

## Title IX Training Disclosure and Contact Information

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The Salon Professional Academy (TSPA) is committed to providing an educational environment that is free of sexual discrimination, sexual harassment and sexual violence. While this policy serves as TSPA's commitment to complying with Title IX requirements, it also serves as a call to action to build on the decades of progress and pave the way forward as we strive.

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in any education program or activity that receives federal funding.

Under Title IX, discrimination based on sex includes:

- Excluding, separating, denying benefits to, or otherwise treating a person differently based on gender
- Sexual Harassment
- Sexual violence, which includes sexual assault, relationship violence, and stalking

Title IX protects students, employees, applicants for admission and employment, and other persons from all forms of sex discrimination, including discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity.

In the event of a Title IX complaint, where a Title IX Coordinator, Adjudicator or Investigator must review the complaint through its complaint process, annual trainings are certified and obtained through the following resources for the Title IX Coordinator, adjudicator, investigator and informal resolution officers to ensure that Complainants and Respondents will be treated equally and fairly following the Title IX requirements:

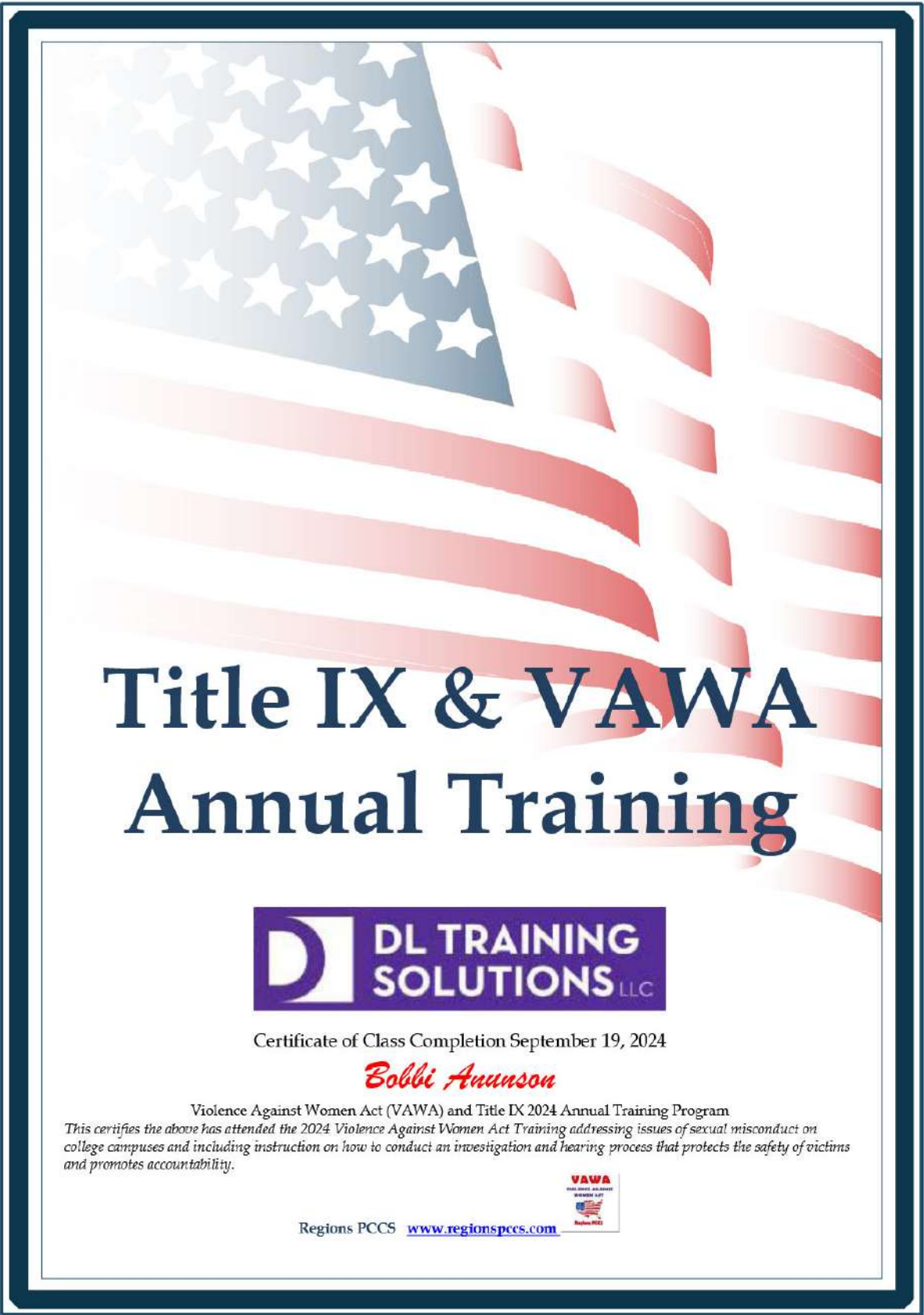
The Compliant/Grievance Policy and Procedure can be found in the Student Handbook or Admissions Office. The Title IX Coordinator may also be contacted at [TitleIXCoordinator@tspaappleton.com](mailto:TitleIXCoordinator@tspaappleton.com)

DL Training Solutions at <http://www.delucalawllc.com/training.html> on Title IX Regulations, OCR's Title IX Guidance, Title IX Dear Colleague Letter, Violence Against Women Act, New Interim Guidance on Campus Sexual Misconduct and Title IX Challenges for Trade & Career Schools. Addressing issues of sexual misconduct on college campuses and including instruction on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

Certificate of Class Completion was obtained. "Title IX & Clery Act Annual Training"

The training was held online with opportunities to interact and ask questions. Slides and certificate are attached.

