



Pepper Hamilton LLP
Attorneys at Law

THE CLERY ACT AND TITLE IX: PRACTICAL CONSIDERATIONS FOR COORDINATION AND INTEGRATION

Gina Maisto Smith & Leslie M. Gomez,
Pepper Hamilton LLP

Alison Kiss, Clery Center

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TODAY'S PRESENTERS



LESLIE GOMEZ is a partner with Pepper Hamilton LLP.



ALISON KISS is the Executive Director at the Clery Center.



GINA MAISTO SMITH is a partner with Pepper Hamilton LLP.

THE CLERY CENTER



THE CLERY CENTER: MISSION & VALUES

Mission Statement

Working together with college & university communities to create safer campuses

Values & Distinguishing Characteristics

- We honor our organization's history by leading with mind and heart.
- We are collaborative & pursue strong partnerships that are based on joint success and open, constructive communication.
- We believe that prevention is critical to campus safety.
- We are persistent, action-oriented, and deliver results that have real impact.

THE CLERY CENTER: PROGRAMS & INITIATIVES



- ▶ Clery Center Collaborative Program
- ▶ National Campus Safety Awareness Month
- ▶ Advocacy
- ▶ Policy
- ▶ Jeanne Clery Act Training Seminars



NCSAM

National Campus Safety
Awareness Month 2016

Moving Forward Together

PROFESSIONAL DEVELOPMENT

We're all learning.

Throughout NCSAM, access the resources you need to make a difference in your community.

Connect with us.

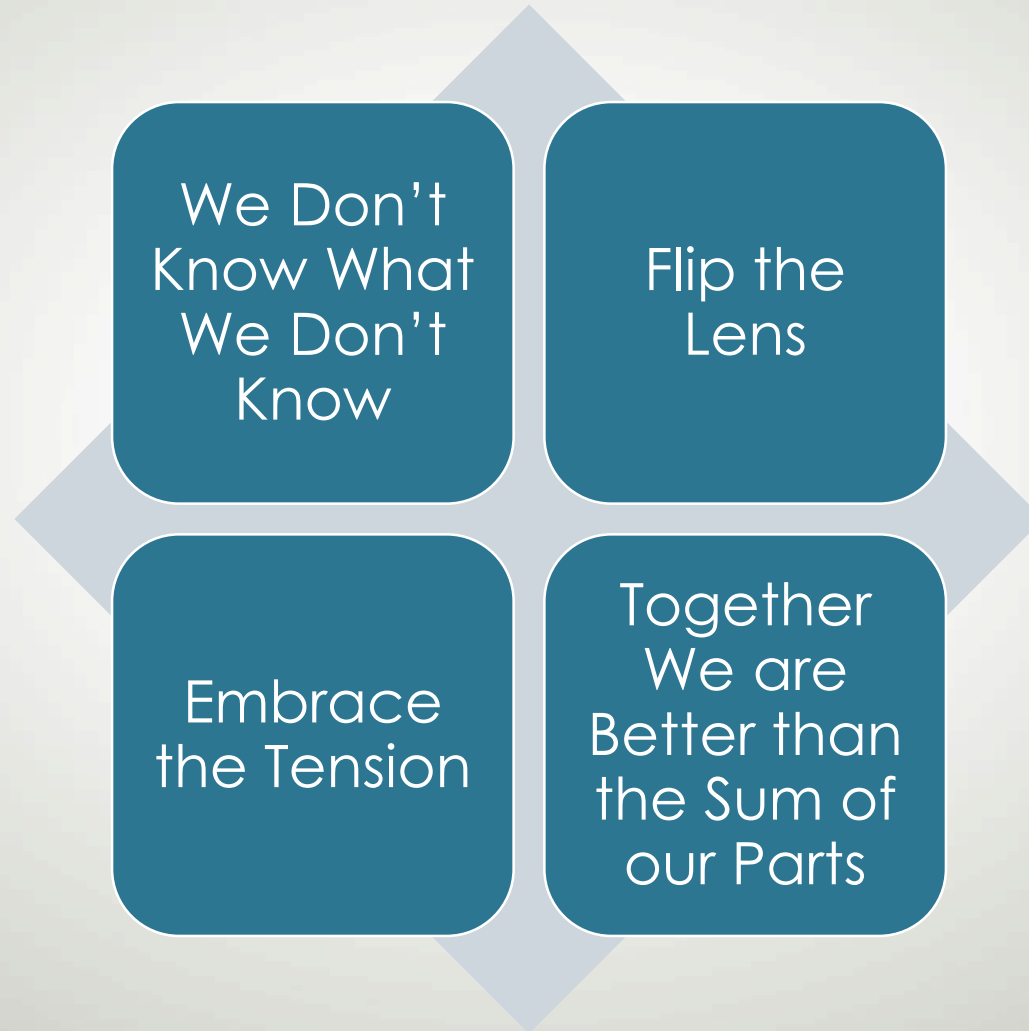
<http://clerycenter.org/article/national-campus-safety-awareness-month-2016>

