



TITLE IX, CLERY ACT, CAMPUS SAFETY & UNIVERSITY RELATIONS: A PRIMER

The issue of campus safety and how universities deal with these issues has seen increased coverage and attention over the past few years. From increased communication about immediate safety concerns on campuses to federally mandated directives regarding campus response to sexual violence: Student safety and campus response to behaviors that are NOT supportive of healthy learning environments are some of the biggest issues facing our campus partners. This document is designed as a primer for you, the Pi Kappa Alpha volunteer, to make sure you have an understanding of the issues.

This document will outline the major pieces of legislation that have led to the current focus on student safety and provide basic information for you as a volunteer. How each campus communicates and deals with these issues will be different and we encourage you to keep the International Fraternity informed of safety issues on your campus.

Part 1 - Federal Statutes that Define Campus Safety Initiatives:

1972 - Title IX: Gender equality for boys and girls in every educational program that received federal funding:

What It Says: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

Who It Applies To: Covers state and federal agencies that receive Department of Education Funds.

- 3,200 colleges & universities
- 16,000 school districts
- 5,000 for-profit schools, libraries & museums (www.knowyourix.org)

The Basics:

- Educational amendment law passed in 1972.
- Title IX is not just about sports; it is a prohibition against sex/gender-based discrimination in education.
- It protects female, male, and gender non-conforming students, faculty and staff for sex-based discrimination, harassment and violence.
- Schools must take immediate steps to address any sex discrimination happening on campus to prevent it from affecting students further.
- Every school must have a Title IX Coordinator who manages complaints and their contact information must be readily available on the school's website.

- Schools are asked to issue no contact directives to the accused and ensure reasonable changes to housing, class and extracurricular activities to protect the accuser. Schools cannot take adverse action against the complainant for their complaint.
- Schools are prohibited from utilizing mediation between an accused student and a complainant/victim in sexual violence cases. ([Dear Colleague Letter of 2011](#))

The Disciplinary Procedure Process:

Under Title IX, both the accuser and accused have equal rights to:

1. Have an advisor of choice present during the process (includes an attorney if allowed by the school).
2. Present evidence or have witnesses speak on their behalf.
3. Have timely access to information that will be used at the hearing.
4. Be present at pre-hearing meetings that provide an opportunity to present their testimony.
5. Receive the final hearing decision in writing at the same time as the other party without being required to sign a non-disclosure agreement.
6. Have the right to appeal the final decision.

1990 - The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The Clery Act):

What It Says: The Clery Act is a federal law that requires colleges to report crimes that occur ‘on campus’ and school safety policies. The Act is named after Jeanne Clery, who was raped and murdered in her dorm room by a fellow student in 1986.

Who It Applies To: Most public and private universities and is tied directly to the participation of universities in federal funding, including student aid.

The Basics: Schools are required to have timely warnings when there are known risks to public safety on campus.

- **Campus Crime:** Sexual assault, domestic violence, dating violence, stalking, murder, manslaughter, robberies, aggravated assaults, burglary, motor vehicle theft, arson, hate crimes (larceny-theft, simple assault, intimidation, destruction, damage, or vandalism of property, crimes of bodily injury based on prejudice).
- **Reporting:** Schools are required to file an Annual Security Report (ASR) on the school’s website by October 1st of each year. This report contains the last 3 years’ worth of reported crimes occurring on campus.
- **“On Campus”:**
 - School grounds, within school owned buildings.
 - Literally on campus (streets, grounds, parking lots within campus boundaries)
 - In on-campus housing facilities (even if privately owned/operated)
 - On public property adjacent to the campus (roads, sidewalks)

- On-campus property owned or controlled by the university or a recognized student organization (e.g. fraternities)
- **“Timely Warning”:** Any time a crime has or is occurring that possesses a serious or ongoing threat to the rest of the campus, the college must provide timely warning in a way that is likely to reach every member of the campus community. Timeliness of warnings is reviewed by the Department of Education.
 - Crimes must be reported by campus police or security via a Daily Crime Log. This log must be updated within two days of a report.

