

**LEADING FROM THE TOP IN
TODAY'S EVER CHANGING TITLE IX
LANDSCAPE**

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IMPORTANT STATISTICS



UE Study: “Confronting Campus Sexual Assault”

- 99% of Perpetrators were men
- 94% of Victims were women
- 54% of Victims were first year students
- 96% Involved acquaintances
- 33% Involved incapacitation
- 29% involved physical force
- 18% involved failed consent
- 13% involved coercion

Source: United Educators – “Confronting Campus Sexual Assault’ 2017

IMPORTANT STATISTICS



UE Study: “Confronting Campus Sexual Assault”

- The accused individual brought 54% of claims and accounted for 72% of financial losses (legal fees and payments to claimants)
- 40% of victims delayed reporting following reasons:
 - Victim blamed him/herself because they were intoxicated
 - Victim did not immediately label the incident as a sexual assault
 - The victim and accused were in a romantic relationship
 - The victim (1 in 5) did not want the institution to investigate or take action against the perpetrator

Source: United Educators – Confronting Campus Sexual Assault, 2017

IMPACT ON THOSE INVOLVED



TO THE VICTIM

- Falling Grades
- Drop out/Fail out
- Mental Health Issues
 - Depression, Post-traumatic stress disorder
 - Alcohol and drug use
 - Contemplation of suicide

TO THE ACCUSED

- Time lost from class
- Potential expulsion from school or job loss
- Impact on ability to obtain a medical license, security check or get recommendations
- Stigma of “rapist”

IMPACT ON THE INSTITUTION



- Impact of victim support and assistance on system and people
- Retention
- Legal liabilities
- Reputation
- Demands on fiscal resources
- Demands on human resources
- Safety concerns for the community

WHAT I'M SEEING ON CAMPUS



- Increased attention to issues of sexual harassment, hostile environment, violence for entire community
- Confusion in sorting out issues when drugs or alcohol is involved-training needed!
- Increase in reporting
- More “helpers” for victims (attorneys & advocates) in filing complaints or civil suits
- Increased media attention
- Conflicts with free speech

WHAT I'M SEEING ON CAMPUS



- Concerns regarding balancing rights of accused and victim (Issues of due process for accused v. victim's rights)
- Emphasis on applying an “investigator model” to civil rights allegations, and providing an independent decision-maker or panel
- Schools’ auditing current policies & procedures for compliance-status quo challenged by courts and Department of Education

FEDERAL LAWS ADDRESSING SEX/GENDER ON CAMPUS



- **Title IX** – Applies to entire campus, covers sex/gender
 - **OCR** Provides compliance guidance
 - **OCR Guidance Document 2001**
 - **OCR DCL September 29, 2017**
- **Title VII** – Limited to employment only, covers sex, color, race, religion and national origin
- **Case law**
 - “Gamechanger” cases, North Haven (1982), Franklin (1992), Gebser (1998), Davis (1999)
- **Clery Act/VAWA Sec. 304**
 - “Violence Against Women (VAWA) Act & SaVE Act (March, 2013)

TITLE IX REVIEW

Background & Principles

TITLE IX STATUTE



Title IX of the Education Amendments of 1972 is a federal law intended to end sex discrimination in all areas of education

Ensures sex (and gender?) equity in all institutional programs, events, operations involving employees, faculty, students, visitors, and others

Applies to sexual harassment, sexual assault, and sex- (and gender-?) related relationship violence, stalking, bullying, etc.

OCR TITLE IX COMPLIANCE REQUIREMENTS



Publication of Policies and Procedures that includes:

- Non-discrimination Statement
- Effective reporting and response protocol
- Appropriate grievance procedures
- Fair and equitable investigations
- Equitable remedies
- Prevention of recurrence
- Incorporation of training as specified by the VAWA/SaVE Act
- Appointment of a Title IX Coordinator

TITLE IX ESSENTIAL COMPLIANCE



- Once a “responsible employee” has either actual or constructive notice of sexual harassment/sexual misconduct, the school must:
 - Take immediate and appropriate steps to investigate what occurred
 - Take prompt and effective action to:
 - Stop the harassment
 - Remedy the effects
 - Prevent the recurrence

WHAT'S A RESPONSIBLE EMPLOYEE?