The sexual harassment and full campus security / annual security report may be obtained in the Admissions Office at The Salon Professional Academy.



# Title IX & Clery Act Annual Training

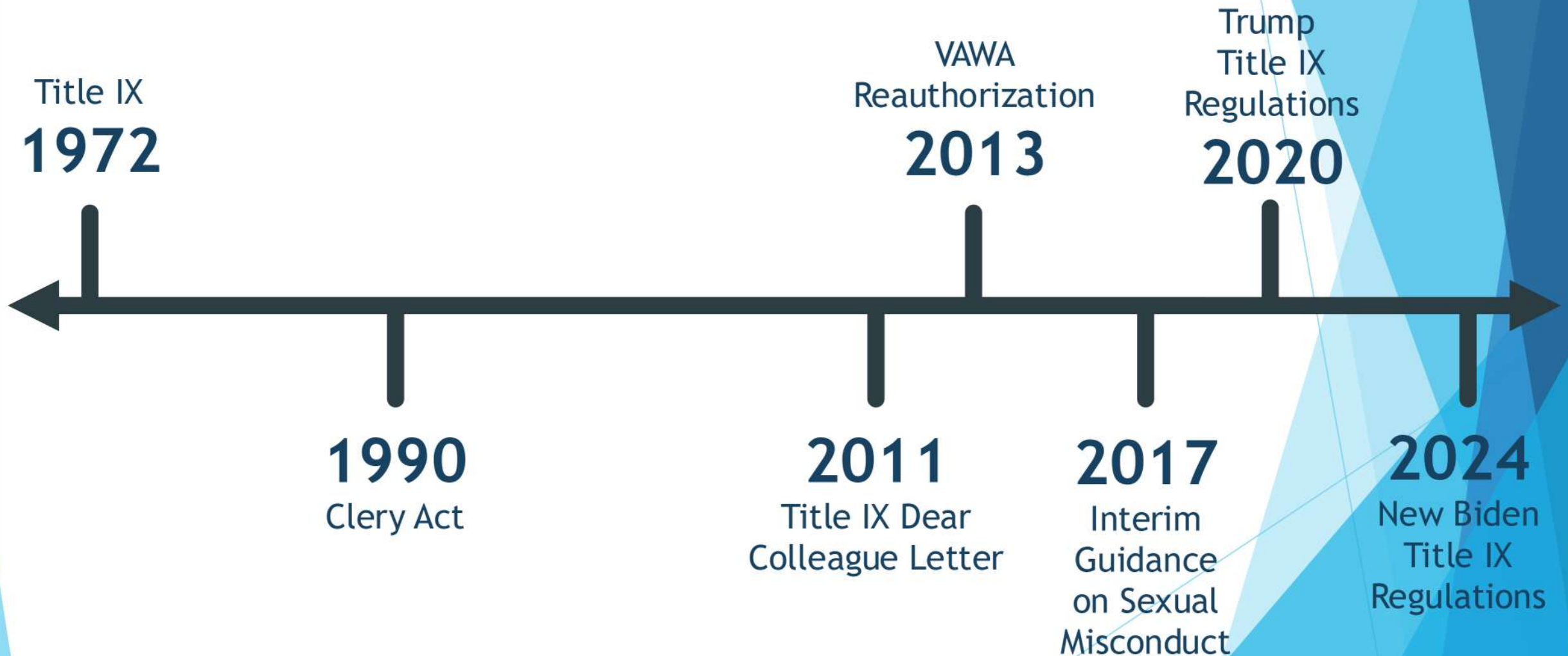
**Christopher DeLuca, J.D.**  
**DL Training Solutions LLC**

September 19, 2024

# Disclaimer

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# Title IX - Clery Act Timeline





# Title IX of the Education Amendments of 1972

Prohibits sex discrimination in education programs that receive federal funding.

- ▶ Sexual harassment, including sexual assault, is a type of sex discrimination that is banned by Title IX.