@clerycenter

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FRAMING THE CONVERSATION



FEDERAL REGULATORY FRAMEWORK



Title IX

Clery

VAWA

Title IX of the Education Amendments of 1972

- Prohibits sex discrimination in educational institutions that receive federal funds

The Jeanne Clery Act (1990)

- Requires reporting of crimes, timely warnings, education/prevention programs, and policies and procedures

The Violence Against Women Reauthorization Act of 2013 Amendments to Clery

- Amends Clery to expand sexual assault requirements and include dating violence, domestic violence, and stalking; applies to all students and employees

INTERSECTIONS: SCOPE

Clery

- ▶ Sexual assault
- ▶ Dating violence
- ▶ Domestic violence
- ▶ Stalking
- ▶ Other Clery crimes
- ▶ On Clery geography

Title IX

- ▶ Sex discrimination
- ▶ Sexual and gender-based harassment
- ▶ Sexual violence
- ▶ Scope
 - ▶ On campus
 - ▶ In the context of any school program or activity
 - ▶ Continuing effects on campus
 - ▶ Consistent with other school policy

INTERSECTIONS: KEY DISTINCTIONS

- ▶ Definitions are not consistent
- ▶ Procedural requirements differ
 - ▶ Burden of proof
 - ▶ Written notice of rights
 - ▶ Advisor of choice
 - ▶ Equal and timely access to all information that will be used
 - ▶ Notice of outcome
- ▶ Different enforcement mechanisms

TOP FIVE: OVERVIEW

- ① Reporting
- ② Timely Warning & Emergency Notification
- ③ Confidentiality
- ④ Coordinating Responses
- ⑤ Training and Education

