

LEGAL INTERSECTIONS

AN OUTLINE OF FEDERAL LAWS, GUIDELINES, and
CALIFORNIA STATE LAW ON CAMPUS SEXUAL ASSAULT

TITLE IX

CLERY ACT



CALCASA
CALIFORNIA COALITION
AGAINST SEXUAL ASSAULT

CALIFORNIA LAW





ENVISIONING
A WORLD FREE FROM
SEXUAL VIOLENCE.

The mission of the California Coalition Against Sexual Assault (CALCASA) is to provide leadership, vision, and resources to rape crisis centers, individuals, and other entities committed to ending sexual violence.

ACKNOWLEDGEMENTS

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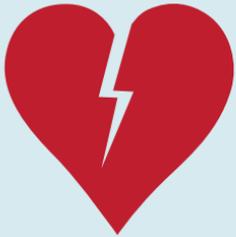
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WHO MUST COMPLY

- **TITLE IX¹**: All schools that receive federal funds (includes elementary, secondary, and postsecondary schools) must comply. Almost all private and public colleges/universities must comply.
- **CLERY ACT²**: All colleges and universities that participate in the federal student aid program must comply. Approximately 7,508 institutions³.
- **CALIFORNIA LAW⁴**: All California colleges and universities that accept state student financial assistance must comply.

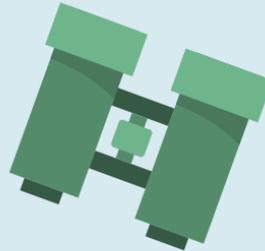
SEXUAL VIOLENCE



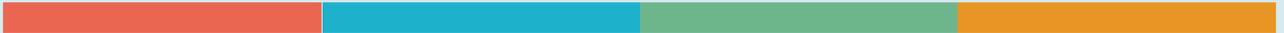
DATING VIOLENCE & DOMESTIC VIOLENCE



STALKING



SEXUAL HARASSMENT



ISSUES COVERED

- **TITLE IX:** Covers discrimination based on sex, including sexual violence⁵. Sexual violence is a form of sexual harassment prohibited under Title IX and can create a hostile environment that schools must take steps to remedy.
- **CLERY ACT:** Covers crimes on and around college and university campuses. Expanded to include sexual violence, dating violence, domestic violence, and stalking.
- **CALIFORNIA LAW:** Covers crimes and discrimination based on sex and sexual violence, domestic violence/dating violence, and stalking.

victim-centered
trauma-informed



takes into account
existence of trauma
and the impact of
the investigation
process on those
who have been
exposed to trauma

POLICY REQUIREMENTS

- **TITLE IX:** Schools must have a procedure for handling complaints of sex discrimination, which includes sexual violence.⁶
- **CLERY ACT:** Colleges and universities must publish an Annual Security Report (often called ASR). Campuses must include the specific procedures they will take in the case of domestic violence, dating violence, sexual assault, and stalking.
- **CALIFORNIA LAW:** Colleges/governing boards must adopt victim-centered policies and protocols to address domestic violence, dating violence, stalking, and sexual violence.

**LOCAL LAW
ENFORCEMENT**



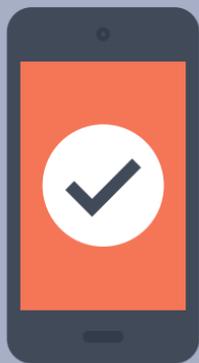
**LOCAL HOSPITAL
OR URGENT CARE**

**RAPE
CRISIS CENTER**



REQUIRED RESPONSE

- **TITLE IX:** Schools must take immediate action. Schools must have a Title IX coordinator.
- **CLERY ACT:** Colleges/universities must have an emergency response, notification, and testing policy. Schools must provide prompt, fair, and impartial investigation and resolution that are conducted by officials receiving annual training on domestic violence, sexual assault, and stalking.⁷
- **CALIFORNIA LAW:** Colleges/governing boards must adopt victim-centered protocols to address domestic violence, dating violence, stalking, and sexual violence.



NOTIFICATIONS

REPORTS



CAMPUS WARNINGS OR NOTICES

- **TITLE IX:** School process must be available and must provide notice of their protocol and name the Title IX coordinator.
- **CLERY ACT:** School process must provide timely warnings for campus threats. Schools must publish crime statistics.
- **CALIFORNIA LAW:** Schools must cross report to local law enforcement agency.



COUNSELORS

SCHOOLS



CONFIDENTIALITY

- **TITLE IX:** Schools designate confidential persons under Title IX (not a required Title IX report, versus those that must make the Title IX report). Local privilege (i.e. state law) protections apply.
- **CLERY ACT:** Professional counselors and pastoral counselors do not have to report. Local privilege (i.e. state law) protections apply.
- **CALIFORNIA LAW:** California state law privilege protections apply to sexual assault and domestic violence counselors as defined in California Evidence Code.



