



# Developing the Written Explanation of Rights and Options

2<sup>nd</sup> Annual Mid-Year Conference

**Adrienne Meador Murray**

*Director, Training & Compliance Activities*

NACCOP

§668.46(B)(11)VII)  
- WRITTEN  
EXPLANATION  
OF STUDENT  
OR  
EMPLOYEE'S  
RIGHTS

- *When a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section. . .*

## 34 C.F.R. § 668.46(C) - VAWA OFFENSES



Rape



Fondling



Incest



Statutory  
Rape



Dating  
Violence



Domestic  
Violence



Stalking

## Who do victims at your institution report to?

- Campus Police/Public Safety
- Local Police
- Title IX Coordinator
- Residence Life
- Dean of Student Services
- Dean of a College
- Human Resources
- Supervisors
- Faculty
- Coaches

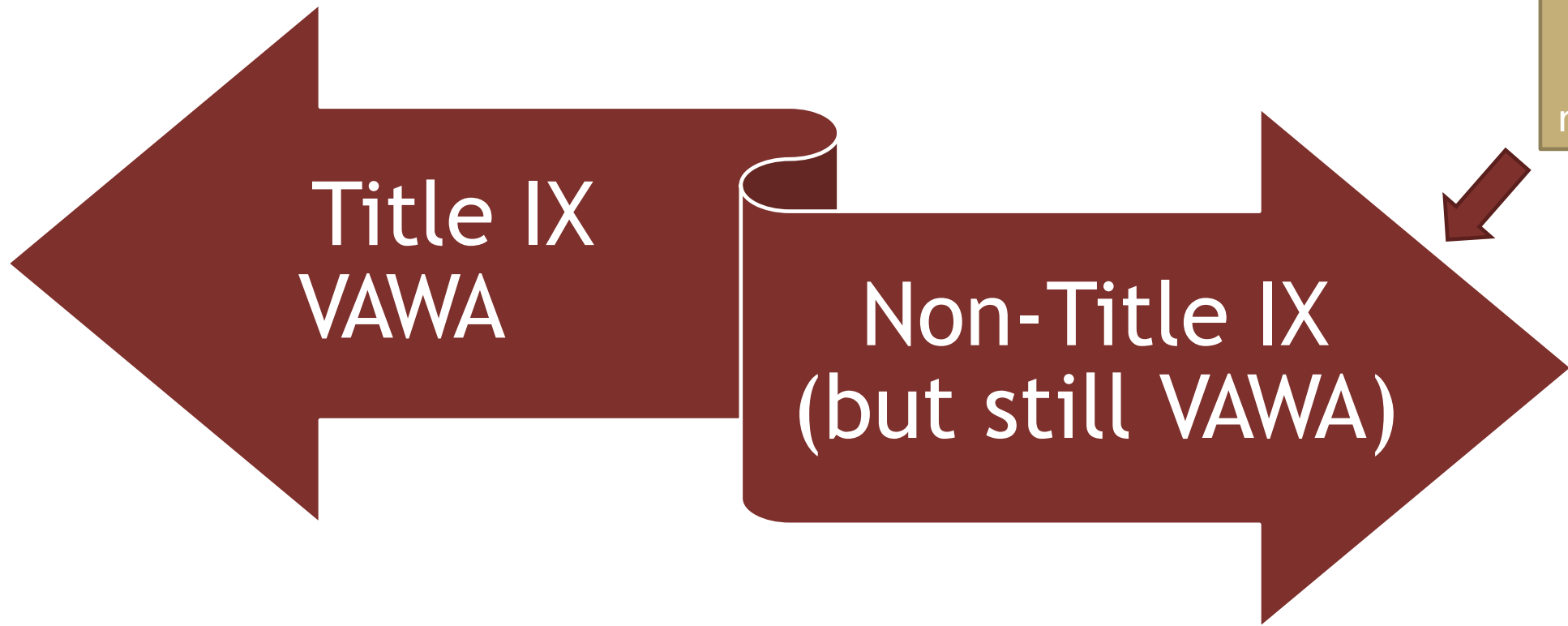


## LOCATIONS OUTSIDE THE DEFINITION

- Outside an education program or activity
- Outside the U.S.