REPORTING



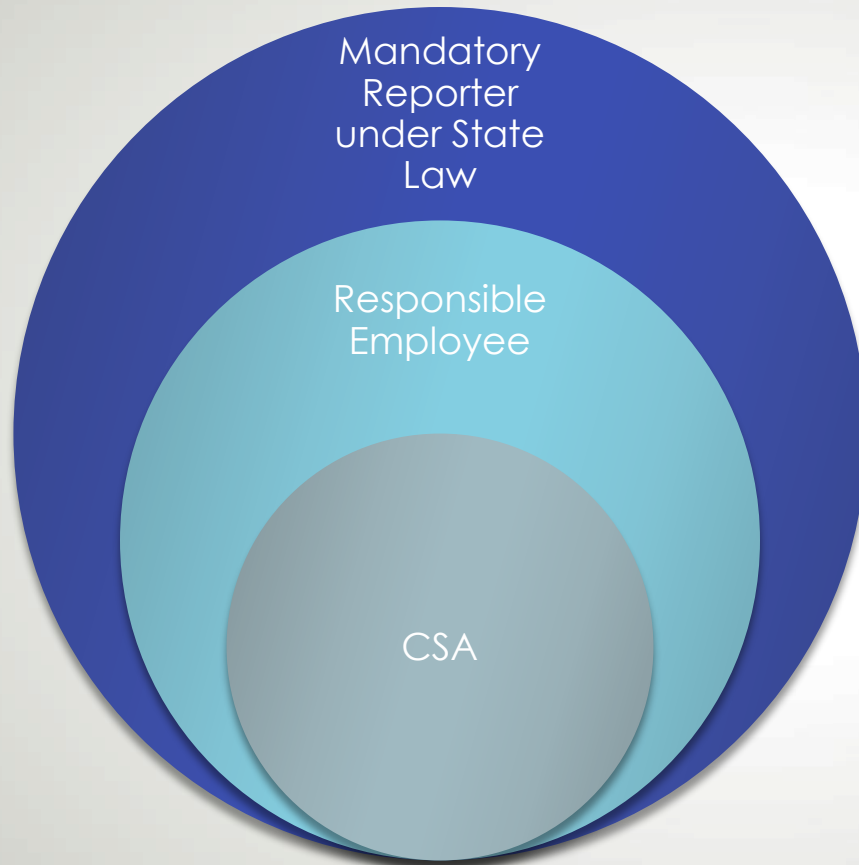
Clery: Campus Security Authorities

- A campus police department or a campus security department of an institution
- Anyone responsible for campus security but does not constitute police or security
- Anyone designated to receive crime reports
- Officials of an institution with significant responsibility for student and campus activities

Title IX: Responsible Employees

- Any employee who has the authority to take action to redress the harassment
- Anyone who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees
- An individual who a student could reasonably believe has this authority or responsibility

INTERSECTIONS



- Many CSAs are considered to be responsible employees
- May intersect with other reporting responsibilities:
 - Academic integrity
 - State law
 - Child abuse
 - Elder abuse
 - Health care professionals
- Neither has responsibility to investigate

RESPONSIBILITIES

Duty	CSA	Responsible Employee
To Whom	Official or office designated by the institution to collect crime report information	Title IX Coordinator
What	Clery offenses on Clery geography	Sexual harassment and violence
Content	Nature of crime, date and time it occurred, date and time reported, location	Names of reporting party, alleged perpetrator (if known), other students involved, and any other relevant facts (date, time, and location)
Anonymity	Can be non-identifiable information	Must include identifying information
Notice	Direct reports only	Indirect and direct reports (knew or should have known)
Timing	Ongoing	Immediately*

HOW INFORMATION IS USED

- Annual Clery Act crime statistics
- Daily crime log
- Timely warnings (serious or ongoing threat to campus community)
- Emergency notification
- Information and support to victims (written notification of resources and rights)
- Interim measures/accommodations
- Investigation and remedial action

RECOMMENDED PRACTICES

- Clearly identify CSAs and REs by title, name and role
- Set clear expectations for reporting
- Consider intersections when establishing campus procedures
 - Integrated training
 - Centralized reporting
 - Template forms with online access
- Provide job training/description
- Give CSAs crime definitions and geographic areas
- Emphasize the importance of timely reports

**TIMELY WARNINGS
& EMERGENCY
NOTIFICATION**



Timely Warnings

- ▶ Narrower Focus – Clery Act crimes only
- ▶ Clery Act geographic area
- ▶ Reach entire campus community
- ▶ Issue warning as soon as pertinent info available

Emergency Notification

- ▶ Broader Focus – any significant emergency or dangerous situation
- ▶ Anywhere on campus
- ▶ Entire campus or segment(s)
- ▶ Issue alert immediately upon confirmation

TIMELY WARNING MYTHS

- ▶ You must issue a timely warning for every sexual assault
- ▶ You must include the exact location of the assault in that warning
- ▶ You must include the details of the case (referral to law enforcement)
- ▶ You do not need to include consultations in your policy (e.g. President's Office, Communications)

TITLE IX RISK FACTORS

- ▶ Whether there have been other sexual violence complaints about the same alleged perpetrator
- ▶ Whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence
- ▶ Whether the alleged perpetrator threatened further sexual violence or other violence against the student or others
- ▶ Whether the sexual violence was committed by multiple perpetrators
- ▶ Increased risk of future acts of sexual violence under similar circumstances (i.e. pattern of perpetration – use illicit drugs/alcohol at a given location or by a particular group)
- ▶ Whether the sexual violence was perpetrated with a weapon
- ▶ The age of the student subjected to the sexual violence
- ▶ Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence)

RECOMMENDED PRACTICES

- ▶ Clear written protocol that:
 - ▶ Identifies factors and criteria
 - ▶ Identifies decision-makers
- ▶ Timely and thorough documentation of available information and reasons for determination
- ▶ Coordinated multi-disciplinary team
- ▶ Centralized reporting to ensure coordination of personnel and information and consistency in practice