**CAMPUS
POLICE**



**LOCAL LAW
ENFORCEMENT**



LAW ENFORCEMENT INVOLVEMENT

- **TITLE IX:** Law enforcement agency (LEA) may be involved, but school needs own response protocol/investigation independent of LEA investigation and criminal justice process.
- **CLERY ACT:** Campus crime statistics must be published annually, and can be done in coordination with local law enforcement agency (LEA). Schools must have a Memorandum of Understanding (MOU) with LEA.
- **CALIFORNIA LAW:** Campus must immediately cross report to the designated law enforcement agency. To the extent possible, schools must have an MOU with LEA⁸



CRIMINAL JUSTICE SYSTEM



CAMPUS ADJUDICATION SYSTEM

Right to Counsel

There is no right to have an attorney present although under Title IX, if a school permits one party to have lawyers or other advisors at any stage of the proceedings, it must do so equally for both parties.

Burden of Proof: "Beyond a Reasonable Doubt"

Burden of Proof: "Preponderance of the Evidence"

California rape law requires proof of force or violence, or duress, menace or fear of immediate injury.

Affirmative consent or "yes means yes" laws apply to disciplinary proceedings for campus sexual assault in California.

INVESTIGATION & DISCIPLINARY PROCESS

- **TITLE IX:** Schools have an independent responsibility to investigate sexual harassment and sexual violence. Internal/campus specific disciplinary process must be provided. Schools must provide prompt, fair, and impartial investigation and resolution that is conducted by officials receiving annual training on domestic violence, sexual assault, and stalking.⁹
- **CLERY ACT:** Schools must specify the procedures they will take in the case of domestic violence, dating violence, sexual assault, and stalking in ASR. Schools must identify the standard of evidence that will be used in the proceeding.
- **CALIFORNIA LAW:** Internal/campus-specific disciplinary process is required.

preponderance of the evidence standard

- a standard of proof that must be met in civil courts and most campus proceedings.
- a complainant must show that it is more likely than not that a violation occurred.
- lower standard of proof, as compared to criminal cases.

STANDARD OF EVIDENCE IN DISCIPLINARY/SCHOOL PROCEEDINGS

- **TITLE IX:** Preponderance of the evidence standard (it is more likely than not that sexual harassment or violence occurred).¹⁰
- **CLERY ACT:** Not specified, but must be included in ASR policy description.
- **CALIFORNIA LAW:** Preponderance of the evidence standard (it is more likely than not that the elements of the complaint occurred).¹¹

**COMPREHENSIVE
PREVENTION
ACTIVITIES**



**AWARENESS
PROGRAMS**

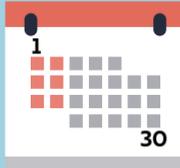


VICTIM RESOURCES

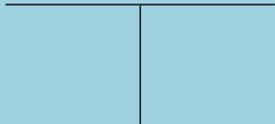


PREVENTION REQUIREMENTS

- **TITLE IX:** Schools should take proactive measures to prevent sexual violence. The US Department of Education, Office of Civil Rights (OCR) recommends all schools implement prevention education programs and make victim resources available.¹²
- **CLERY ACT:** Requires notice of ongoing prevention and awareness programs in ASR. Prevention and education programming is required and must include education programs.¹³
- **CALIFORNIA LAW:** Requires prevention education during new student orientation and encourages comprehensive prevention education and awareness.



ANNUAL TRAINING



TRAINING OF SCHOOL EMPLOYEES REQUIREMENTS

- **TITLE IX:** Requires training for Title IX coordinators and persons involved in Title IX complaints/investigations.¹⁴
- **CLERY ACT:** Requires an annual training for officials conducting investigations. The training on the process must protect the safety of victims and promote accountability.
- **CALIFORNIA LAW:** Requires comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases.¹⁵

RETALIATION



WHISTLEBLOWERS



3RD PARTIES



RETALIATION PROVISIONS

- **TITLE IX:** Retaliation is a cause of action under Title IX. Campus can be liable for retaliation against the victim, witnesses, and whistleblower.¹⁶ This includes retaliation by accused student and 3rd parties.
- **CLERY ACT:** No retaliation is permitted by officer, employee, or agent of institution against victims, whistleblowers, or other 3rd parties.¹⁷ A retaliation claim is a separate violation of the law subject to full penalties, and which may be invoked even if there are no other violations of the Act.¹⁸
- **CALIFORNIA LAW:** None.