2013 - Campus Sexual Violence Elimination Act (Campus SaVE Act) & 2014 - (reauthorization of original 1994) Violence Against Women Act (VAWA Act):

What They Says: First federal reforms since the Clery Act (1990) & Campus Sexual Assault Victim’s Bill of Rights (1992). The VAWA outlines new campus requirement around reporting, discipline and prevention education. Campus SaVE Act amends the Clery Act to mandate extensive “primary prevention and awareness programs” regarding sexual misconduct and related offenses.

Who It Applies To: All applications of the Clery Act apply here, as this act further expands upon the previous act.

The Basics:

- VAWA signed by President Obama on March 7, 2013.
- Final regulations for VAWA were published on October 20, 2014
- Provisions require institutions of higher education to comply with certain campus safety and security-related requirements as a condition of their Title IV (Higher Education Act, HEA) programs.
- Expands reporting requirements by Clery Act beyond sexual offenses to include: Domestic violence, dating violence and stalking as reportable incidents.

Disciplinary Procedure Process: Violence Against Women Act updates standards for investigation that are outlined in the Clery Act and Victim’s Bill of Rights to include:

1. Investigation policy must include ‘statement of the standard of evidence’ used.
2. Officials who conduct proceedings must be trained on conducting hearings in a manner that ‘protects the safety of victims’ and ‘promotes accountability’.
3. Policy must identify ‘sanctions or protective measures’.
4. Accuser and accused are entitled to the same opportunities to have others present.
5. Simultaneous and ‘in writing’ notifications.
6. Confidentiality protection for victims.

Part 2 - Pertinent Issues for Pi Kappa Alpha Volunteers:

Clery Act Reporting: Campus Security Authorities (CSA's)

What It Says: The Clery Act requires institutions to collect crime reports from a variety of individuals specified as Campus Security Authorities (CSA's). Institutions of higher education are being audited more frequently by the U.S. Department of Education. With the increased frequency of these audits, many universities have been found to be out of compliance with the Clery Act regarding their efforts to gather crime statistics.

To date, there are **nine known instances** where a campus has classified fraternity advisors as CSA's. If you receive information from your university that they are looking to classify fraternal advisors as CSA's, please contact the International Fraternity immediately.

- Penn State
- Wisconsin
- Iowa State
- Kentucky
- Butler
- Dartmouth
- Texas Tech
- Cincinnati
- Oregon

Penn State was the First to Classify Fraternity Advisors as Campus Security Authorities (CSA's)

What It Says: Penn State has used a broad interpretation of one of the definitions of a CSA that reads in part: Officials who have a significant responsibility for student and campus activities.

Who It Applies To: CSA's are defined by job function, not by title. Also, CSA's do not have to be paid employees, they can be volunteers. Therefore, Penn State unilaterally designated all non-employee volunteers as CSA's, including fraternity and sorority advisors.

The Basics:

- Penn State does not believe that chapter advisors being unilaterally designated as a CSA will have any material impact on litigation related issues.
- Penn State had a legal review of this position prior to implementation and there is not case law to support this specific issue.
- They are providing broad training opportunities on the subject.
- Penn State is asking CSA's to report any sexual misconduct information without trying to discern whether the crime fits the reporting categories of the Clery Act.
- NIC & NPC have been working to advocate their shared positions and concerns for this move by Penn State.

Campus Accountability & Safety Act

What It Says: Proposed legislation being considered by the Senate. This legislation is adding further updates to the Clery Act. Recently, over 70 universities were notified that they were out of compliance with Clery Act reporting of sexual misconduct.

Who It Applies To: All applications of the Clery Act apply here, as this act further expands upon the previous act.

The Basics:

- Regulates the disclosure of campus security policies and crime statistics on university websites.
- Defines domestic violence, dating violence and stalking (as the VAWA does).
- Clarification of individuals who are 'responsible employees' to be considered campus security authorities (CSA's).
 - A responsible employee is one who has the authority to redress sexual harassment or who has the duty to report incidents of sexual harassment or other misconduct by students or employees.
- Proposes Campus Climate Annual Survey by Attorney General and Secretary of Education. This survey will allow government to fine non-compliant institutions up to \$150,000.
- Requires a Memorandum of Understanding (MOU) between institutions and local law enforcement to delineate roles and responsibilities of entities and information sharing. This includes delineation and sharing protocols, investigation protocols, training requirements for institutions, and methods for sharing information about crimes anonymously.
 - MOU's must be in place within one year of bill's passage.
- Clarification of a confidential advisor to serve as liaison with campus and law enforcement when directed by the victim.
 - Non-student, non-Title IX Coordinator, non-responsible employee.
- Uniform campus-wide process for disciplinary proceedings.