# Clery Act of 1990

Every institution must:

- ▶ **Collect, classify, and count crime reports and crime statistics.**
- ▶ Issue a **timely warning** for any *Clery Act* crime that represents an ongoing threat to the safety of students or employees.
- ▶ Issue an **emergency notification** upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.
- ▶ **Publish an annual security report** containing safety- and security-related policy statements and crime statistics and distribute it to all current students and employees. Schools also must inform prospective students and employees about the availability of the report.
- ▶ **Submit crime statistics to ED.** Each year in the fall schools must participate in a Web-based data collection to disclose crime statistics by type, location, and year.
- ▶ ED can issue civil **finest of up to \$69,733 per violation** for a substantial misrepresentation of the number, location, or nature of the crimes required to be reported or for a violation of any other provision of the safety- and security-related *HEA* regulations.

# 2001 OCR Title IX Guidance

Provides the principles that a school should use to recognize and effectively respond to sexual harassment of students in its program as a condition of receiving federal financial assistance.

- ▶ Describes the regulatory basis for a school's compliance responsibilities under Title IX
- ▶ Outlines the circumstances under which sexual harassment may constitute discrimination prohibited by the statute and regulations
- ▶ Provides information about actions that schools should take to prevent sexual harassment or to address it effectively if it does occur

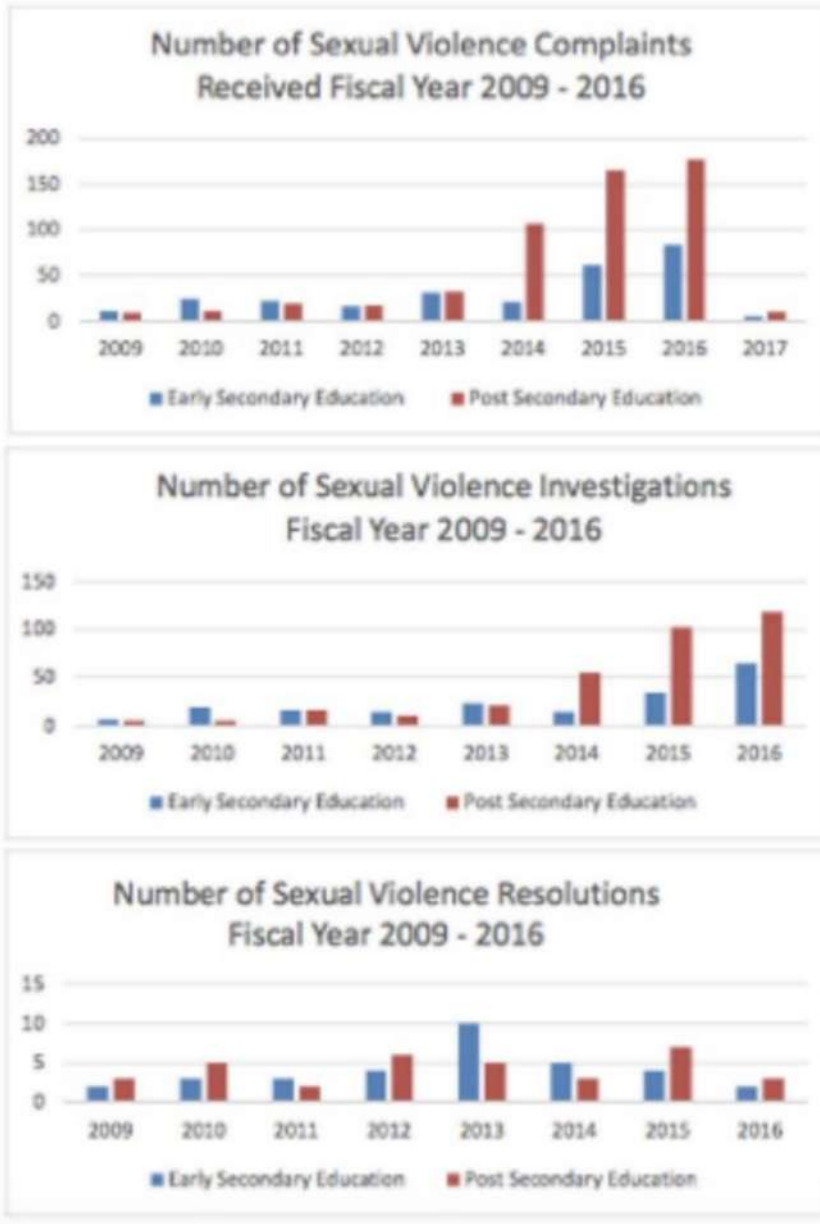


# 2011 Dear Colleague Letter

- ▶ Was deemed a “significant guidance document” by ED
- ▶ Detailed schools’ obligations and the appropriate response to sexual harassment and violence
- ▶ Guidance was repealed by Trump Administration in September 2017

## Appendix D: Number of Title IX Complaints, Investigations, and Resolutions 2009-2016

Source: Department of Education, Office for Civil Rights



“The Second Report of the White House Task Force to Protect Students from Sexual Assault,” January 5, 2017, (originally retrieved from <https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Documents/1.4.17.VAW%20Event.TF%20Report.PDF> [January 18, 2017])

Retrieved from: <http://www.changingourcampus.org/resources/not-alone/Second-Report-VAW-Event-TF-Report.PDF> (June 20, 2022)