CONFIDENTIALITY



DISTINGUISHING BETWEEN PRIVACY AND CONFIDENTIALITY

- ▶ Inconsistent language between federal and state laws
- ▶ Students or employees wishing to obtain confidential assistance may do so by speaking with professionals who are obligated by law to maintain confidentiality
- ▶ Confidential resources generally include medical providers, mental health providers, clergy, and rape crisis counselors
- ▶ Exceptions to confidentiality include:
 - ▶ Mandatory child abuse reporting
 - ▶ Tarasoff imminent risk of harm to self or others
 - ▶ Health professionals based on nature of conduct
 - ▶ Other state laws
- ▶ Privacy: Need to know, sensitivity, FERPA

CONFIDENTIAL RESOURCES

Clery

- ▶ Pastoral and professional counselors are exempt from Clery reporting
- ▶ Pastoral counselor: A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor
- ▶ Professional counselor: A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of the counselor's license or certification. This definition applies even to professional counselors who are not employees of the institution, but are under contract to provide counseling at the institution.

Title IX

- ▶ Campus mental-health counselors, pastoral counselors, social workers, psychologists, health center employees, and any other person with a professional license requiring confidentiality are NOT required to report incidents of sexual violence to the school in a way that identifies the student
- ▶ Professional counselors and pastoral counselors whose official responsibilities include providing mental-health counseling to members of the school community are NOT required by Title IX to report *any* information regarding an incident of alleged sexual violence

CAMPUS ADVOCATES: TO REPORT OR NOT TO REPORT?

Clery

- ▶ Examples of CSAs listed in Handbook for Campus Safety and Security Reporting (2016) include:
 - ▶ victim advocates or others who are responsible for providing victims with advocacy services, such as assisting with housing relocation, disciplinary action or court cases, etc.;
 - ▶ members of a sexual assault response team (SART) or other sexual assault advocates
- ▶ Does not require disclosing personally identifying information

Title IX

- ▶ OCR gives schools the latitude NOT to require on-campus sexual assault centers, victim advocacy offices, women's centers, or health centers ("non-professional counselors or advocates") to report incidents of sexual violence in a way that identifies the student without the student's consent
- ▶ To identify patterns or systemic problems related to sexual violence, a school should collect aggregate data about sexual violence incidents from non-professional counselors or advocates
- ▶ Should report only general information about incidents of sexual violence such as the nature, date, time, and general location of the incident and should take care to avoid reporting personally identifiable information about a student