The Case for Support of Further Legislation: The bill is being sponsored by Senator Claire McCaskill (D-MO). Her office conducted a study of 440 4-year institutions on current compliance with Title IX and the Clery Act. The survey supports the need for:

- Gathering data: Survey results conclude that Campus Climate Surveys are the best way to obtain an accurate picture of sexual assault issues on campus.
- Reporting tools: 51% of institutions provide hotlines, 44% an option to report sexual assault online.
- Faculty & student training: less than 20% provide sexual assault training for faculty & staff. Less than 30% provide sexual assault training for students.
- Investigation reform: Roughly 40% of surveyed institutions have not conducted a single investigation into sexual violence in the past 5 years. There have been more incidents reported than federally mandated investigations.

- Service for survivors: Most institutions fail to incorporate the local prosecutor's office. 50% do not include community victim assistance/advocacy programs.
- Increased trained & coordinated law enforcement: Law enforcement officials at 30% of institutions receive no training on how to respond to sexual violence. More than 70% do not have protocols on institution and local law enforcement collaboration.
- Compliance of adjudication requirements: Over 40% of institutions allow students to help adjudicate sexual assault cases.
- Coordinated oversight: More than 10% of schools do not have a Title IX Coordinator.

Part 3 - What You Need to Know as a Pi Kappa Alpha Volunteer:

Pi Kappa Alpha is committed to keeping you up to date with ongoing campus safety issues. The Fraternity is asking that local volunteers keep the organization and staff abreast of any issues on campus that directly affect fraternity and sorority life (i.e. Penn State CSA ruling).

The federal legislation sets mandates for college campuses *not* international fraternities. As such, our obligation is to recognize the opportunity to educate our members on sexual assault prevention and to engage in prospective campus efforts to do so. At the 2014 Baltimore Convention, Pi Kappa Alpha resolved and committed each member, chapter, and the greater fraternity to actively engage in the prevention of sexual assaults.

To help in advising Pi Kappa Alpha student groups:

As a fraternal organization:

- The Fraternity is committed to providing education for its members on affirmative consent and bystander intervention.
- Education starts with new members and it is important to impart training where the fraternity experience begins.
- PIKE has signed an MOU with the nation sexual assault prevention campaign It's On Us and was the first international fraternity to sign on as a national sponsor for this dynamic initiative. (<http://itsonus.org>)

As a chapter on a university campus:

- If the chapter you advise is made aware of an allegation of sexual assault, please contact the International Fraternity immediately.
- Understand the right to have an advisor present during Title IX / Clery Act hearings and conversations.
- Most, if not all universities now have Title IX Coordinators. Many of these individuals are currently looking into past sexual assault issues reported to the university.
- Students should meet with their Title IX Coordinator when requested. They should, if deemed necessary, exercise their right to have a chapter advisor or alumnus attorney (pro bono if possible) present at the meeting.
- During Title IX inquiries, student should be advised to only answer questions they feel comfortable with and/or have absolute certainty of.

- Fraternity chapters and members should not create a hostile environment if a complaint is filed. If a member of the organization is accused of sexual misconduct, this is an individual issue and chapter members should show restraint in retaliation against the accused and complainant.

Part 4 - Summary:

Federal laws on campus sexual assault

No person shall be excluded from participation in, or be denied the benefits of, any education program or activity receiving federal financial assistance on the basis of sex.



"sexual harassment of students, including sexual assault, interferes with students' right to receive an education free from discrimination."

- Department of Education, 2011

Colleges and universities must provide a nondiscriminatory environment and take responsibility for proactively addressing and preventing sexual assault or face losing federal funding. A required Title IX coordinator at every college and university oversees issues of gender equity in education.

Requires public and private colleges and universities to provide information regarding crimes on campus.



SCHOOLS MUST

Disclose crime statistics for incidents that occur on campus

Publish an Annual Security Report

Issue timely warnings about crimes which pose a serious or ongoing threat to students and employees

Passed as an amendment to the 2013 reauthorization of the Violence Against Women Act, it expands the Clery Act to more proactively address prevention and investigation of sexual assault in higher education.



