

Clery Act and Title IX Guidebook

Legislative Compliance Checklist & Prevention Best Practices

Campus sexual assault has dominated headlines – and federal and state legislation – for the past two years, and for good reason. The individual and institutional impact of sexual violence is enormous, making clear the importance of meeting both the letter and spirit of laws put in place to protect our students, faculty and staff.

The oft-cited statistics that **20-25% of college women (and 3-6% of college men) will experience sexual assault** during their time on campus, albeit horrific, are only numbers.^{1,2,3} These numbers represent thousands of women and men whose lives are drastically affected by preventable violence and abuse. Depression, PTSD, anxiety, eating disorders, suicide, substance abuse, harmed social/intimate relationships, poor academic performance, higher rates of dropping out, and heightened risk for future victimization are among the potential fallout.

Beyond the physical, mental, and emotional toll sexual assault has on survivors, the impact of violence on higher education institutions is significant in multiple mission-critical domains: student attrition, reputational repercussions, enrollment, litigation costs, federal investigations tied to fines and funding cuts, more staff time, and increased demand for services. In fact, a report from the White House Task Force

to Protect Students from Sexual Assault estimated a total economic cost of \$87,000 to \$241,000 per rape, while a recent study by United Educators cited **\$17M in losses to colleges and universities for sexual assault claims resulting in litigation** (an average of \$200,000 for defending/resolving each claim).^{4,5}

As federal and state lawmakers continue to confront these issues, and mandates from Title IX and the Clery Act (Campus SaVE/VAWA) continue to evolve, institutions will require a more thorough and holistic approach to their sexual assault prevention efforts.

As of July 1st, 2015, colleges and universities will be required to offer “primary prevention and awareness programs” to all incoming students and employees, as well as “ongoing prevention and awareness campaigns.” These mandates are part of the Clery Act, put in place by Section 304(a) (5) of the reauthorized Violence Against Women Act of 2013. Many refer to these Clery Act amendments as the Campus SaVE Act, and they will be enforced by the Department of Education in addition to all requirements of Title IX.

To get you started, we’ve compiled a list of key requirements from both the Clery Act and Title IX so that you can review your current practices and ensure your institution meets and exceeds compliance.



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Legislative Compliance Checklist

CLERY ACT (CAMPUS SAVE) & TITLE IX

Compliance Area	Description	Are You Addressing This Area Today?	How Might This Be Improved?
Primary Prevention and Awareness Programs (pg. 3)	Prevention programs must be in place for all incoming students and employees, containing the information below.	<input type="checkbox"/>	
Ongoing Prevention and Awareness Campaigns (pg. 4)	Programming, initiatives, and strategies must be sustained over time for students and employees.	<input type="checkbox"/>	
Prohibition Statement and Notice of Non-Discrimination (pg. 5)	Providing a statement that the institution prohibits sexual assault, dating violence, domestic violence, stalking, and sexual harassment, and does not discriminate on the basis of sex in education programs/ activities.	<input type="checkbox"/>	
Defining Key Terms (pg. 5)	Educating students and employees on the definitions of consent, sexual assault, dating violence, domestic violence, stalking, and sexual harassment, in the applicable jurisdiction as well as campus-specific policies.	<input type="checkbox"/>	
Bystander Intervention (pg. 6)	Description of safe and positive options for bystander intervention.	<input type="checkbox"/>	
Risk Reduction (pg. 7)	Providing options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims.	<input type="checkbox"/>	
Grievance Policies, Procedures, and Resources (pg. 8)	Rights, resources, and reporting options if an offense occurs; description of proceedings, including rights of accuser/accused	<input type="checkbox"/>	

Prevention Best Practices & Strategies

Improving Campus Prevention & Response Initiatives

While federal mandates provide impetus to focus on critical issues related to health, wellness, and safety, institutions must also focus intently on building prevention approaches that go above and beyond these baseline requirements.

As an additional resource to our checklist, we are providing a best practice guide to consider what improvements you might make as you consider each of the compliance areas and your broader sexual assault prevention efforts on campus.