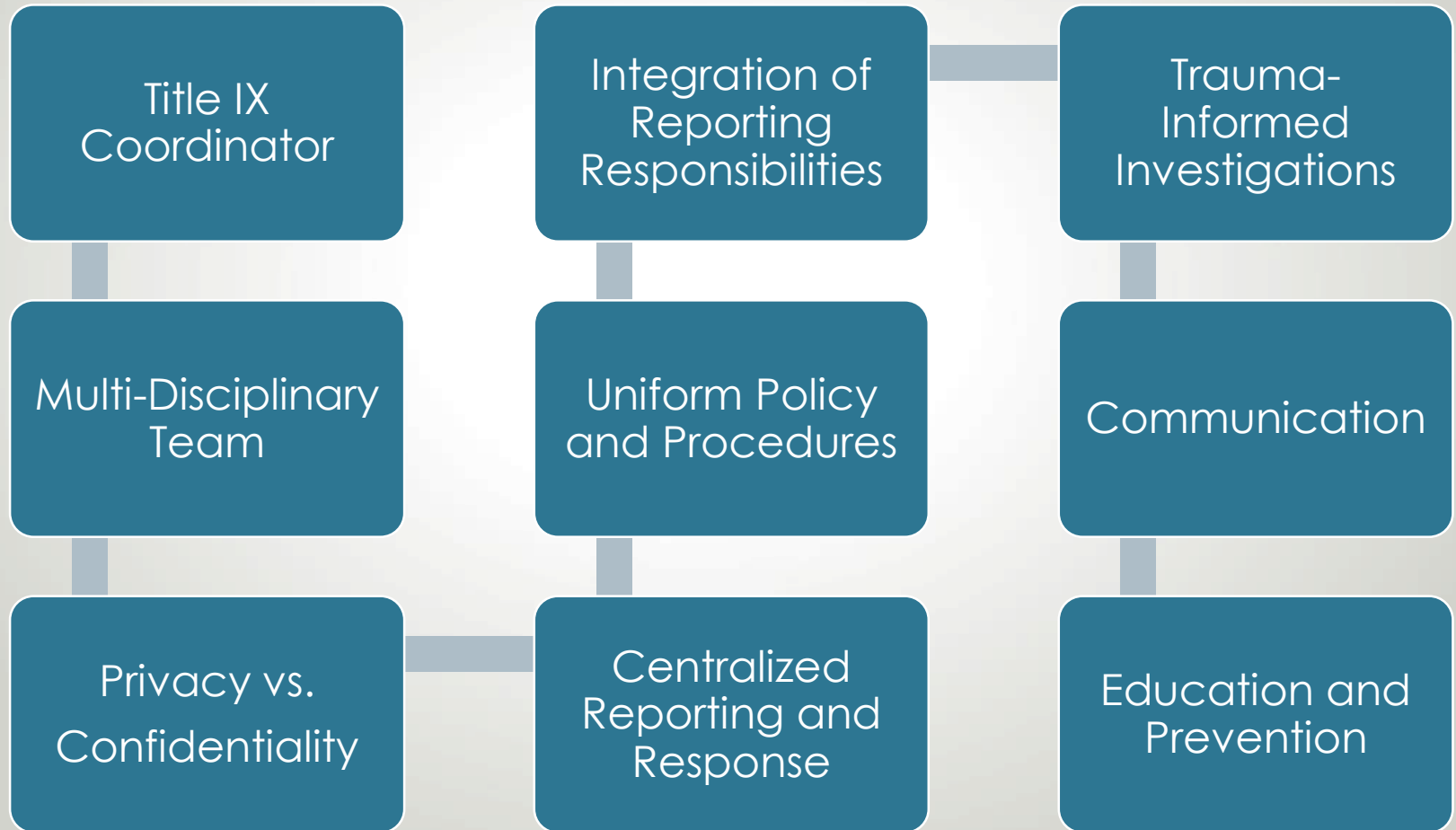
PRACTICAL CONSIDERATIONS

- ▶ Language:
 - ▶ ~~Mandated Reporter~~
 - ▶ Voluntary confidential v. anonymous
- ▶ Distinguish between confidential resources and reporting options
 - ▶ Denote any limits on confidentiality
 - ▶ Carefully communicate role in policy, practice and written resources
- ▶ Partnerships with external resources