# Violence Against Women Reauthorization Act (2013)

Amended the definition of “sexual assault” under the Clery Act and added three new crimes for Clery crime reporting purposes:

- ▶ domestic violence
- ▶ dating violence
- ▶ stalking

# Violence Against Women Reauthorization Act (2013)

Updated requirements for school's Annual Security Reports. The ASR must include:

- ▶ the school's ***education programs*** to promote awareness of sexual misconduct;
- ▶ Possible ***sanctions*** schools may impose regarding sexual misconduct;
- ▶ ***Procedures that victims should*** follow if an incident of sexual misconduct has occurred;
- ▶ The school's procedures for conducting a ***disciplinary proceeding*** in cases of alleged sexual misconduct;



# 2014 White House Task Force - First Report Findings:

- ▶ One in five women is sexually assaulted in college
- ▶ Most often by someone she knows
- ▶ Most often not reported
- ▶ Many survivors feel isolated, ashamed, or to blame
- ▶ Although less often, men also victims

Source: Not Alone, The First Report of the White House Task Force to Protect Students From Sexual Assault, April, 2014, accessed June 20, 2022, <https://www.justice.gov/ovw/page/file/905942/download>

# BJS 2016 Campus Climate Survey

- ▶ The Bureau of Justice Statistics developed a pilot campus climate survey to address key Task Force goals and issues related to the measurement of rape and sexual assault in self-report surveys.
- ▶ Completed surveys were collected from more than 23,000 undergraduate students at nine schools
  - ▶ Data collection occurred March through May 2015
- ▶ The overall prevalence rate for completed sexual assault experienced by undergraduate females, averaged across the nine schools, was 10.3%

”Campus Climate Survey Validation Study Final Technical Report,” (January 2016). Bureau of Justice Statistics, accessed January 21, 2016  
(<http://www.bjs.gov/content/pub/pdf/ccsvsftr.pdf>)

# Challenges - Non-Traditional Higher Education

Title IX & the Clery Act/VAWA requirements present particular challenges to postsecondary trade and career schools.

- ▶ These schools typically do not have on-campus police or dedicated security forces.
- ▶ The Title IX coordinator at these schools is often the director or another administrator whose primary job functions pertain to school operations.
- ▶ Given the size of the student body, lack of residential student housing, and limited school-sponsored extracurricular activities, incidents of sexual misconduct may be infrequent at these types of institutes.



# Challenges - Non-Traditional Higher Education

Commenters have noted the significant compliance burden that the regulations place on small institutions.

- ▶ For example, commenters have referenced the requirement for institutional disciplinary proceedings in the case of alleged sexual harassment (including dating violence, domestic violence, sexual assault, or stalking under VAWA).
- ▶ In response, the Department has noted that institutions are not making determinations of criminal responsibility but are determining whether the institution's own rules have been violated.
- ▶ The Department further noted that students at smaller institutions should have the same protections as their counterparts at larger institutions.



# Challenges in Creating Title IX Regulations

*Then-U.S. Secretary of Education Betsy DeVos' Press Release on May 6, 2020, upon the publication of the Trump Administration's Title IX Regulations:*

*“This new regulation requires schools to act in meaningful ways to support survivors of sexual misconduct, without sacrificing important safeguards to ensure a fair and transparent process. We can and must continue to fight sexual misconduct in our nation's schools, and this rule makes certain that fight continues.”*

# A little background on the New Rules ...

- ▶ **August 2020** - Title IX Regulations promulgated under the Trump Administration became effective
- ▶ **April 2021:** U.S Department of Education Office for Civil Rights (OCR) undertook a comprehensive review of the Department's existing regulations, orders, guidance, policies, and any other similar agency actions, including the 2020 Rules
  - ▶ Public hearings held June 7 to 11, 2021 (ED received over 30,000 written comments)
- ▶ **July 12, 2022 - ED released NPRM.**
  - ▶ **240,085** public comments received by ED
    - ▶ 2020 Title IX regulations - Over 140,000 public comments
  - ▶ ED originally said final regulations may be published in May 2023
- ▶ **FINAL REGULATIONS PUBLISHED APRIL 19, 2024 (effective date August 1, 2024)**

# New Title IX Rule Released 4/19/24

- ▶ The unofficial version of the final regulations is available [here](#) (1,577 pages)
- ▶ In addition, the Department has released:
  - ▶ a [fact sheet](#),
  - ▶ a [summary](#) of the major provisions of the final regulations, and
  - ▶ a [resource](#) for drafting Title IX policies & procedures
- ▶ Official version published in the Federal Register on April 29, 2024
  - ▶ Official version available [here](#)

*Effective Date 8/1/24*

# General Response to Sexual Harassment (2020 Rules)

A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent.

