



Clerly and Title IX Intersections

See Prior Melissa Talks: [A new era in Title IX Compliance: Process, Fairness, and New Regulations Take Center Stage \(2/21/20\)](#); [New Title IX Regulations Released: An Overview \(5/14/20\)](#); and [What is a Campus Security Authority under the Clerly Act/MCCCD policy and what does it mean to be one? \(2/19/21\)](#)

Statutes:

- 1) **Title IX of the Education Amendments of 1972** is a federal law that provides:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681
Recent regulatory updates include:

- What constitutes “actual knowledge” of a Title IX matter, including which individuals on campus meet the criteria to be considered “Officials With Authority” and “Mandatory Reporters”;
- Definition and jurisdiction clarifications, especially regarding sexual harassment;
- And, procedural requirements including increased due process requirements.

- 2) **The Clerly Act** signed into law in 1990

- A. The Clerly Act was named after Jeanne Clerly, a student who was raped and murdered in her dorm room by a fellow student at Lehigh University in Pennsylvania. The death of Jeanne Clerly triggered concern about unreported crime and safety issues on campuses across the country. It eventually led to the Clerly Act, summarized by the Clerly Center as a “consumer protection law that aims to provide transparency around campus crime policy and statistics” (Clerly Center, 2017).

The act accomplishes this by requiring institutions of higher education to:

- disseminate a public annual security report (ASR)
 - include four distinct categories of crime in their ASR crime data
 - include crime statistics on-campus and certain places off-campus
 - provide timely warnings and emergency notifications of crime
 - address victim rights, options, and resources (Clerly Center, 2017)
- B. The VAWA Amendments, which went into effect on March 7, 2014, cover domestic violence, dating violence, and stalking cases in addition to sexual assault cases. The Clerly Act has long required the adoption of sexual assault policies with certain features, but the breadth and detail of these requirements was expanded significantly by the VAWA Amendments.

Overlap Between Title IX and Clerly:

What kinds of incidents must be reported to school officials?

Both Title IX and the Clerly Act cover aspects of sexual assault and specified forms of gender-based violence ([dating or domestic violence, and stalking](#)), although each statute is also somewhat broader and covers additional conduct not covered by the other. For example, discrimination based on sex is covered by Title IX but is not covered by the Clerly Act unless the discrimination involved a sex offense or hate crime that is covered by the Clerly Act. (NACUA Presentation 2017- Interplay and Intersection: Where Title IX and the Clerly Act Collide) Acts of sexual, domestic, or dating violence such as unwanted sexual contact, sexual coercion, attempted rape, and completed rape.

The 2020 Title IX regulations expressly harmonized the definitions of dating violence, domestic violence, sexual assault, and stalking to those crimes as defined by VAWA.

Geography

Title IX geography is limited to conduct that takes place on the campus or on property owned or controlled by the MCCC, at MCCC-sponsored events, or in buildings owned or controlled by MCCC's recognized student organizations.

Clery geography includes three general categories:

1. Campus: Any building or property that an institution owns or controls within a reasonably contiguous area that directly supports or relates to the institution's educational purposes. On campus also includes residence halls and properties the institution owns and students use for educational purposes that are controlled by another person (such as a food or retail vendor). The definition of "controlled" includes all such properties that are leased or borrowed and used for educational purposes. 20 U.S.C. §1092(f)(6)(ii)
2. Non-campus building or property: Any building or property that is owned or controlled by a recognized student organization. And, any building or property that is owned or controlled by the institution that is used in support of its educational purposes but is not located within a reasonably contiguous area to the campus. 20 U.S.C. §1092(f)(6)(iii).
3. Public property: All public property within the reasonably contiguous geographic area of the institution that is adjacent to or accessible from a facility the institution owns or controls and that is used for educational purposes. Examples include sidewalks, streets, and parking facilities. 20 U.S.C. §1092(f)(6)(iv).

There is significant overlap in geography, all campus property owned or controlled by MCCC, but the Clery geography extends considerably on the "edges" of property.

Reporting Responsibilities

Title IX- An *Official with Authority* (OWA) means an employee of the MCCC explicitly vested with the responsibility to implement corrective measures for sexual harassment on behalf of the MCCC. Notice to any official with authority conveys actual knowledge to the institution.

Mandatory Reporters (MR) are those MCCC employees designated as expected to report actual or suspected sexual harassment/discrimination to the Title IX Coordinator.

Clery- Campus Security Authorities (CSA) are individuals specially designated under the Clery Act to facilitate crime reporting in the institution's annual report.

These are discreet groups with specific responsibilities, but there is great overlap. The majority of MRs are also CSAs, which is also true of OWAs and MRs. Because of these layered responsibilities, individuals who are in the position to serve multiple roles for various statutes should be mindful of all of the responsibilities and act accordingly. For example: a dean who is approached by a student who tells the dean of a sexual assault has the responsibility to 1) inform the Title IX Coordinator of the information, and 2) to communicate the crime to the individual/group responsible for compiling the Clery Crime Statistics for their College (at MCCC this is the Police Department).

See also- <https://www.justice.gov/archives/ovw/page/file/910306/download> (note, this was prepared in 2014 and the 2020 changes to the Title IX regulations are not reflected in this document).



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