- A “Responsible Employee” includes any employee who:
 - Has the authority to take action to redress the harassment, OR
 - Has the duty to report harassment or other types of misconduct to appropriate officials, OR
 - Is someone a student could reasonably believe has this authority or responsibility
- When a responsible employee knows or reasonably should know of possible sexual-based misconduct, OCR deems a school to have notice of the sexual violence

VAWA, SEC 304 & THE CLERY ACT

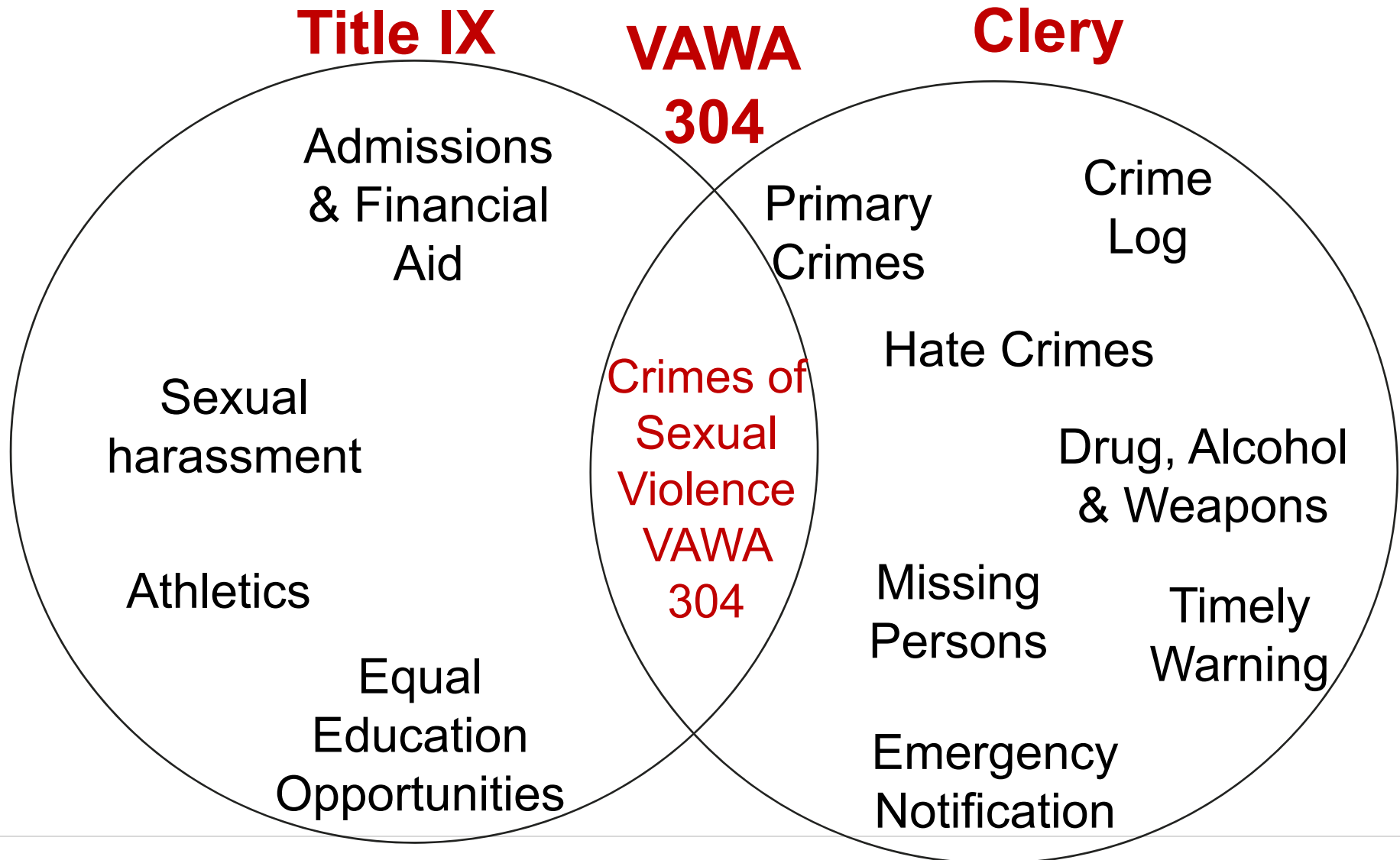
VAWA REAUTHORIZATION & SECTION 304



Section 304: “Campus SaVE”

- **Section 304** significantly amended the Clery Act.
 - Final Regulations released October 15, 2014.
 - **Extensive** new policy, procedure, training, education, and prevention requirements for:
 - Sexual assault.
 - Stalking.
 - Dating violence.
 - Domestic violence.
 - Prohibits retaliation.
- } The “Big 4”