- ▶ A recipient is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances



# General Response to Sexual Harassment (2024 Rules)

A recipient with knowledge of conduct that reasonably may constitute sex discrimination in its education program or activity must respond promptly and effectively

# Legal Challenges to New Title IX Rules

- ▶ There are injunctions in 26 states blocking ED's enforcement of the new Title IX rules
  - ▶ Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, & Wyoming
  - ▶ Injunction also applies to any school attended by a member of Young America's Foundation, Female Athletes United, & Moms for Liberty
- ▶ Most vocal challenges have been to new rules on sexual orientation and gender identity, but also challenging the definition of sex-based harassment and procedural safeguards for accused students.
- ▶ NOTE: Federal district courts have upheld legal challenges to 2020 Title IX regulations, with minor modification

# Legal Challenges to New Title IX Rules

## ED Statement regarding the New Rules:

*As of July 31, 2024, pursuant to Federal court orders, the Department is currently enjoined from enforcing the 2024 Final Rule in the states of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming; the Department is also currently enjoined from enforcing the 2024 Final Rule at the schools on the list located at <https://www2.ed.gov/about/offices/list/ocr/docs/list-of-schools-enjoined-from-2024-t9-rule.pdf>. Per Court order, this list of schools may be supplemented in the future. The Final Rule and these resources do not currently apply in those states and schools. Pending further court orders, the Department's Title IX Regulations, as amended in 2020 (2020 Title IX Final Rule) remain in effect in those states and schools.*



# Legal Challenges to New Title IX Rules

- ▶ While 26 states have challenged the new Title IX regulations, other states are supporting the new rules
- ▶ ED appealed injunction rulings to the US Supreme Court
  - ▶ Argued that even if injunction related to sexual orientation and sexual identity provisions allowed to stand, the rest of the regulations should be allowed to go into effect
  - ▶ Supreme Court in 5-4 ruling upheld the injunctions
- ▶ Where does this leave schools now?
  - ▶ Today we have two sets of rules depending on school's location
    - ▶ And whether school has any students who are a member of Young America's Foundation, Female Athletes United, or Moms for Liberty
  - ▶ Will one of the courts issue a nationwide injunction?
  - ▶ Will ED voluntarily choose to defer effective date until court issues resolved?



# Clery Act Basics

# Clery Act Requirements - The Basics

Clery Act Requirements – The Basics	
<ul style="list-style-type: none"><li>• Collect, classify, and count crime reports and statistics</li></ul>	
<ul style="list-style-type: none"><li>• Issue campus alerts and warning notices</li></ul>	<ul style="list-style-type: none"><li>• Publish an Annual Security Report (Due date: October 1)</li></ul>
<ul style="list-style-type: none"><li>• Disclose missing student notification procedures, when applicable</li></ul>	<ul style="list-style-type: none"><li>• Submit crime and fire statistics to the Department, when applicable</li></ul>
<ul style="list-style-type: none"><li>• Disclose procedures for institutional disciplinary actions</li></ul>	<ul style="list-style-type: none"><li>• Provide educational programs and campaigns</li></ul>
<ul style="list-style-type: none"><li>• Keep a daily crime log, when applicable</li></ul>	<ul style="list-style-type: none"><li>• Disclose fire safety information, when applicable</li></ul>

Clery Act Appendix for FSA Handbook, p. 1

# Clery Crimes

## **Criminal Offense**

- ▶ Murder/Non-negligent manslaughter
- ▶ Negligent manslaughter
- ▶ Rape
- ▶ Fondling
- ▶ Incest
- ▶ Statutory Rape
- ▶ Robbery
- ▶ Aggravated assault
- ▶ Burglary
- ▶ Motor vehicle theft
- ▶ Arson

## **VAWA Offenses**

- ▶ Domestic Violence
- ▶ Dating Violence
- ▶ Stalking

## **Arrests & Disciplinary Actions**

- ▶ Weapons
- ▶ Drug abuse violations
- ▶ Liquor law violations

## **Hate Crimes**

## The tools you need for Campus Safety and Security analysis

### Get Data for One School

Search for a school to view general information and the past three years of safety- and security-related statistical data for the entire school or by campus.

### Compare Data for Multiple Schools

Select up to four schools to see a side-by-side comparison of aggregated data for the most recent year, along with an option to view the number per 1000 students.

### Download Custom Data

Select the safety- and security-related statistical data you are interested in for one or more years and download data for a customized group of schools.

### Generate Trend Data

Select a subject area and a question that you are interested in, and then see the answer for a selected year, build a table, and see a graph that shows the trend over time. You can customize your results by various institutional characteristics such as public or private, 2-year or 4-year, or state.

### Download Data

Download the complete data file for all institutions from a single data collection. Files will include all data submitted by all institutions in the selected survey year.

## What is the Campus Safety and Security Data Analysis Cutting Tool?

The Campus Safety and Security Data Analysis Cutting Tool is brought to you by the Office of Postsecondary Education of the U.S. Department of Education. This analysis cutting tool was designed to provide rapid customized reports for public inquiries relating to campus crime and fire data. The data are drawn from the OPE Campus Safety and Security Statistics website database to which crime statistics and fire statistics (as of the 2010 data collection) are submitted annually, via a web-based data collection, by all postsecondary institutions that receive Title IV funding (i.e., those that participate in federal student aid programs). This data collection is required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and the Higher Education Opportunity Act.

