programs and Procedures



- A statement that the institution will provide written notification to students and employees about existing resources available for victims within the larger community:
 - counseling,
 - health,
 - mental health,
 - victim advocacy,
 - legal assistance,
 - visa & immigration assistance,
 - student financial aid, and
 - other services available for victims

VAWA Programs and Procedures



- v. A statement that the institution will provide written notification to victims about options for, available assistance in, and how to request changes to
 - academic,
 - living,
 - transportation, and
 - working situations
 - or protective measures.

The institution must make such accommodations or provide such protective measures if the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

VAWA Programs and Procedures



vii. A statement that, 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.

- Procedures victims should follow
- Information regarding confidentiality of victims & others
- Campus and community victim services
- Information regarding accommodations & protective measures
- Procedures for institutional disciplinary action

VAWA Programs and Procedures



- vi. An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required by paragraph (k) of this section; and

*We will address the specific requirements of paragraph (k)
on the slides that follow*

**VAWA
PROCEDURES FOR
INSTITUTIONAL DISCIPLINARY
ACTION**

VAWA Disciplinary Procedures

- In accordance with 34 CFR§668.46(k), the Annual Security Report must contain:

A clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as defined in paragraph (a) of this section, and that—

VAWA Disciplinary Procedures

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- i. Describes each type of disciplinary proceeding used by the institution;
 - the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding;
 - how to file a disciplinary complaint; and
 - how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking;
- ii. Describes the standard of evidence that will be used during any institutional disciplinary proceeding arising from an allegation of dating violence, domestic violence, sexual assault, or stalking;

Examples of Types of Disciplinary Proceedings

- Non-Title IX student or employee codes of conduct
 - Does not fall within Title IX jurisdiction or sexual harassment definition.
- Title IX student or employee
- Title VII Policies for Employees
- Other Institution policies or procedures



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VAWA Disciplinary Procedures



- iii. Lists all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking; and
 - An institution may have different potential sanctions for different crimes. For example, the possible sanctions for an allegation of stalking may be very different from the possible sanctions for an allegation of sexual assault.
 - Be specific. For example, if suspension is a possible sanction, describe the type and length of the suspension, and any requirements that must be met for reinstatement.

VAWA Disciplinary Procedures



- iv. Describes the range of protective measures that the institution may offer to the victim following an allegation of dating violence, domestic violence, sexual assault, or stalking;
 - These may include, but are not limited to
 - orders of protection, including no-contact orders, restraining orders, or similar lawful orders issued by a criminal, civil or tribal court, or by the institution;
 - transportation assistance or security escorts;
 - modifications to academic requirements or class schedules; and/or
 - changes in living or working situations.

VAWA Disciplinary Procedures

- In accordance with 34 CFR§668.46(k), the Annual Security Report must contain:

A clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as defined in paragraph (a) of this section, and that...(2) provides that the proceedings will

VAWA Disciplinary Procedures

Include a prompt, fair, and impartial process from the initial investigation to the final result;

Be conducted by officials who, at a minimum, receive 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 victims and promotes accountability; *(The statement must describe this training)*

Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;

VAWA Disciplinary Procedures



- ***Proceeding*** means all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact finding investigations, formal or informal meetings, and hearings.
 - Proceeding does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.

VAWA Disciplinary Procedures

- iv. Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties; and
- ***Advisor*** means any individual who provides the accuser or accused support, guidance, or advice.

VAWA Disciplinary Procedures

- iv. Require simultaneous notification, in writing, to both the accuser and the accused, of—
 - A. The result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking;
 - B. The institution's procedures for the accused and the victim to appeal the result of the institutional disciplinary proceeding, if such procedures are available;
 - C. Any change to the result; and
 - D. When such results become final.

VAWA Disciplinary Procedures



- **Result** means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution.
- The result must include any sanctions imposed by the institution. Notwithstanding section 444 of the General Education Provisions Act (20 U.S.C.1232g), commonly referred to as the Family Educational Rights and Privacy Act (FERPA).
- The result must also include the rationale for the result and the sanctions.

VAWA Disciplinary Procedures



- *A prompt, fair, and impartial proceeding* includes a proceeding that is—
 - A. Completed within reasonably prompt timeframes designated by an institution's policy, including a process that allows for the extension of timeframes for good cause with written notice to the accuser and the accused of the delay and the reason for the delay;

VAWA Disciplinary Procedures

Conducted in a manner that—

- Is consistent with the institution's policies and transparent to the accuser and accused;
- Includes timely notice of meetings at which the accuser or accused, or both, may be present; and
- Provides timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings; and

Conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.



VAWA Disclosure Requirements

- VAWA requires institutions to disclose statements of policy in the ASR regarding:
 - *educational programs* the institution provides to students and employees to prevent VAWA offenses;
 - *procedures victims should follow* if a VAWA offense has occurred;
 - the *procedures the institution will follow* when a VAWA offense has been reported; and
 - *disciplinary procedures* that will be followed when a student or employee is accused of a VAWA offense.

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VAWA Implementation Requirements

- VAWA also requires institutions to implement:
 - *educational programs and campaigns* that meet certain requirements;
 - *institutional procedures and practices* in response to a report of a VAWA offense, including those related to:
 - confidentiality,
 - supportive services,
 - accommodations, and
 - protective measures;

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VAWA Implementation Requirements

- *A written notice of rights and options*, which must be provided to students or employees reporting a VAWA offense, and
- *disciplinary procedures* that must be followed when a student or employee is accused of a VAWA offense.

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