Primary Prevention and Awareness Programs

According to the new Clery Act amendments, all institutions are required to have “primary prevention and awareness programs” in place for all incoming students and employees. The definitions of these two separate programming approaches - primary prevention and awareness - are detailed below (Figure 1).

Primary Prevention Programs	Awareness Programs
Primary prevention programs means programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in healthy and safe directions.	Awareness programs means community-wide or audience-specific programming, initiatives, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

Figure 1. Primary Prevention and Awareness Programs, as Defined in VAWA Negotiated Rulemaking

Sexual assault stems from a confluence of factors that contribute to greater risk for experiencing or perpetrating violence. The Social Ecological Model is a public health framework for addressing these individual, relational, community, and societal influences that should be incorporated into prevention programs to ensure that they are comprehensive and effective (Figure 2).⁶ Done well, primary prevention programs can spark a positive cultural shift necessary for driving down rates of sexual assault, on campuses and beyond.

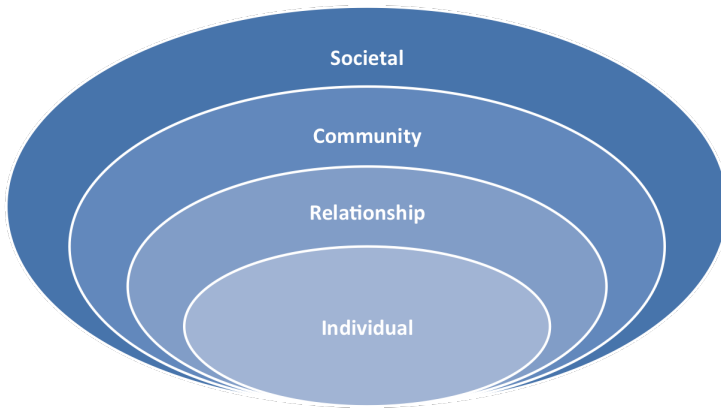


Figure 2: Social Ecological Model

From a best practice perspective, primary prevention programs should be developed to address the root causes of violence and abuse in order to prevent their initial occurrence. For many schools, investing in primary prevention helps to address sexual and relationship violence before it even happens, reducing the impact these crimes have on students, staff, and the campus community at large. Successful prevention programs that, over time, lead to lower rates of violence will decrease the need for institutions to invest as heavily in response, ultimately lowering the direct and indirect costs of these offenses.

In fact, studies have shown substantial return-on-investment (ROI) of public health prevention programming, with additional savings on intervention and treatment costs. **One study found that for every \$1 invested in community-based prevention, the return amounts to \$5.60, or an ROI of 460%.**⁷

The legislation requires institutions to provide primary prevention programs to all incoming students, staff, and faculty. This includes transfer, graduate, and non-traditional student populations like online enrollees, military, and more. Providing education to such diverse populations at scale can be difficult for many campuses, so the addition of online programs is becoming an invaluable prevention approach for many schools, including Oregon State University.

“We were looking for something that would help us meet all of our compliance requirements,” says Roni Sue, Co-Associate Director of Bias Prevention and Education with Oregon State University’s Office of Equity & Inclusion. “But we also required a program that would drive real positive changes in student attitudes and behaviors.”

Through their implementation of online courses, Oregon State has been able to achieve a 95% completion rate of their sexual assault prevention programs, allowing the University to achieve compliance and protect their diverse population of students.

Ongoing Prevention and Awareness Campaigns

The definition of “ongoing” prevention and awareness campaigns remains a bit unclear amongst public health professionals, Title IX Coordinators, Clery Act Officers, and other compliance personnel across campuses. According to Clery, the mandate requires “programming, initiatives, and strategies [that] must be sustained over time for students and employees.”