<https://ope.ed.gov/campussafety/#/>



# Clery Reporting

The background of the slide features abstract geometric shapes in various shades of blue. On the right side, there are large, overlapping triangles and polygons in light blue, medium blue, and dark blue. A thin, light blue line extends diagonally from the bottom left towards the center. On the far left, a small portion of a light blue triangle is visible.

# Clery Geography

You must disclose statistics for reported Clery crimes that occur:

- ▶ on campus
- ▶ on public property within or immediately adjacent to the campus, and
- ▶ in or on noncampus buildings or property that your institution owns or controls

# Clery Geography: On-Campus

Under Clery, the **on-campus** category encompasses the following:

- ▶ Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and
- ▶ Any building or property that is within or reasonably contiguous to the property described above, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or retail vendor).

For Clery reporting purposes, your campus includes buildings and properties that meet all of the following criteria:

- ▶ Your institution owns or controls them;
- ▶ They are reasonably contiguous to one another; and
- ▶ They directly support or relate to the institution's educational purposes

# Clery Geography: On-Campus

## **Institutions that lease space in strip malls:**

- ▶ Your campus consists of any space within the strip mall that is covered by your written agreement.
- ▶ If the lease includes use of the parking lot, or selected spaces in the lot, include the lot (or selected spaces) as part of your campus.
- ▶ If your students need to use stairwells or elevators or hallways to access the space your institution controls, include them as part of your campus as well.
- ▶ Do not include any of the strip mall's stores, restaurants, offices, etc., in your on-campus category because your institution doesn't control them.



# Clery Geography: Public Property

- ▶ *All public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes."*
- ▶ In order for this definition to apply, the property in question must satisfy all three conditions: 1) public (e.g., publicly-owned); 2) within or adjacent to campus; and 3) accessible from campus.
- ▶ This definition excludes any private property, and may in some cases exclude areas such as property divided by a fence or wall, or property with clearly posted signs indicating that it is not part of the campus or that trespassing is prohibited.
- ▶ The Department applies no specific measurable distance definition into adjacent public property.

# Clery Geography: Noncampus

- ▶ The Clery definition of **noncampus buildings or property** is:
  - ▶ any building or property owned or controlled by a student organization that is officially recognized by the institution; or
  - ▶ any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.
- ▶ The noncampus category encompasses two distinct types of buildings and property:
  - ▶ those owned or controlled by officially recognized student organizations, and
  - ▶ those located off campus but owned or controlled by your institution.

# Space versus Program Agreements

Perhaps your institution sends students to an off-campus site for internships, externships, clinical training, or student teacher.

- ▶ If you own or control the site or any space within the site, include the site or the specified space in your non-campus category.
- ▶ If you do not own or control the space, don't include it.
- ▶ If you have an agreement, even a written agreement, to send your students to a location for one of the aforementioned reasons, but that written agreement is for the program rather than for the use of the physical space, you do not have control of the location and do not have to include statistics for crimes that occur there.

U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting, 2016 Edition, Washington, D.C., 2016, p. 2-21. **NOTE: THIS HANDBOOK GUIDANCE HAS BEEN RESCINDED AS OF OCTOBER 9, 2020.**



# Space versus Program Agreements

For example:

If you have a written agreement to send students to a privately owned hospital for clinical training, but you don't have a written agreement for use of the hospital or any space within the hospital, you do not have to include statistics for the crimes that occur there.

- ▶ However, if you rent classroom space for students within the same hospital, you are required to include crime statistics for that space, as well as for any other areas, such as lobby or hallways and elevators used to access that space for the period of time specified in the agreement.

U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting, 2016 Edition, Washington, D.C., 2016, p. 2-21. **NOTE: THIS HANDBOOK GUIDANCE HAS BEEN RESCINDED AS OF OCTOBER 9, 2020.**



# Definition of Sexual Harassment

The background of the slide features abstract, overlapping geometric shapes in various shades of blue, ranging from light sky blue to deep navy blue. These shapes are primarily located on the right side and bottom of the frame, creating a modern, dynamic aesthetic.

# Common Elements of 2020 & 2024 Rules

## Definition of Sexual Harassment

### Definition of sex-based harassment includes:

- ▶ Quid Pro Quo harassment (*no change from 2020 Rules*)
- ▶ VAWA Offenses (*no change from 2020 Rules*)
  - ▶ Domestic Violence
  - ▶ Dating Violence
  - ▶ Sexual Assault
  - ▶ Stalking

# 2024 Title IX Rules - Definition of Sexual Harassment

- ▶ **Hostile environment harassment**

- ▶ **Hostile Environment**: unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity

# 2024 Title IX Rules

## Hostile Environment

- ▶ Regulations apply to every recipient and to all sex discrimination occurring under a recipient's education program or activity in the United States. This includes:
  - ▶ Conduct that occurs in a building owned or controlled by approved student organization
  - ▶ Conduct subject to recipient's disciplinary authority

A recipient has an obligation to address a sex-based **hostile environment** under its education program or activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's education program or activity or outside the United States.