TITLE IX, CLERY, VAWA 304



DEVELOPING ISSUES IN TITLE IX

LAWS AND REGULATIONS



- Laws passed by Congress (e.g.: Title IX) - enforceable by courts and OCR
- Case law established by courts (jurisdictional implications)
- Regulations - enforceable by courts and OCR
- Guidance from OCR
 - Regulatory guidance - 2001 Guidance
 - Sub-Regulatory guidance
 - 2011 Dear Colleague Letter
 - 2014 Q&A on Title IX and Sexual Violence

OVERVIEW OF PROPOSED REGULATIONS



- November 29, 2018: OCR published proposed amendments to Title IX regulations:
 - Provided 60 days for public comment
 - OCR is reviewing over 130,000 comments in order to finalize the regulations
 - This administrative action will amend the Code of Federal Regulations, bypassing Congressional action
 - **Will have the force of law once adopted**
 - Proposed amendments are significant, legalistic, and very due process-heavy
 - Will likely go into effect 30 days after final regulations published in Federal Register

IMPACT OF 6TH CIRCUIT COURT DECISIONS



- Requirement to provide live hearings
 - May be be a single independent decision maker or a hearing panel
 - Training for either method is critical
 - Decision or recommendation for the outcome may not be made by the investigator (called a “single investigator model”) or by the Title IX coordinator
 - There can be no conflict of interest or overlap of an individual in the process
- Requirement to provide for cross-examination between parties
 - Both parties must be present for the hearing
- Requirement to allow cross examination of witnesses by

RECOMMENDATIONS FOR CHIEF EXECUTIVES AND GOVERNING BOARDS

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UNDERSTANDING RISKS AND CHALLENGES



COACHING FOR SUCCESS

- Support staffing at appropriate levels to ensure a prompt and equitable response to allegations
- Ensure institution is providing training at all levels, including for faculty, staff and students as well as Title IX Coordinator, investigators, decision-makers and appeals officers
- Understand the difference between criminal processes, civil actions and policy violations

UNDERSTANDING RISKS AND CHALLENGES



- Expect to be kept in the loop via regular reports and to be notified of high profile issues or significant allegations
- Be aware that new Title IX Regulations may create the need for policy changes.
- Understand the risks of Board or Senior Executives' direct involvement as appeals decisionmakers.

TIPS FOR SENIOR EXECUTIVES AND BOARD MEMBERS



- Ensure your institution's Title IX Officer is:
 - Not Just a figurehead, has direct access to the top
 - Appropriately trained in the scope of the laws and regulations related to sex & gender misconduct; knowledgeable about Title IX response requirements
- Require development of climate surveys
- Publish a non-discrimination notice in compliance with Title IX
- Encourage school to develop a single Community-Based Policy on Sexual Harassment, Discrimination and Misconduct that applies to faculty, staff and students
- Understand and support identifying “Responsible Employees” and Confidential Reporting Sources and the obligations associated with their role

TIPS FOR SENIOR EXECUTIVES AND BOARD MEMBERS



REMAIN IN THE KNOW: REQUIRE REGULAR REPORTING, TO INCLUDE:

Aggregate data, without personally identifiable information, that provides a enumeration of all reported incidents:

- The number of reports received by the Title IX officer, broken down by the policy alleged to have been violated
- The number of informal resolutions
- The number of formal investigations conducted
- The disposition of the investigated cases
- Discussion of any observable trends
- Other categories of interest, such as Greeks, athletes, residential v. off campus incidents, year in school

- To be published on a web site

TIPS FOR SENIOR EXECUTIVES AND BOARD MEMBERS



Support prevention initiatives, including:

- Appropriate and annual training for key individuals
- Broad publication of resources
 - Written and electronic
 - Link for reporting on institution's mail page
 - A web page with links to critical information (reporting options, policy & grievance process, confidential sources, medical and counseling resources)
- **Build positive and collaborative community relations**
 - MOU with community victims resource/domestic violence services
 - MOU with community law enforcement
 - Involvement with community leaders

AND FINALLY, A TEST FOR YOU



Occasionally take a few minutes to use your school's web page to use "key words" that one might use if seeking resources or information regarding sex-based discrimination or misconduct. See if you hit on:

- Student/Employee policies on sexual harassment, sex-based discrimination
- Code of Student Conduct Policy
- Policies addressing Domestic/Dating Violence (Intimate Partner Violence)
- Policies on Bullying,
- Policy on Stalking
- Consensual Relationship Policy

THANK YOU!



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THANK YOU!

Questions?

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