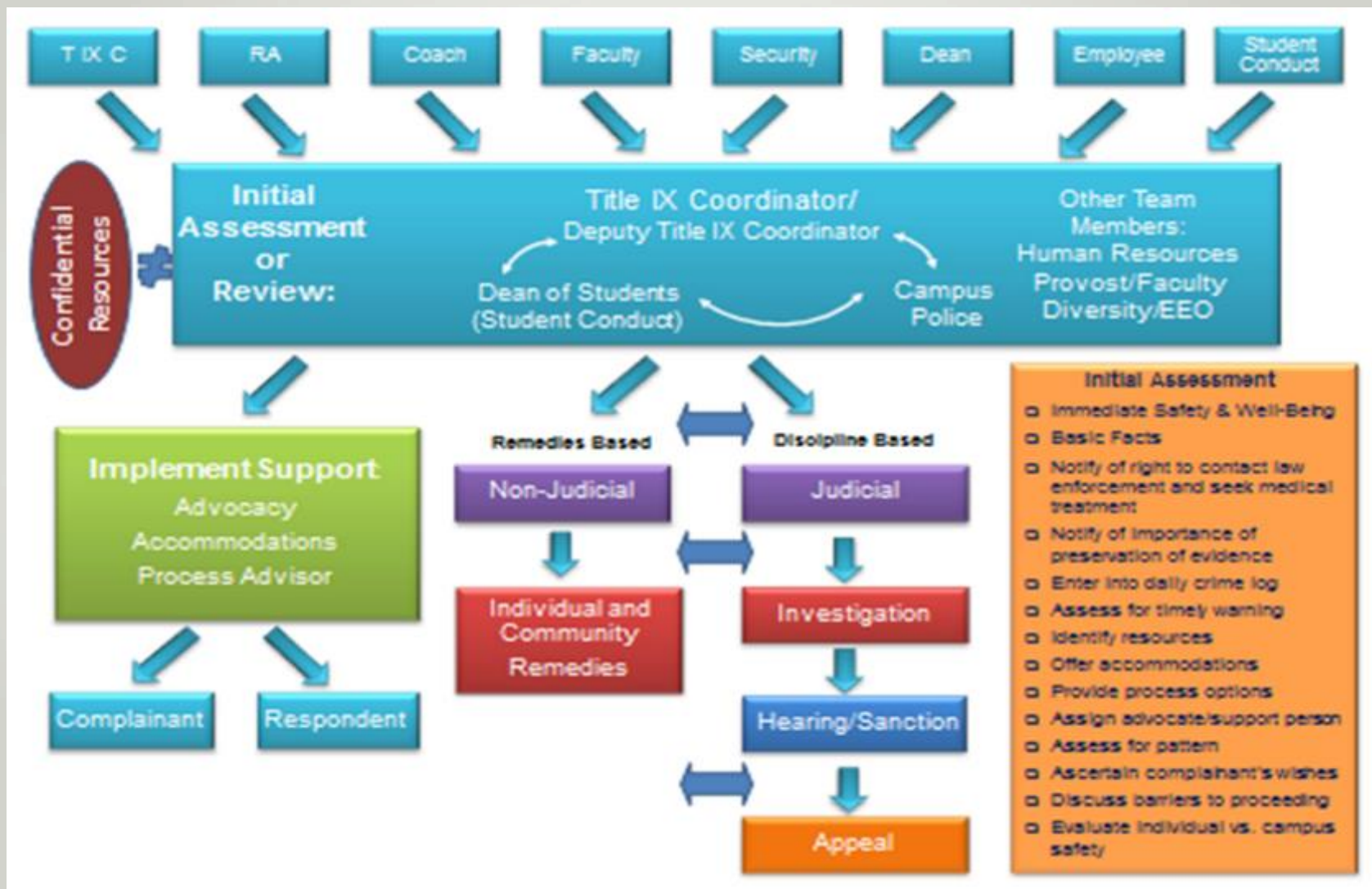
COORDINATING RESPONSES



KEY ELEMENTS OF EFFECTIVE PRACTICES



INTEGRATION AND COORDINATION



MULTI-DISCIPLINARY TEAM

- ▶ Core stakeholders
 - ▶ Title IX Coordinator
 - ▶ Student conduct
 - ▶ Campus safety/police
 - ▶ Human resources
 - ▶ Dean of faculty/Provost
- ▶ Additional campus stakeholders
 - ▶ Counseling
 - ▶ Health center
 - ▶ Advocacy
 - ▶ Counsel
- ▶ Community partners
 - ▶ Law enforcement
 - ▶ Prosecutor
 - ▶ Hospital/Medical Providers
 - ▶ Community crisis or advocacy centers
 - ▶ Rape Crisis Counselors
 - ▶ Domestic Violence Counselors

MULTI-DISCIPLINARY TEAM

- ▶ Coordination of personnel
 - ▶ Clearly delineated roles and responsibilities
 - ▶ Build in regular and open lines of communication
 - ▶ Separate support and advocacy roles and functions from investigation and adjudication
 - ▶ Sequence events in advance
- ▶ Identify and integrate available sources of information
- ▶ Centralized tracking to address trends, patterns, climate
- ▶ Use of consistent template communications
- ▶ Timely and thorough documentation of:
 - ▶ Available facts
 - ▶ Communications
 - ▶ Reasoning of decisions made during the process
- ▶ Ensure consistent implementation:
 - ▶ Interim remedial and protective measures
 - ▶ Classification of incidents
 - ▶ Timely warnings
 - ▶ Decision to initiate an investigation
 - ▶ Sanctions
 - ▶ Community remedies

