

# **Title IX, Clery, VAWA, and Sexual Misconduct: What Every Trustee Should Know**

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## **I. Duties and Responsibilities of Florida College System Boards of Trustees**

- a. AGB: Governing boards are accountable to the mission and heritage of their institutions, with the fiduciary responsibility to promote institutional integrity and quality while advancing their institutional missions.
- b. Florida law:
  - i. “Each board of trustees has responsibility for compliance with state and federal laws, rules, regulations, and requirements.”
  - ii. “Each board of trustees is vested with the responsibility to govern its respective Florida College System institution and with such necessary authority as is needed for the proper operation and improvement thereof in accordance with rules of the State Board of Education.”
- c. Title IX/Sexual Misconduct Laws and Regulations– Not just a matter of mere compliance, but a matter of student and staff safety and welfare. Promotion of healthy and effective academic environment.
- d. Balance: Effective governance requires avoiding micromanagement while being sufficiently informed to assess institutional effectiveness.

## **II. Legal Background: Become Fluent in the Issues**

- a. Title IX (1972)
  - i. “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.”
  - ii. Requires gender equity in athletics, with broader protections against sex discrimination in college programs and activities, prohibits all forms of sexual discrimination (non-violent, like slurs; and violent, like rape) and sexual harassment and applies equally to students, faculty and staff.
  - iii. Duty: If college knows or reasonably should know of sexual misconduct that creates a hostile environment, it must take immediate and appropriate action to investigate. If sexual violence has occurred, the college must take prompt and effective steps to end/eliminate the conduct, prevent its recurrence, and address its effects (whether or not the sexual violence is the subject of a criminal investigation).

- b. Clery Act (1990)
  - i. Requires institutions to maintain and publish information about crime on or near their campuses or other property under their control. Requires that an Annual Security Report be published documenting three consecutive years of campus crime statistics and policies, procedures, and information concerning the basic rights of sexual assault victims. Also requires the maintenance of a public crime log, open for inspection.
  - ii. VAWA/Campus SaVE Act (series of amendments (2013) to Clery Act (section 485(f) of the HEA of 1965)
    - 1. Expands an institution's obligations to collect and report statistics for dating violence, domestic violence, and stalking, in addition to sexual assault statistics already required under the original Clery Act. Also requires specific support to sexual assault victims, including information on basic rights and procedures, availability of counseling, and interim protective measures.
    - 2. Colleges must adopt and disclose specific policies related to campus conduct proceedings in sexual misconduct cases. Important to note standard of proof (preponderance of evidence), provision of a prompt, fair and impartial process, provide the accused/accuser with same opportunities to have others present, and more.

### III. The National Context – Why Now?

- a. April 4, 2011 Dear Colleague Letter (Supplements 2001 Guidance)
- b. High Profile Cases/Increased Enforcement Efforts (increased litigation, Clery complaints, OCR investigations)
- c. Increased activism from victim's rights advocates in DC and state capitals
- d. Pervasive media coverage
- e. Impact of Social Media
- f. Recent Legislation and Political Activity
  - i. 2013 Reauthorization of VAWA (including Campus SAVE Act)
  - ii. Negotiated Rulemaking for new VAWA regulations (10/20/2014)
  - iii. OCR FAQ's, 4/29/2014 (Guidance on Title IX and Sexual Violence)
  - iv. White House Task Force to Protect Students from Sexual Assault – Not Alone Report
- g. Proposed Legislation – Sen Boxer: SOS Campus Act (requires independent advocate for sex assault prevention/response) Sen. McCaskill: Campus Accountability and Safety Act (training standards, confidential advisors, law enforcement MOU required, publish results of student surveys, Title IX violation up to 1% of budget; Clery violations \$150,000 each).

#### **IV. Dynamics of Sexual Assault - The Role of Campus Culture and Other Challenges**

- a. Drugs/Alcohol and “hook up” culture promoting casual sexual encounters
- b. Consent is common Defense
- c. Delays in Reporting
- d. The person accused is often familiar to the accuser
- e. Are minors involved? Child abuse reporting requirements may apply.
- f. Many cases are “word against word” cases, where credibility is key
- g. Many cases provide decision makers with little or no evidence to support findings.
- h. Key distinctions in Florida College System institution setting – usually no residence halls, no Greek System, little or no alcohol use on campus, smaller scale athletic programs. However, despite these differences, this is still a critical issue for colleges.
  - i. AACC – In 2010-2012, Community colleges’ percentage of reported forcible sexual offenses (among all sectors) was respectively, 8.6%, 7.7%, and 7.4%
  - ii. Public 4 year – 47.4%; Private 4 year – 41.7% (2012)

#### **V. How to Comply with Evolving Title IX Requirements**

- a. Appoint and train a Title IX Coordinator.
- b. Update and adopt policies and procedures reflecting latest changes in laws, regulations, and guidance.
  - i. Have clear definitions, especially for types of prohibited conduct, jurisdiction (on/off campus incidents), “consent,” confidentiality vs. privacy, and prohibited retaliation or complicity.
- c. Train investigators and hearing officers extensively on all aspects of dealing with sexual assault cases and their unique challenges.
- d. Be timely and effective in response to complaints (60 days).
- e. Consider a Memorandum of Understanding with local law enforcement agencies.
- f. Develop a stable of internal and external experts, including local victim support services.
- g. Identify and train “Responsible Employees.”
- h. Train students on sexual assault – prevention, resources, response.
  - i. Bystander Intervention program, etc.
- i. Did I mention that effective training and communication is important?

#### **VI. Questions to be Considered by Board Members**

- a. Has the college named a Title IX Coordinator and devoted appropriate resources to carry out the function?
- b. Is the college regularly and appropriately training its students, faculty and staff regarding reporting and responding to alleged sexual misconduct?
- c. Are the college’s policies and procedures up to date and consistent with evolving federal requirements in Title IX and sexual assault areas?
- d. Is college monitoring its overall climate with respect to issues related to sexual misconduct?