Ongoing prevention approaches consider both breadth and depth, and should always be prefaced by the question, “are we covering the right topics and going deep enough to actually impact the attitudes and behaviors of our learning populations?” For the impact of any educational programs to be sustained over time, prevention messages must be a frequent, and consistent, part of the student, faculty, and staff experience at your institution. As such, providing annual prevention programs is the absolute lowest bar for



\$1

invested in community-based prevention returns

\$5.60

maintaining compliance, and likely will not drive breakthrough progress in prevention.

The greatest impact to attitudes and behaviors will be made when messages are tailored to the unique needs and strengths of target groups. They should build upon themselves over time, through a variety of delivery vehicles, including but not limited to online courses, in order to deepen understanding, reinforce key information, and build critical skills.

Prohibition Statement and Notice of Non-Discrimination

The Clery Act amendments through VAWA require institutions to define and publish a “prohibition statement” that showcases the school’s policy against sexual assault, dating violence, domestic violence, stalking, and sexual harassment. This is similar to the notice of non-discrimination required by Title IX, stating that Title IX requires that the school does not discriminate on the basis of sex in education programs and activities.

Prohibition statements are important from a prevention perspective, as they set the tone that these offenses will not be tolerated. Students, faculty, and staff must be held accountable to a set of standards for being part of your institution and creating a safe, healthy community.

Understanding that most students, faculty and staff are healthy in their attitudes and behaviors, this message does not have to be punitive or heavy-handed. Institutions should strive to create prohibition statements that promote the values of the institution. See below (Figure 3) for an example prohibition statement you may customize for your college or university.

“EverFi University is a community that stands for safe, healthy relationships. As such, it is the policy of the University to foster a campus environment that is free from intimidation and one in which students may be educated to their fullest potential. Therefore, the University will not tolerate rape, sexual assault, dating violence, domestic violence, stalking, and any form of sexual harassment from students, faculty, or staff. The University also encourages reporting of any incident related to these offenses.”

Figure 3. Sample Prohibition Statement

Defining Key Terms

In order for students, faculty, and staff to create safe, healthy communities, they must have an understanding of offenses that threaten these ideals. As such, the Clery Act also requires educational programs, including those delivered online to students, faculty, and staff, to define “key terms”, which include the following:

- Dating Violence
- Domestic Violence
- Sexual Assault
- Stalking
- Consent, in reference to sexual activity

The Clery Act legislation requires that these terms be defined in the “applicable jurisdiction.” By providing education on these key terms, students, faculty, and staff will be made aware of how both legal statutes and campus policy define these offenses.

Legislation from Title IX also encourages a non-hostile environment, free of discrimination. Sexual assault, dating violence, domestic violence, stalking, and sexual harassment all threaten the campus environment and are forms of discrimination against members of the campus community. Title IX guidance from the Office of Civil Rights recommends that

prevention programs include the definition of sexual violence (a broad, encompassing term), including same-sex sexual violence, under the school's policies, as well as the definition of consent.

Analysis has found that population-level prevention approaches like online education can spark significant shifts in awareness and understanding of these key terms. Being able to recognize what constitutes violence/abuse is a critical first step in getting students invested in addressing it.^{8,9}

Bystander Intervention

Bystander intervention is defined in VAWA as the “safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.”

Bystander intervention has gained widespread traction in the space of sexual assault prevention, and for good reason. Most students, faculty, and staff endorse positive attitudes and behaviors that do not support violence, and a bystander approach allows institutions to champion these individuals as critical parts of the solution who can take action to promote safe and healthy communities. However, there are widespread misperceptions among students of their peers’ confidence and willingness to intervene. Even though most students have a great deal of confidence and willingness to intervene themselves in critical situations, these misperceptions of norms among their peers can create substantial barrier to them taking action (Figure 4).¹⁰