**STATE & FEDERAL
DEPARTMENTS OF
EDUCATION**

FEDERAL AID



ENFORCEMENT

- **TITLE IX:** Complaints about school's response are investigated by the US Department of Education's Office of Civil Rights (OCR). The OCR can issue warnings, compliance requirements, fines, and suspend federal aid. Individuals also have a cause of action (ability to sue) against the school for both injunctive (court ordered activities) relief and monetary damages.¹⁹
- **CLERY ACT:** US Department of Education is responsible for enforcing the Clery Act. The Department's Clery Act Compliance Division investigates complaints and can issue warnings, fines, and suspend federal aid.²⁰
- **CALIFORNIA LAW:** California Department of Education can suspend school's access to state funds for student financial assistance for failure to comply with the law.²¹ Guidance on compliance comes from California's Office of the Attorney General.

MEDICAL RECORDS



INTERSECTION WITH FERPA (FAMILY EDUCATIONS RIGHTS AND PRIVACY ACT)

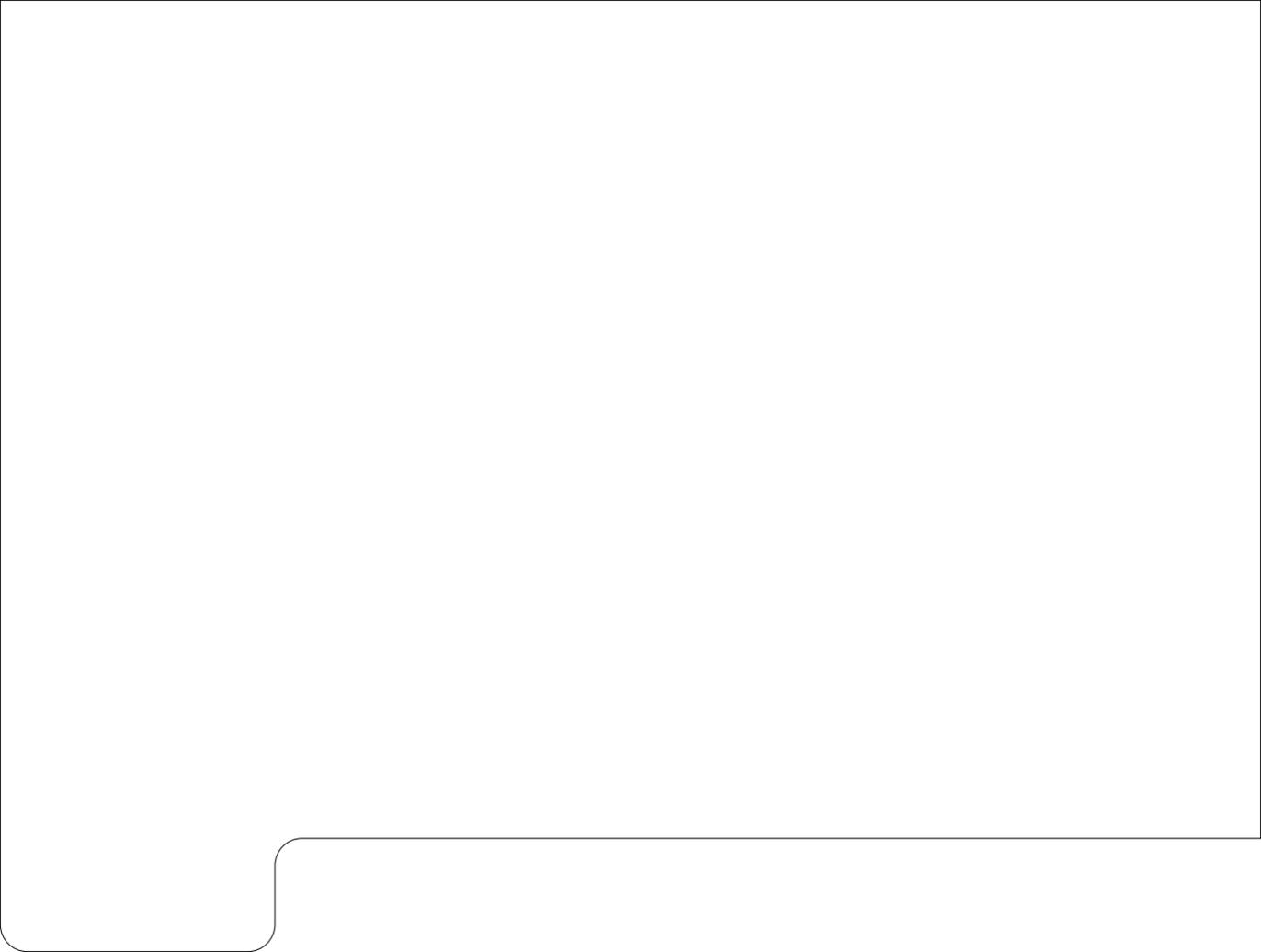
- **TITLE IX:** No conflict between FERPA and Title IX because FERPA allows for disclosure of information that directly relates to the complainant. In case of conflict between FERPA and Title IX, Title IX law overrides.²²
- **CLERY ACT:** Under FERPA, schools can disclose to alleged victims of any crime of violence or rape/sexual assault the final results of any disciplinary proceedings conducted by the institution against the alleged perpetrator of the offense. FERPA limits on re-disclosure do not apply to information released in compliance with Clery Act.²³
- **CALIFORNIA LAW:** No additional notification of outcome requirements.²⁴

