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#MeToo Title IX for Non-Traditional Schools

Handouts

- PPT Presentation
- Sign-In Sheet
- Certificate
 - Live Session – emailed from GoTo
 - Recorded Session– avail at www.accsc.org

Live Polling

- Use the **GoTo** Polling Tool

Temperature Check

- Use the **GoTo** “Question” Tool



About the Speakers



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This presentation is provided for informational purposes only and does not constitute legal advice. Please consult a qualified attorney to discuss your unique situation if you need legal assistance.

Disclaimer

*Integrity is doing
the right thing,
even when no
one is watching.*
~ C. S. Lewis



Photo credit: Google Images

#MeToo



Photo credit: Google Images

*On February 24, 2020,
Harvey Weinstein was
found guilty of rape
and a felony sex
crime, marking a
climactic end to a
high-profile case that
in some ways serves
as vindication of the
#MeToo movement.*

Los Angeles Times



Photo credit: Google Images

What does ACCSC say?

ACCSC standard I.A.2.iii

- Compliance with accrediting standards and applicable federal, state, and local requirements.

ACCSC standard I.C.1.

- The financial structure of the school is sound, with resources sufficient for the proper operation of the school and the discharge of obligations to its students.



Photo credit: Google Images

WHAT IS A NON-TRADITIONAL SCHOOL?

BUT ARE WE REALLY THAT DIFFERENT?



#MeToo in Postsecondary Education

- Title IX Statute & Regs
- ED & OCR Guidance
- State Statutes & Regs
- Judicial Decisions
- Clery & VAWA
- Title VII



Title IX: Where are We Today?

- September 22, 2017:
 - DCL withdraws April 4, 2011 DCL & April 29, 2014 Q&A issued by OCR
- OCR contemporaneously released new guidance, *Q&A on Campus Sexual Misconduct* and re-emphasized:
 - *Revised Sexual Harassment Guidance*
 - *DCL January 25, 2006*
- Proposed Title IX Regulations published November 2018
- Final Regulations Released TBD

Key Features of Current TIX Guidance

Emphasis on impartiality and fair process for all parties

Standard of Evidence Option: Clear & Convincing or Preponderance

Informal Resolution Options

Appeal: if reporting party afforded appeal, appeal option must be made available to responding party as well.

Proposed Title IX Rule: Overview



Narrows Definition of Sexual Harassment



Limits a School's Obligation to Respond



Establishes Expectations for School's Response



Emphasis on Fairness/Due Process



Aligns with Existing Case Law

Definition of Sexual Harassment

- Quid Pro Quo
- Unwelcome conduct on the basis of sex that so severe, pervasive and objectively offensive that it denies a person equal access
- Sexual Assault as defined in Clery

*Limits actionable conduct to objectively serious behavior that, if left unaddressed would jeopardize a student's access to education

*Establishes minimum standards, schools may adopt higher standards of conduct

When is a School's Obligation to Respond Triggered?

- Meets definition of sexual harassment
- Actual Knowledge
- Applies only to conduct occurring within the school's own program or activity
- Applies only to U.S. persons

School will only be liable if response is Deliberately Indifferent (i.e. response was clearly unreasonable in light of known circumstances).

Expectations for School's Response

School Must
Meaningfully Respond
to All Reports of
Sexual Harassment

- Emphasis on Supportive Measures
- School has Flexibility in Applying Institutionally Determined Process

Formal Investigation
& Grievance Process

- Formal Written Complaint by Reporting Party or T9 Coordinator

*Proposed
Title IX
Rule:
Supportive
Measures*



Individualized services meant to protect parties, deter harassment and maintain access to education