# 2024 Title IX Rules

## Hostile Environment

### Factors in considering whether a Hostile Environment exists:

- i. The degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- ii. The type, frequency, and duration of the conduct;
- iii. The parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- iv. The location of the conduct and the context in which the conduct occurred; and
- v. Other sex-based harassment in the recipient's education program or activity

# 2020 Title IX Rules - Definition of Sexual Harassment

2020 Title IX Regulations §106.30 Definitions. ***Sexual harassment*** includes:

*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*

*Note: 2024 Rules use the standard of "limits or denies"*

# 2020 Title IX Rules

## Equal Access to Program or Activity

- ▶ Does not require showing that a complainant dropped out of school, failed a class, had a panic attack, or otherwise reached a “breaking point” in order to report and receive a recipient’s supportive response to sexual harassment.
- ▶ Evaluating whether a reasonable person in the complainant’s position would deem the alleged harassment to deny a person “equal access” to education protects complainants against school officials inappropriately judging how a complainant has reacted to the sexual harassment.

# 2020 Title IX Rules

## Equal Access to Program or Activity

2020 Rules do not require complete exclusion from an education, but rather denial of “equal” access.

Signs of enduring unequal educational access due to severe, pervasive, and objectively offensive sexual harassment may include:

- ▶ skipping class to avoid a harasser,
- ▶ a decline in a student’s grade point average, or
- ▶ having difficulty concentrating in class;

No concrete injury is required to conclude that serious harassment would deprive a reasonable person in the complainant’s position of the ability to access the recipient’s education program or activity on an equal basis with persons who are not suffering such harassment.



# Identifying and Reporting Sexual Misconduct

# Domestic Violence

The term "domestic violence" includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who—

- A. is a current or former spouse or intimate partner of the victim, or person similarly situated to a spouse of the victim;
- B. is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- C. shares a child in common with the victim; or
- D. commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

*34 USC §12291(a)(12)*

### Examples of Domestic Violence

**Scenario 1:** A student's wife is waiting for her husband outside of his on-campus classroom building. She attacks her husband with a knife when he exits the building. Include this as one on-campus incident of Domestic Violence and one on-campus Aggravated Assault.

**Scenario 2:** A neighbor reports yelling in the apartment next door in a university housing complex. The officer who arrives at the apartment finds a husband and wife having an argument. Neither party reports any physical injuries and neither party reports being intimidated. Do not include this incident in your *Clery Act* statistics.

**Scenario 3:** An employee reports to the campus police that her ex-husband has physically assaulted her four times. All four assaults occurred at the employee's private residence; however, he has also recently showed up in the noncampus parking lot outside her office and threatened to hurt her. Include one noncampus Domestic Violence incident for the Intimidation that occurred in the noncampus parking lot. Do not include the Aggravated Assaults in your *Clery Act* statistics because they did not occur on *Clery Act* geography. Do not include the Intimidation as a Hate Crime in your *Clery Act* statistics because there was no evidence that it was motivated by bias. Also include one incident of noncampus Stalking (Stalking is discussed below).

**Scenario 4:** A father argues with his son at a football game in the on-campus stadium. He eventually hits his son, breaking his jaw. Include this as one on-campus incident of Domestic Violence and one Aggravated Assault.

U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting, 2016 Edition, Washington, D.C., 2016, p 3-38.  
NOTE: THIS HANDBOOK GUIDANCE HAS BEEN RESCINDED AS OF OCTOBER 9, 2020



# Dating Violence

The term "dating violence" means violence committed by a person—

- A. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- B. where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - i. The length of the relationship.
  - ii. The type of relationship.
  - iii. The frequency of interaction between the persons involved in the relationship.

34 USC §12291(a)(11)



### **Examples of Dating Violence**

**Scenario 1:** A female student cuts her ex-boyfriend with a knife during an altercation in an on-campus dining hall. Include this as one incident of on-campus Dating Violence and one on-campus Aggravated Assault.

**Scenario 2:** A female student reports that her boyfriend forced her into nonconsensual sex in her on-campus dorm room. Include one Rape in both the on-campus category and the on-campus student housing facility category, and one incident of Dating Violence in both the on-campus category and the on-campus student housing facility category.

**Scenario 3:** After a party on campus, John walked back to his apartment in a noncampus housing complex with Matt, whom he has hooked up with a few times over the past month. When they reached John's apartment, it became clear that Matt was angry that John had been talking with other men at the party, causing Matt to punch two holes in the wall and threaten to beat John if he sees him flirting with any other men on campus. John now fears for his safety around Matt. Include one incident of noncampus Dating Violence for the threat of physical abuse.

**Scenario 4:** A dating couple is arguing on a public sidewalk in front of a campus building. The male slaps the female and her face is red. Include this as one public property incident of Dating Violence.