SCHOOLS MUST

Establish prevention and awareness programs on sexual assault

Update reporting requirements and make them more accessible and uniform

Require training on sexual assault for staff and students

Publish formal procedures for cooperation between schools and law enforcement.

How Colleges and Universities Can Act to Prevent Sexual Assault and Support Survivors

SCHOOLS MUST

Take up all reports of sexual assault for adjudication. This can be especially important in states where male-male or female perpetrated sexual assault is not recognized.



Provide on-going prevention and awareness programs for students and employees to address issues of domestic violence, dating violence, sexual assault and stalking.



Ensure survivors have access to everything they may need to continue their education. This can include dorm and class transfers, academic accommodations, and mental health support.



SCHOOLS SHOULD ALSO

Move quickly to suspend and expel offenders to ensure both the survivors' safety and maintain a safe environment for other students.



Investigate reports of sexual assault to identify patterns and change security practices to better protect students in the future.



However, Gaps Remain

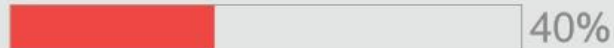
Despite the many tools available to colleges and universities to address sexual assault, too many still fail to properly address the problem.



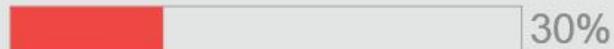
A survey found colleges and universities...

For more information, visit genprogress.org

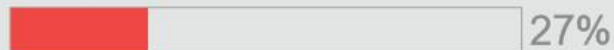
Reported not investigating a single sexual assault in the past five years



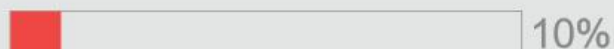
Offered no training on sexual assault to students nor law enforcement officers



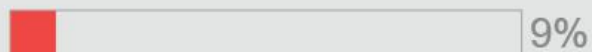
Left oversight of cases relating to student athletes to their athletic departments



Had not hired a permanent Title IX Coordinator



Reported more sexual assaults to the Department of Education than they actually investigated



Sources:

United States Senate, Subcommittee on Financial and Contracting Oversight, "Sexual Violence on Campus, How too Many Institutions of Higher Education are Failing to Protect Students" (2014), available at <http://www.mfocaskill.senate.gov/SurveyReport/Appendix.pdf>

Krebs, C. P., Lindquist, C. H., Warner, T. D., Fisher, B. S., & Martin, S. L. "The Campus Sexual Assault (CSA) Study" (National Institute of Justice, 2007), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>.

American Civil Liberties Union and Students Active for Ending Rape, "Title IX and Sexual Assault" (2008), available at <https://www.aclu.org/files/pdfs/womensrights/titleixandsexualassaultknowyourrightsandyourcollege%27responsibilities.pdf>.

Centers for Disease Control and Prevention, "National Intimate Partner and Sexual Violence Survey" (2010), available at http://www.odc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

U.S. Department of Education, Office for Civil Rights, "Dear Colleague Letter" (2011), available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>.

White House Task Force to Protect Students from Sexual Assault, "Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault" (2014), available at <https://www.notalone.gov/assets/report.pdf>.

Know Your IX, "Why Schools Handle Sexual Violence Reports" (2014), available at <http://knowyourix.org/why-schools-handle-sexual-violence-reports/>.
National Women's Law Center, "Protecting Survivors of Sexual Assault on Campus: Myths and Facts" (2014), available at <http://www.nwlc.org/resource/protecting-survivors-sexual-assault-campus-myths-and-facts>.

By: Zenen Jaimes Pérez

**GENERATION
PROGRESS**

Generation Progress is a national organization that works with and for young people to promote progressive solutions to key political and social challenges.

Part 5 - Resources:

- Title IX: www.knowyourIX.org
- Clery Act: www.clerycenter.org
- Violence Against Women Act & Campus SaVE Act: www.campussaveact.com
- US Department of Education: <http://www.ed.gov/>
- Not Alone (White House Task Force to Protect Students from Sexual Assault): <https://www.notalone.gov/>
- US Department of Education Dear Colleague Letter 2011: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>