Apply with or w/o formal investigation



Free



Non disciplinary, non-punitive



Equally available to both parties



Demonstrates a school's response is not clearly unreasonable

Grievance Procedures

Must be
Equitable/Preserve
Due Process

Presumption of
Innocence

Standard of
Evidence

Reasonably Prompt
Timeframes

Burden to Gather
Evidence on School

Live Hearings

Right to Cross-
Examination

Appeal

Live Hearings & Cross- Examination

- *Institutions of higher education must provide a live hearing*
- *Parties must be allowed to cross-exam other party and any witnesses*
- *Cross-examination must be conducted by party's advisor of choice; school must provide if they don't have one*
- *Cross-examination may occur in separate rooms*
- *Evidence of complainant's sexual behavior is not allowed*

State Law Requirements



ENOUGH IS
ENOUGH
YES MEANS
YES



CONSENT



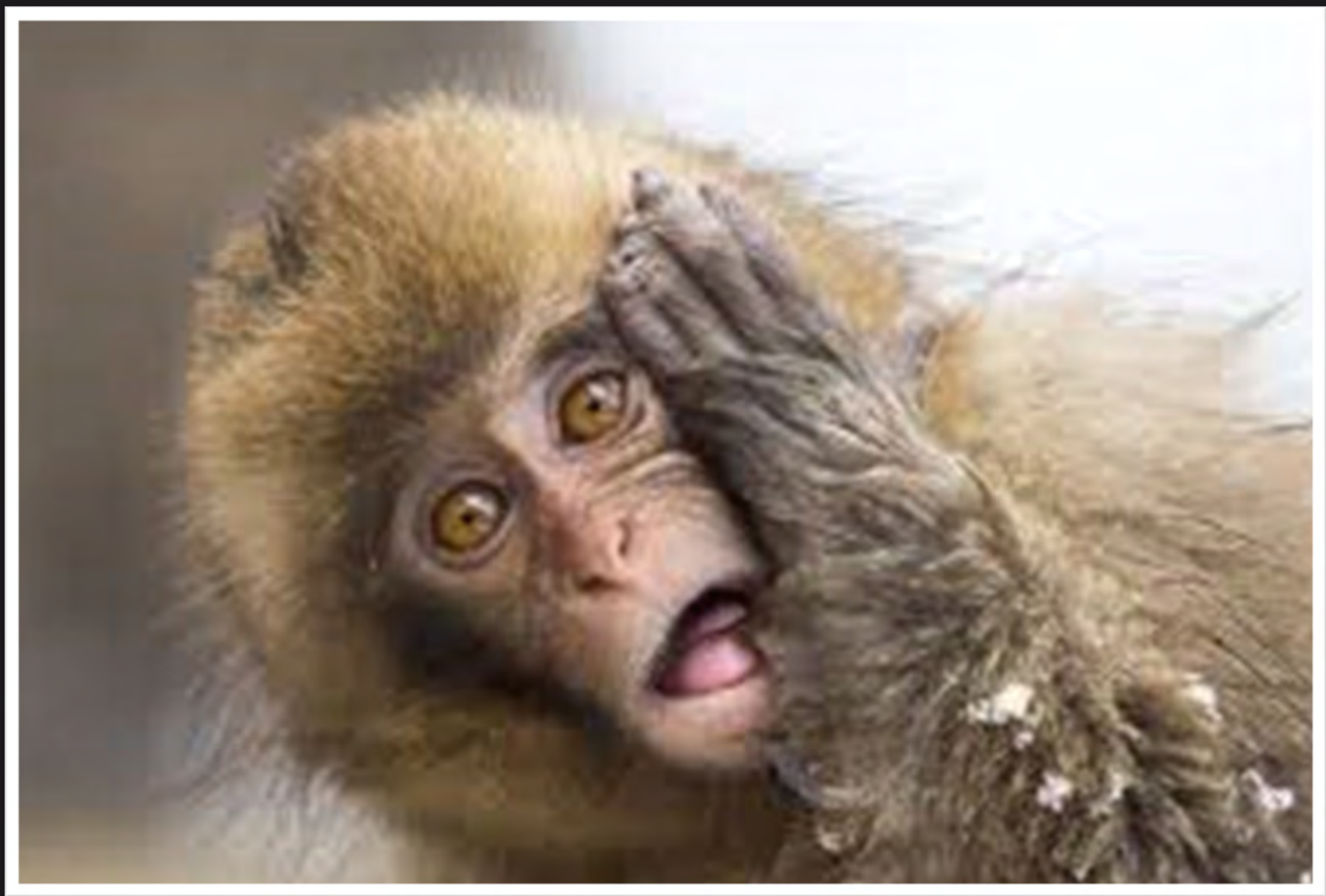
STANDARD
OF
EVIDENCE



TRAINING



POLICIES/
PROCESS



Clery/VAWA



Intersects with Title IX



Clery Geography/VAWA geography



Required Policy Statements



Primary & Ongoing Prevention and Awareness Activities



Title IX v. Clery/VAWA

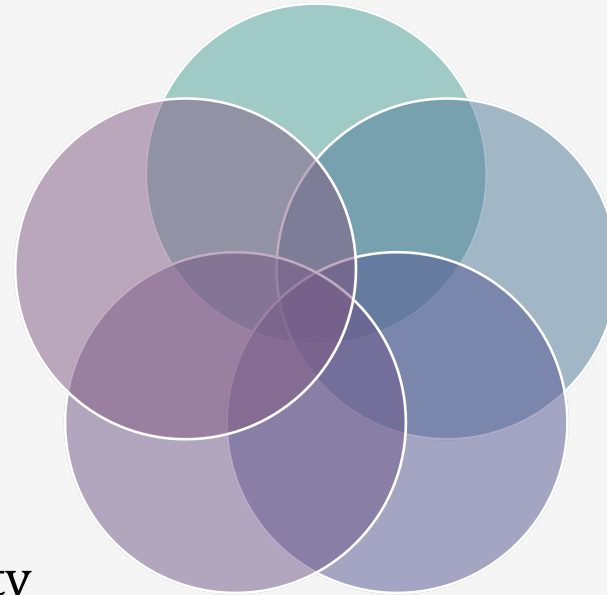
Scope

Training &
Prevention

Geography

Confidentiality

Reporting



Clery Findings

- 2013: Wards Corner Academy - \$15,000.00
- 2014: Midlands Technical College - \$47,500.00
- 2016: Penn State University - \$2,397,500.00
- 2019: Michigan State-\$4,500,000