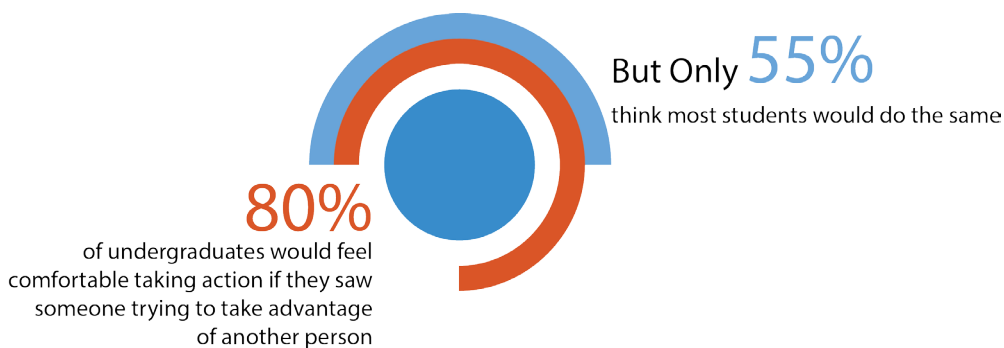


Figure 4. Bystander Intervention: Students Misperceive the Willingness of Peers to Intervene to Confront Sexual Assault

A person’s decision to intervene is largely shaped by their perceptions of peer support, among other barriers such as lack of awareness of problematic situations, lack of confidence in their skills to intervene successfully, and fear of embarrassment or retaliation. In fact, the bystander effect - where no one takes action in a critical situation - is caused by the assumption that someone else will intervene if a situation truly warrants action. In addition, there are often situations where a student, faculty, or staff member identifies a behavior as problematic, but incorrectly assumes that others do not see it as a problem, particularly if others are doing nothing to intervene.

By educating and engaging the critical mass of students, faculty, and staff who have positive attitudes and behaviors, and making them aware that they are part of a healthy majority on campus, it is possible to correct social norm misperceptions and provide the skills to intervene effectively. With this approach, institutions can rely on their students, faculty, and staff to help create safer, more positive campus communities.

Risk Reduction

VAWA defines “risk reduction” as the “options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.”

Risk reduction programs should encompass a variety of risk behaviors, going far beyond a singular focus on strategies to avoid victimization. This myopic perspective to risk reduction has led to an inappropriate and undue burden and blame placed on survivors of sexual assault and abuse, rather than on those who committed the crime.

A more comprehensive approach to risk reduction addresses attitudes and behaviors that may contribute to perpetration. Similarly, students, faculty, and staff must learn about the skills and strategies to overcome bystander inaction if they or others are witness to problematic behavior or dangerous situations.

Addressing student drinking and the role alcohol plays in many sexual assault situations is an important part of risk reduction messages, particularly as it has been found that at least **50% of campus sexual assaults involve alcohol use by the victim, the perpetrator, or both.**¹¹ In fact, the role of alcohol and other drugs has been called out specifically as a focus area in Title IX guidance. To avoid placing the onus on those who (may) experience sexual assault, alcohol should be addressed as a tool used by perpetrators to make another person more vulnerable. In addition, alcohol can inhibit a bystander’s ability to recognize a risky or dangerous situation and intervene effectively.

More broadly, alcohol can be addressed as a risk factor for achieving one’s goals in college, rather than simply a precursor to sexual assault. Research has consistently found that students who drink excessively are more likely to have lowered academic performance and carry a higher risk of attrition. For institutions heavily focused on student retention, the economics prove costly - lost tuition revenue resulting from attrition, along with a host of other financial factors related to student drinking, can cost institutions up to \$629,000 a year (Figure 5).



50%

of campus sexual assaults involve alcohol

Item	Calculation	Cost
Attrition	15% Attrition due to alcohol	\$30,467
Counseling Services	15% Counseling staff time, #FTLEs	\$75,643
Adjudication	80% Student Conduct staff time, #FTLEs	\$224,128
Public Safety	15% Campus staff time, #FTLEs	\$226,930
Non-Billable Property Damage	55% Damage due to alcohol; per student costs	\$72,229
	Total Cost	\$629,396

Figure 5: Alcohol-Related Costs to EverFi University (Pseudonym)

Note - Based on EverFi’s Alcohol Cost Calculator estimation for “EverFi University”, a pseudonym institution with an undergraduate student population of 10,000.