# Do all Reports Get Shared with Title IX?



Where do these reports go?

**“Title IX is not the exclusive remedy for sexual misconduct or traumatic events that affect students. A school has discretion to respond appropriately to reports of sexual misconduct that do not fit within the scope of conduct covered by the Title IX grievance process.”**



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## Procedures the Institution will Follow

Does your institution have a standard procedure that will be followed when a VAWA offense is reported?

(Hint—you say you do in your ASR AND you provide a list of what actions your institution will take no matter whom the offense is reported to!)



# Title IX: Response to “Actual Knowledge” by T9C



## Title IX Duties

- Contact the complainant
- Offer and/or implement supportive measures
- Explain the process for filing a formal complaint

## Clery Act-VAWA Duties

- Provide victim with written explanation of victim’s rights and options
- Report CSA report to Clery Authority on Campus (most often campus police/public safety)
  - Campus official responsible must assess for Timely Warning OR Emergency Notification

**Caveat! If a CSA report of a VAWA offense (or other sexual harassment) is made to campus police/public safety, that office must report all pertinent information it received to the institution’s Title IX Coordinator (T9C), including location, date/time it occurred, and identifying information of the parties and witnesses, if known to comply with the Federal Clery Act.**

If a victim makes a report of a sex offense as enumerated in [REDACTED] to local or University Police, the police are required to notify the victim that his/her name will become a matter of public record unless confidentiality is requested.<sup>10</sup> If a victim requests that his/her identity be kept confidential, his/her name will not become a matter of public record and the police will not report the victim's identity to anyone else at the University, including the Title IX Coordinator. University Police will, however, report the facts of the incident itself to the Title IX Coordinator being sure not to reveal to the Title IX Coordinator the victim's name/identity, or compromise their own criminal/police investigation.

## EXCERPT FROM AN INSTITUTION'S ONLINE WRITTEN EXPLANATION OF RIGHTS AND OPTIONS

## § 668.46 - RESPONSE REQUIREMENTS FOR VAWA OFFENSES

Procedures  
victims of VAWA  
Offenses should  
follow

Procedures an  
institution will  
follow when  
offense reported

*and make sure it  
is all in  
WRITING.*

§ 668.46(B)(11)(II)  
- WRITTEN  
EXPLANATION  
OF RIGHTS  
AND OPTIONS

- **The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order**
  - Not required but recommended: Where to obtain forensic exams, contact info, does not require police report and can have exam now, decide later
- **How and to whom the alleged offense should be reported**
  - List any person or organization that can assist the victim
  - Recommended: Also include community organizations

## **THE IMPORTANCE OF PRESERVING EVIDENCE**

It is important that you take steps to preserve and collect evidence; doing so preserves the full range of options available to you, be it through the University's administrative complaint procedures or criminal prosecution. To preserve evidence: (1) do not wash your face or hands; (2) do not shower or bathe; (3) do not brush your teeth; (4) do not change clothes or straighten up the area where the assault took place; (5) do not dispose of clothes or other items that were present during the assault, or use the restroom; and, (6) seek a medical exam immediately. If you already cleaned up from the assault, you can still report the crime, as well as seek medical or counseling treatment. You should preserve text messages, social media postings, or notes that demonstrate the course of conduct. Contemporaneous photos of bruises or other injuries are helpful. You may consult with the campus Title IX Coordinator or Sexual Assault Victim's Advocate (see contact information above) for assistance as well.

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- **Notification of the victim's option to**
  - Notify proper law enforcement authorities, including on-campus and local police
  - Be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses
  - Decline to notify such authorities
- **The rights of victims and the institution's responsibilities for**
  - Orders of protection
  - "No contact" orders
  - Restraining orders
  - Similar lawful orders issued by a criminal, civil, or tribal court, or the institution



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## Orders of Protection (cont.)