U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting, 2016 Edition, Washington, D.C., 2016, p 3-38.  
NOTE: THIS HANDBOOK GUIDANCE HAS BEEN RESCINDED AS OF OCTOBER 9, 2020

# Sexual Assault

The term "sexual assault" means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

*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***.

*Sex Offenses* - any sexual act directed against another person, ***without the consent of the victim***, including instances where the victim is incapable of giving consent.

- A. *Fondling* - The touching of the private body 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.
- B. *Incest* - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- C. *Statutory Rape* - Sexual intercourse with a person who is under the statutory age of consent

34 USC §12291(a)(35); 34 CFR 668.46



### Examples of Sexual Assault

**Scenario 1:** A female student reports that she was raped by an unidentified male while jogging along a campus trail. Include this as one on-campus Rape.

**Scenario 2:** A female student reports that her ex-boyfriend had sex with her in her campus residence hall room while she was unconscious after a night of drinking alcohol. Include this as one Rape in the on-campus category and one Rape in the on-campus student housing facility category. Also include one incident of Dating Violence in both the on-campus and on-campus student housing facility categories (Dating Violence is discussed on pages 3-36 and 3-37).

**Scenario 3:** A male student reports that another male student fondled him in a campus building while telling him that he was glad they could finally be alone. Include this as one on-campus Fondling.

**Scenario 4:** A female student reports to the campus police that she was raped in her car in a parking lot on her school's campus by students from another college. Include this as one on-campus Rape.

**Scenario 5:** Three female students report that they were each raped by five male students at an off-campus fraternity house owned by a recognized fraternity. Each male raped each of the female students. Include this as three noncampus Rapes.

**Scenario 6:** A female student reports that an unknown male attempted to rape her on a city-owned sidewalk outside a classroom building on campus, but that he was frightened away by another pedestrian before completing the attack. Include this as one public property Rape.

**Scenario 7:** A woman is walking on a public sidewalk in front of your campus and a man pinches her buttocks as he runs by her. Include this as one public property Fondling only if the victim reports that it was sexual in nature.

**Scenario 8:** A female student reports that she has been raped three times since January by someone who lives in the same on-campus student housing facility. All three of the sexual assaults occurred in this housing facility. Include this as three Rapes in both the on-campus category and on-campus student housing facility category.

**Scenario 9:** A 21-year-old student has sex with a 15-year-old juvenile in the student's on-campus apartment. There is no use of force or threat of force (the statutory age of consent is 16). Include this as one Statutory Rape in the on-campus category and one Statutory Rape in the on-campus student housing facility category.

**Scenario 10:** Campus police respond to a call from the dean reporting that an unknown man exposed himself to a group of female students on campus. Do not include this incident in your *Clery Act* statistics as it is not a *Clery Act* crime.

U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting, 2016 Edition, Washington, D.C., 2016, p. 3-8.  
**NOTE: THIS HANDBOOK GUIDANCE HAS BEEN RESCINDED AS OF OCTOBER 9, 2020.**

# Consent

In both VAWA & the Title IX final regulations, the Department of Education considered and ***chose not*** to define consent.

- ▶ At minimum, the definition should recognize that:
  - ▶ consent is a voluntary agreement to engage in sexual activity;
  - ▶ someone who is incapacitated cannot consent;
  - ▶ past consent does not imply future consent;
- ▶ silence or an absence of resistance does not imply consent;
- ▶ consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
- ▶ consent can be withdrawn at any time; and
- ▶ coercion, force, or threat of either invalidates consent.



# Affirmative Consent

- ▶ “Affirmative consent” is defined as an affirmative, conscious, and voluntary agreement to engage in sexual activity.
  - ▶ Neither the lack of protest or resistance nor silence constitutes consent, and consent may be withdrawn at any time.
  - ▶ Affirmative consent must be given by all parties to sexual activity.
- ▶ Often referred to as “Yes Means Yes”

# Example of Affirmative Consent Standard

N.Y. Education Law Sec. 6441. AFFIRMATIVE CONSENT TO SEXUAL ACTIVITY. Every institution shall adopt the following definition of affirmative consent as part of its code of conduct:

- ▶ Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity.
- ▶ Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.
- ▶ Silence or lack of resistance, in and of itself, does not demonstrate consent.

# Affirmative Consent

- ▶ Under VAWA & Title IX, schools have option to adopt an affirmative consent standard to determine whether a student has given consent to sexual activity.
  - ▶ BUT: If state law requires affirmative consent, then school must comply with state law standards
- ▶ The affirmative consent standard is distinguishable from the standards applicable to criminal proceedings in certain ways.
  - ▶ First, the affirmative consent standard does not apply in the criminal context.
  - ▶ A criminal trier of fact may consider whether an individual affirmatively consented, but that alone is not determinative of whether the activity was consensual.
  - ▶ Other evidence of consent or lack of consent, such as body language or silence, may also be considered in the analysis of whether a crime occurred.
  - ▶ Under the affirmative consent law, the question of whether a victim affirmatively consented is by itself determinative of whether wrongdoing occurred.