 - ED fines Michigan State \$4.5 million for failing to report sexual violence, including abuse of hundreds of women by former team doctor. The penalties signal toughened enforcement of federal disclosure laws.
- Last Week: USC –close to \$215 million class-action settlement (New York Times)

**In 2017, Clery Act fines doubled from their original amount, to \$54,789 per violation*

Proactive Title IX Compliance



*Aligned &
Integrated
Policies*



Training & Prevention

Faculty & Staff



Policies & Procedures



Students



Resources

- <https://atixa.org/>
- <https://clerycenter.org/> - YouTube Channel (free)
- <https://www.nacua.org/>
- Chronicle of Higher Education
- Office of Civil Rights
- www.ifap.ed.gov
- Regulations.gov
- State Resources (CA DOJ trainings)
- MaxKnowledge
- YouTube



February 27, 2020: OCR issues Resolution Letter

...The University failed to maintain a recordkeeping system to identify and monitor incidents of possible sexual harassment by its employees.



The University failed to provide a timely response to Employee 1's appeal of the University's 2016 determination regarding Employee 1's alleged sexual misconduct...

...Based on the findings detailed below, OCR determines that the University violated the Title IX regulation at 34 C.F.R. §§ 106.8(b) and 106.31 because the University failed to promptly and effectively respond to notice of potential sexual harassment by Employee 1 and this failure may have allowed female students to be subjected to continuing sex discrimination.

QUESTIONS?



THANK YOU



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