You must disclose all rights that a victim may have to obtain an order of protection, a “no contact” order, a restraining order or a similar lawful order issued by a criminal, civil or tribal court, or by the institution. You must let students know what legal options are available to them and under what circumstances. You must tell students how to request information about the available options and provide specific contact information. You must also provide instructions for how to file a request for each of the options. Again, include specific contact information. Your statement must also disclose the institution’s responsibilities for honoring such requests and complying with these orders. You must also provide clear information about what the victim should do to enforce an order of protection. If your institution does not issue orders of protection, state that the institution does not issue orders of protection. However, your statement should provide information on other available options in your jurisdiction, such as orders of protection issued by a criminal, civil or tribal court, as well as your institution’s responsibilities for complying with and enforcing those orders.

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- **To students AND employees about existing**
  - Counseling, health, mental health services
  - Victim Advocacy
  - Legal Assistance
  - Visa and Immigration Assistance
  - Student Financial Aid
  - Other services available for victims
- **Options for, available assistance in, and how to request changes to (if requested and reasonably available)**
  - Academic, living, transportation, working



# Options for, available assistance in, and how to request changes to (if requested and reasonably available) cont.



- State that your institution is obligated to comply with a student’s reasonable request for a living and/or academic situation change following an alleged sex offense.
- Your statement should identify all of the available options. Your statement should also identify how you will determine what measures to take and who will be responsible for making that decision. Note that this requirement allows your institution flexibility in terms of what is reasonable.
- Factors that might be considered during this process include, but are not limited to the following: the specific need expressed by the complainant; the age of the students involved; the severity or pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged perpetrator share the same residence hall, dining hall, class, transportation or job location; and whether other judicial measures have been taken to protect the complainant (e.g., civil protection orders).
- Protective measures should minimize the burden on the victim. For example, if the complainant and alleged perpetrator share the same class or residence hall, the school should not, as a matter of course, remove the victim from the class or housing while allowing the alleged perpetrator to remain without carefully considering the facts of the case.

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- **Confidentiality**
  - Publicly available recordkeeping has no personally identifying information about the victim (not required for respondent but best practice in most cases)
  - Accommodations and protective measures are confidential (to the extent they can be without impairing the ability to provide them)
- **Disciplinary Procedures**
  - An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required

# Clery Act Requirements For Disciplinary Proceedings



Anticipated timelines (“reasonably prompt”)



Decision-making process



How to and options for filing a school complaint (with contact info)



How school determines which process to use



Who makes decisions



Include employee procedures



Use procedures regardless of Clery geography

## § 668.46(K)(2)(III-IV)- ADVISORS

*Provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice*

*Not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; however, the institution may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties*

# Informal Resolutions



## Title IX

- Can offer, but may not require
- Not allowed for “employee on student” sexual harassment
- Party may withdraw up to a point

## Clery Act

- Written information about procedures the institution will follow for VAWA offenses (does not differentiate between formal vs informal)

# Formal Complaint Rights



## Title IX

- Treat equitably with goal to restore/preserve access to education; due process for respondent
- Reasonably prompt time-frames

## Clergy Act

- Prompt, fair and impartial investigation and resolution
  - Anticipated timeframes
  - List all possible sanctions for each offense (employees and students)
  - Consistent with policy and transparent
  - Not required to list all protective measures

# Written Determination



## Title IX

- Identification of the allegations
- Procedural steps taken from receipt through determination
- Findings of fact supporting the determination
- Conclusions regarding the application of code of conduct to the facts
- Result (responsibility, rationale, sanctions, remedies for each allegation)
- Appeals procedures
- When results become final (post appeal)

## Clergy Act

- Result (include any sanctions and rationale for results and sanction)
- Appeals procedures
- Any change to the result
- When such results become final

# Appeals



## Title IX

- Must offer both parties an appeal
- Based on specific grounds

## Clergy Act

- Not required (but must provide notice if allowed along with appeal procedures)
- Simultaneous written decision describing result, sanction, any changes to the result, when it becomes final





# Session Evaluation

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