NOTIFICATION



NOTIFICATION OF OUTCOME

- **TITLE IX:** Must notify the complainant whether or not it found that the sexual violence occurred, any individual remedies offered or provided, any sanctions imposed on the respondent that directly relate to the complainant, and other steps the school has taken to eliminate the hostile environment and prevent recurrence.²⁵
- **CLERY ACT:** Each institution is required to develop and distribute procedures for simultaneously notifying the accuser and accused of the outcome of institutional disciplinary proceedings.²⁶
- **CALIFORNIA ACT:** None specified.



WORKS CITED

- 1 20 U.S.C. §1681.
- 2 20 USC § 1092.
- 3 Federal Register, Vol. 79, No. 202 (10/20/2014).
- 4 Cal. Educ. Code §§ 67380, 67383, 67386.
- 5 2014 Dear Colleague Letter.
- 6 34 C.F.R. § 106.8(b); • Questions and Answers on Title IX and Sexual Violence (April 29, 2014), available at <http://www.ed.gov/ocr/docs/qa-201404-title-ix.pdf>; • Dear Colleague Letter: Sexual Violence (April 4, 2011), available at <http://www.ed.gov/ocr/letters/colleague-201104.pdf>; • Dear Colleague Letter: Title IX Grievance Procedures, Postsecondary Education (August 4, 2004), available at http://www.ed.gov/ocr/responsibilities_ix_ps.html; • Dear Colleague Letter: Title IX Grievance Procedures, Elementary and Secondary Education (April 26, 2004), available at http://www.ed.gov/ocr/responsibilities_ix.html; and • Revised Sexual Harassment Guidance (January 19, 2001), available at <http://www.ed.gov/ocr/docs/shguide.pdf>.
- 7 Campus SaVE Act.
- 8 See Cal. Educ. Code § 67386(c).
- 9 Questions and Answers on Title IX and Sexual Violence, available at: http://www.google.com/url?sa=t&rc=1&ved=0CB8QFjAA&url=http%3A%2F%2Fwww2.ed.gov%2Fabout%2Foffices%2Flist%2Focr%2Fdocs%2Fqa-201404-title-ix.pdf&ei=XcSWVbyXBsqXsAW54Y64Dw&usg=AFQjCNGNvlsST9mlGinElZzlC3Wau42RnQ&sig2=_bvzf8L1qhYQ_BWUeRMCAA&bvm=bv.96952980,d.b2w.
- 10 Dear Colleague Letter: Sexual Violence (4/4/2011).
- 11 Cal. Educ. Code § 67386(a)(3).
- 12 Dear Colleague Letter: Sexual Violence (4/4/2011).
- 13 20 USC § 1092(f)(8)(B).
- 14 Dear Colleague Letter: Title IX Coordinators (4/24/2015).
- 15 Cal. Educ. Code § 67386(b)(12).
- 16 34 C.F.R. § 106.71 (incorporating by reference 34 C.F.R. § 100.7(e)); and • Dear Colleague Letter: Retaliation (April 2013), available at <http://www.ed.gov/ocr/letters/colleague-201304.pdf>.
- 17 20 USC § 1092(f)(17).
- 18 <http://www.cleryact.info/non-retaliation.html>.
- 19 See <http://knowyourix.org/title-ix/title-ix-in-detail/>.
- 20 See <http://www.cleryact.info/clery-act.html>.
- 21 See Cal. Education Code § 67386 et seq.
- 22 See <https://www.notalone.gov/assets/ferpa-clerychart.pdf>.
- 23 20 U.S.C. §1232g(b)(6).
- 24 34 C.F.R. §99.33(c).
- 25 See <https://www.notalone.gov/assets/ferpa-clerychart.pdf>.
- 26 20 U.S.C. §485f(1)(J)(8)(B)(iv)(III)(aa).