Given the sensitivity of these particular topics, it is important that messages are designed and delivered by highly trained prevention professionals. Many institutions have partnered with organizations that provide advisory services to help design the proper risk reduction

approaches, particularly those that address challenging topics like the relationship between alcohol and sexual assault in a victim-sensitive and comprehensive manner.

Grievance Policies, Procedures, and Resources

Sexual assault is one of the most underreported crimes: recent studies have estimated that student report rates range from only 12-20%.^{12,13} It is important to be aware that effective prevention programs will likely result in an increase in reported incidences in the short term, and this is a good sign. Creating a culture where victims are aware of resources and options, and feel safe and supported enough to report, is necessary for holding perpetrators accountable.

In addition to the prevention-related training mandates previously described, the Clery Act requires schools to provide information to students and employees about what options exist if a crime occurs. These requirements are similar, although not identical, to the response-oriented aspects of Title IX.

Students, faculty, or staff who experience sexual assault, dating violence, domestic violence, stalking, and/or sexual harassment have multiple options for reporting and a number of rights to ensure they receive the support they need. Creating a culture of care starts by educating students on how to support a person who comes to them after experiencing sexual assault, as EverFi research has indicated that the most likely person a survivor will disclose to is a close friend (Figure 6).¹⁴ Ensuring that students have the skills needed to listen respectfully, believe and not judge, and provide resources is critical for survivors healing and willingness to report.

Who did you tell about the incident?

27% NO ONE

27%	Roommate
55%	Close Friend
13%	Parent
5%	Police

If you did not tell anyone, why was that the case?

52%	It's a private matter - wanted to deal with it on my own
44%	Ashamed/embarrassed
43%	Didn't think what happened was serious
42%	Wanted to forget it happened

Figure 6: Perspectives from Sexual Assault Victims
"Who Did You Tell About the Incident?"

It is worth noting that this analysis found that only 7% of sexual assault survivors utilized their school's procedures for reporting, indicating a clear need for improvement in driving up report rates.¹⁵ While institutions can't (and shouldn't) force victims to share their experiences, they can give them the information they need to recognize that they have options and will be supported. It has been found that training on topics relevant to reporting has had a positive impact on victims' likelihood to report. However, over half of students who reported to their school felt that their institution's procedures helped very little or not at all.

To ensure clarity and support for survivors and responders, it is critical for institutional employees (faculty and staff) to be aware of their roles and responsibilities if an offense is reported to them. The Department of Education has outlined three possible reporting roles for campus employees in Title IX guidance, including:

- **Responsible employees** (similar to, but not always the same as, Campus Security Authorities in Clery) who are required to report all relevant details of an offense
- **"Anonymous reporters"** who must report offenses but are not required to

provide identifying information about the people involved without the reporting student's consent

- Non-professional counselors or advocates fall into this category (including individuals who work or volunteer in on-campus sexual assault centers, victim advocacy offices, women's centers, or health centers)
- **Privileged or confidential employees** who do not have to report offenses they are made aware of because of their role as licensed counselors (psychologists, pastoral counselors, etc.)

Proper training of potential first responders to ensure that disclosures and reports are addressed appropriately and sensitively is of utmost importance - most importantly for the healing and recovery of students who are victimized, but also the liability risks posed to the institution itself.

Once an offense is reported, institutions must adhere to certain procedures for the investigation and provide certain rights/options for both the reporting student and the alleged offender. These include reasonable accommodations for the victim, efforts to protect confidentiality if requested, fair and timely disciplinary hearings, clear and transparent sanctions and standards of evidence, and protection from retaliation.

At a time of increased scrutiny of institutional responses from both parties - both on behalf of alleged victims and perpetrators - it is important for campuses to write strong policies, develop clear protocols and procedures, and stringently adhere to them for every case.

