



Obtaining Information and Sharing Information: Campus Security Authorities under the Clery Act and Mandated Reporters under Title IX

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2020 Title IX Regulations - Responsible Employee



- *New Subpart A: Introduction*
 - 106.8(a) *Designation of ~~responsible employee~~ coordinator*. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part employee must be referred to as the “Title IX Coordinator.”

Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)



Question 14: Which school employees must be notified about allegations of sexual harassment for a school to be put on notice that it must respond?

Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)



In elementary and secondary school settings, a school must respond whenever any school employee has notice of sexual harassment. This includes notice to a teacher, teacher's aide, bus driver, cafeteria worker, counselor, school resource officer, maintenance staff worker, coach, athletic trainer, or any other school employee.

Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)



In postsecondary school settings, notice may be more limited in scope. The institution must respond when notice is received by the Title IX Coordinator or another official who has authority to institute corrective measures on the institution's behalf. The Department is unable to provide examples of types of individuals who have this authority because the determination of whether a person is an official who has authority to institute corrective measures on behalf of the institution depends on facts specific to that institution.

Questions and Answers on the Title IX Regulations on Sexual Harassment (July 2021)



A school “may, at its discretion, expressly designate specific employees as officials with this authority for purposes of Title IX sexual harassment and may inform students of such designations.” The preamble explains that “the Department does not limit the manner in which [a school] may receive notice of sexual harassment.” This means that the employees described above “may receive notice through an oral report of sexual harassment by a complainant or anyone else, a written report, through personal observation, through a newspaper article, through an anonymous report, or through various other means.” The 2020 amendments refer to this notice of sexual harassment as “actual knowledge.”

§106.30 Definitions – Actual Knowledge



“Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient.”

§106.30 Definitions – Actual Knowledge



Title IX
Coordinator



Official
with
authority



Different
K-12
standard



Designation



Not same as
CSAs

§106.44 Recipient's Response



Deliberately Indifferent

Educational Program or Activity

Equitable

Contact Complainant

On-line

What is a Campus Security Authority?



- Although every institution wants its campus community to report criminal incidents to law enforcement, we know that this doesn't always happen.
- Even at institutions with a police department on campus, a student who is the victim of a crime may report it to someone other than the campus police.
- For this reason, the Clery Act requires all institutions to collect crime reports from a variety of individuals and organizations that are considered to be “campus security authorities” under the law.

CSAs: Four Essential Tasks



Identify

Identify individuals and organizations designated by the law to be Campus Security Authorities

Notify

Notify CSAs of their status and the responsibilities conferred upon them by law

Train

Train CSAs to ensure they understand how to carry out their responsibilities when a crime is brought to their attention

Engage

Engage CSAs annually to determine whether any crimes have been brought to their attention and not yet forwarded to the reporting structure of the institution

Campus Security Authorities [34 CFR 668.46(a)]



Identifying CSAs



- Consult the 2016 [Handbook for Campus Safety and Security Reporting](#)
- Engage Human Resource professionals at your institution:
 - Position descriptions (reviewing existing PDs)
 - Tracking CSA status in Employee Information System
 - Notifications as employees are hired or leave
- Engage Departments likely to have a large number of CSAs (Student Activities/Organizations, Athletics, Housing/Residence Life, Campus Police/Public Safety, etc.)
- Annual engagement of deans, departments, directors (meetings and/or emails)
- Consider development of a Clery Liaison program (see: <https://police.illinois.edu/crime-reporting/clery-compliance/clery-liaisons/>)

10/9/20 Recission and Replacement of 2016 Handbook



- “...the Department’s new guidance makes clear that it is up to an institution to identify which individuals are CSAs and it is beyond the Department’s authority to disagree with that *reasonable determination*” [emphasis added]
- BE CAREFUL WITH THIS: “The Department will defer to an institution’s designation of CSAs as authoritative and provide any technical assistance necessary to work with institutions to help ensure proper identification and notification of CSAs consistent with the regulations.”

Importance of Training CSAs (PSU)



“While the Clery Act does not set out training as a separate requirement, identification and training of CSAs and implementing a simple and effective CSA reporting system are necessary conditions precedent for enabling CSAs to fulfill their responsibilities under the Clery Act...

While the Clery Act does not specifically require institutions to provide CSA training, it is virtually impossible to achieve compliance without it.”
(Penn State University Campus Crime Final Program Review Determination, 2016, p. 117-118)

Training CSAs



- “CSAs are to be identified, and then provided processes, policies and procedures that delineate their duties and responsibilities...
- Even though the regulation does not specifically require training of an IHE's CSAs, the institution must be able to provide proof of the processes that it uses to identify and provide instruction to its CSAs in order to ensure that they are able to perform their duties and carry out their responsibilities according to the institution's own processes, policies, and procedures” (Baylor University Final Program Review Determination, 2020, p. 32)

ED Suggested CSA Training Elements



Describe the role of a CSA

Provide reporting materials

- Clery Map, Clery Crimes, & Crime Reporting Form

Discuss the importance of documentation

- Explain that CSA crime reports should include personally identifying information if available. This is important for law enforcement purposes and to avoid double counting crimes. If a victim doesn't want the report to go any further than the CSA, the CSA should explain that he or she is required to submit the report for statistical purposes, but it can be submitted without identifying the victim.

Emphasize the need for timely report submission

- How to submit
- To whom they should submit

What Should a CSA Do?

“For Clery Act purposes, an incident of crime is considered to be reported as soon as relevant information is brought to the attention of a campus police or security entity or a campus security authority.

It is not the responsibility of a crime victim or witness to use any particular words or phrases to describe an incident.

Instead, it is the province of law enforcement or other trained security professionals or CSAs to assist the victim or witness in making an accurate and complete report”

(Penn State Campus Crime Final Program Review Determination, 2016, p. 22).

Importance of CSAs



- “...it is incumbent upon CSAs to obtain as much information as possible when it is made available to them as that report could be [the institution’s] one and only opportunity to obtain all the information concerning a crime or incident the complainant refuses to report it to [the campus police or security department]” (Baylor University Final Program Review Determination, 2020, p. 33).

Questions for Discussion



- What is a “report”?
- What should the receiver of the report do?
- What does the report receiver do if they have responsibilities under both Title IX and the Clery Act?
- What are some models to consider when training responsible officials under Title IX and Clery?
- What are some reporting models/structures to consider for incidents that need to be evaluated for Title IX and Clery Act purposes?
- If guidance/regulations continue to change, particularly with Title IX, what should we do?
- Your Questions?

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