EVALUATION

- ▶ Self-assessment
- ▶ Table-tops
- ▶ Build in annual review
- ▶ Routinely seek feedback from parties and implementers
- ▶ Provide opportunities for student engagement

COORDINATION WITH LAW ENFORCEMENT

- ▶ MOUs
- ▶ Develop a collaborative relationship
 - ▶ In advance of the crisis
 - ▶ Mutual education re: shared values/goals
 - ▶ Leadership and frontline officers & investigators
- ▶ Prepare:
 - ▶ Gather all relevant personnel
 - ▶ Gather all relevant documents
 - ▶ Have informed facilitator and decision makers present
- ▶ Communication, communication, communication!
- ▶ State law confidentiality issues

COORDINATION WITH LAW ENFORCEMENT

- ▶ Respect for integrity of law enforcement investigation
 - ▶ Defer to law enforcement's right to notify respondent of charges
 - ▶ Preservation of evidence
 - ▶ Impose interim protective measures
- ▶ Sharing of Information
 - ▶ By agreement
 - ▶ By subpoena
- ▶ Cutting Edge
 - ▶ Interview memos
 - ▶ Joint interviews
 - ▶ Forensic evidence gathering

TRAINING AND EDUCATION



TRAINING AND EDUCATION FOR STUDENTS

Clery

- ▶ Primary prevention & awareness programs for all incoming students
- ▶ Ongoing prevention & awareness programs for students

Title IX

- ▶ All students re:
 - ▶ What constitutes sexual harassment and sexual violence
 - ▶ The institution's policies and disciplinary procedures
 - ▶ The consequences of violating those policies

TRAINING AND EDUCATION FOR ALL EMPLOYEES

Clery

- ▶ Primary prevention & awareness programs for new employees
- ▶ Ongoing prevention & awareness campaigns for employees

Title IX

- ▶ All employees
 - ▶ What constitutes sexual harassment and sexual violence
 - ▶ The institution's policies and disciplinary procedures
 - ▶ The consequences of violating those policies

TRAINING AND EDUCATION FOR EMPLOYEES WITH REPORTING DUTIES

Clery

- ▶ CSAs (not required, but recommended)
 - ▶ Why? (federal requirement and beyond)
 - ▶ What/ (Information to share)
 - ▶ To whom?
(Person/department receiving information)
 - ▶ When? (ASAP)
 - ▶ How? (Reporting form, phone number)

Title IX

- ▶ Responsible employees
- ▶ Employees likely to witness or receive reports of sexual violence

TRAINING AND EDUCATION FOR IMPLEMENTERS

Clery

- ▶ Annual training on:
 - ▶ Issues related to sexual assault, dating violence, domestic violence, and stalking
 - ▶ Investigations that protect the safety of victims and promote accountability
- ▶ Per Handbook, should cover (but not limited to):
 - ▶ Relevant evidence and how it should be used during a proceeding
 - ▶ Proper techniques for questioning witnesses
 - ▶ Basic procedural rules for conducting a proceeding
 - ▶ Avoiding actual and perceived conflicts of interest

Title IX

- ▶ Implementers must have training or experience in handling sexual violence complaints and in the operation of grievance procedures

YOUR HOMEWORK

- ▶ Review applicable federal and state law and guidance
- ▶ Identify your team
- ▶ Assess your policies
- ▶ Assess your structure
- ▶ Assess sufficiency of resources
- ▶ Review prior cases
- ▶ Consider trauma-informed, fair and impartial practices
- ▶ Engage your community
 - ▶ Students
 - ▶ Faculty
 - ▶ Staff
 - ▶ Leadership
 - ▶ Local partners
- ▶ Make a plan with measurable action items:
 - ▶ Task force
 - ▶ Consider external policy audit
 - ▶ Constituency survey
 - ▶ Training and education schedule

QUESTIONS?



CONTACT

- ▶ Clery Center for Security On Campus
 - ▶ www.clerycenter.org
 - ▶ info@clerycenter.org
 - ▶ [Facebook.com/CleryCenter](https://www.facebook.com/CleryCenter)
 - ▶ Twitter: @CleryCenter
 - ▶ [Youtube.com/CleryCenter](https://www.youtube.com/CleryCenter)
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