Doing the Best Work Possible -

Protecting Your Students, Faculty, Staff, and Institution

Compliance with mandates, particularly in response to incidences, will continue to be a critical focus on the minds of Title IX Coordinators, Clery Compliance Officers, Student Affairs administrators, and institutional leadership. We believe that legislative requirements provide a solid foundation for campus efforts to address sexual and relationship violence.

Institutions committed to protecting and supporting students, faculty and staff should strive to exceed compliance by prioritizing prevention best practice. With this in mind, "checking the box" of compliance is just the first step towards achieving the ultimate goal of creating safer, healthier campus communities.

Learn More About EverFi and Sexual Assault Prevention Programs at [EverFi.com/Haven](https://www.EverFi.com/Haven)

Sources & Additional Compliance Resources

Referenced Sources:

¹Fisher, B., Cullen, F. & Turner, M. (2000). The Sexual Victimization of College Women. (NCJ #182369.) Washington, DC: U.S. Department of Justice, National Institute of Justice. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/182369.pdf>

²Tjaden, P., and N. Thoennes. Prevalence, Incidence and Consequences of Violence Against Women Findings From the National Violence Against Women Survey. Washington, DC: U.S. Department of Justice, National Institute of Justice, November 1998, NCJ 172837.

³Krebs, C. P., Lindquist, C., Warner, T., Fisher, B., & Martin, S. (2007). The Campus Sexual Assault (CSA) Study: Final report. Retrieved from the National Criminal Justice Reference Service: <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>

⁴Rape and Sexual Assault: A Renewed Call to Action. (2014). Retrieved June 22, 2015, from https://www.whitehouse.gov/sites/default/files/docs/sexual_assault_report_1-21-14.pdf

⁵Facts From United Educators' Sexual Assault Claims Study. (2015). Retrieved June 22, 2015, from https://www.ue.org/sexual_assault_claims_study/

⁶The Social-Ecological Model: A Framework for Prevention. (2015, March 25). Retrieved June 22, 2015, from <http://www.cdc.gov/violenceprevention/overview/social-ecologicalmodel.html>

⁷Prevention for a Healthier America: Investments in Disease Prevention Yield Significant Savings, Stronger Communities. (2009). Retrieved June 22, 2015, from <http://healthyamericans.org/reports/prevention08/Prevention08.pdf>

⁸Sexual Victimization & Intervention Rates on the College Campus. (2015, February 1). Retrieved June 22, 2015, from <http://info.everfi.com/SexualVictimization.html>

⁹2014-15 EverFi Haven analysis, n = 550,000

¹⁰Sexual Victimization & Intervention Rates on the College Campus. (2015, February 1). Retrieved June 22, 2015, from <http://info.everfi.com/SexualVictimization.html>

¹¹Abbey, A. (2002). Alcohol-related sexual assault: A common problem among college students. *Journal of Studies on Alcohol*, Supplement 14, 118-128.

¹²Poll: One in 5 Women Say They Have Been Sexually Assaulted in College. (2015, June 12). Retrieved June 22, 2015, from <http://www.washingtonpost.com/graphics/local/sexual-assault-poll/>

¹³Rape and Sexual Assault Among College-age Females, 1995-2013. (2014, December 11). Retrieved June 22, 2015, from <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5176>

¹⁴EverFi Climate Survey Data Analysis. (2015, June 18). Presented at EverFi Annual Research Summit.

¹⁵Ibid.

Additional Compliance Resources:

Title IX Statute:

<http://www.justice.gov/crt/about/cor/coord/titleix.php>

Title IX FAQs:

<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

2011 Dear Colleague Letter - Title IX Guidance:

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>

2015 Dear Colleague Letter on Title IX Coordinators:

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>

Final Consensus Language for Clery Act Amendments Through VAWA:

<https://www.federalregister.gov/articles/2014/06/20/2014-14384/violence-against-women-act>

Note: The content included in this document is provided solely for informational and educational purposes. This document is not a substitute for a comprehensive risk management audit and/or consultation by a qualified legal or risk management advisor.

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