



January 24, 2024

Office of Equity and Inclusion

# Title IX Workshop: Clery and Title IX

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Minnesota State

# Introductions

## Chris Cichosz

- Winona County Sheriff's Office-14 yrs.
  - Jail, Patrol, K-9, Narcotics Investigations, Chief Deputy
- WSU-7+ yrs.
  - Clery Center Training-2 day
  - Clery Center Institutional member
    - Regular training opportunities
  - D. Stafford & Associates: 5-day training x2
  - D. Stafford & Associates: 2-day (WSU-specific event)
  - National Association of Clery Compliance Officers and Professionals (NACCOP)- institutional member
    - Annual webinar series (10)
  - NACCOP Conference 2019
  - NACCOP Clery Compliance Officer Certification-2020
    - Annual recertification

## Ashley Atteberry

- Minnesota State, system office, 10 months
- MSU Moorhead, 14.75 years
  - Director of Student Conduct
  - Title IX Coordinator, 7 years; Deputy, 4 years
- Ferris State University, 3 years
  - Director of Student Conduct
  - Assist. Director of New Student Orientation Program
- University of South Dakota
  - Housing experience: grad assist. hall director and RA
- Trainings and certificates, include:
  - Mn Peacebuilding Leadership Institute: STAR (2022)
  - Clay Co. Domestic Violence Court: non-fatal strangulation cases (2016)
  - DSA Clery Act Compliance (2018)
  - NACUA Title IX course (2012)
  - National Center for Higher Education Risk Management (2008-2015)
  - Minnesota State investigator trainings (2008-2023)
  - Security on Campus, Team Approach (2008)

# Agenda

- Federal and State laws
- Overlap and Intersections
- Clery Definitions
- Campus practices at WSU

# Terms to be used

**Annual Security Report (ASR)**

**Annual Security & Fire Safety Report (ASFSSR)**

**Clery Report**

**Campus Security Authority (CSA)**

**Security=Public Safety**

# Why is the Clery Act important?

- In essence the Clery Act is a consumer protection law
- The information we are required to provide allows you, your colleagues, our students, prospective students/parents, and prospective staff to make informed decisions for their safety and security
- A person cannot make an informed decision if they do not know all the facts(Jeanne Clery-killed in 1986)

# Federal and State Laws

## Overview

# Federal Law: Title IX

- Title IX of the Education Amendments of 1972 is a federal law that provides: 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.”  
20 U.S.C. § 1681
- 2020 regulatory guidance includes:
  - What constitutes “actual knowledge” of a Title IX matter, including which individuals on campus meet the criteria to be considered “Officials With Authority”;
  - Definition and jurisdiction clarifications, especially regarding sexual harassment; and, procedural requirements including increased due process requirements.



# Federal Law: Clery

- The Clery Act (1990) was named after Jeanne Clery, a student who was raped and murdered in her dorm room by a fellow student at Lehigh University in Pennsylvania. Jeanne’s parents advocated for legislation that required disclosure of campus crime statistics. These disclosures would allow people to make informed decisions on the environment they attend classes or work.
- The Clery Act is considered a “consumer protection law that aims to provide transparency around campus crime policy and statistics” (Clery Center, 2017).
- Some requirements of the Clery Act
  - Publish the annual Clery Report
  - Maintain a publicly available crime and fire log
  - Issue Timely Warning notifications when crimes pose a serious or ongoing threat to the campus community
  - Issue Emergency Notifications to the campus community in the event of a significant emergency or ongoing dangerous situation
  - Implement procedures for missing students (on-campus residents)
  - Identify Campus Security Authorities (CSAs) and provide annual training
  - Identification of Clery Act Geography
  - Address victim rights, options, and resources (Clery Center, 2017)

# Federal Law: Violence Against Women Act

## Reauthorized and effective 2014:

- Prompt, fair, and impartial process: initial investigation to final result
- Process must be consistent with institution's policies and transparent to both parties
- Both parties shall have:
  - Equal opportunities to have others present, including advisor of choice
  - Timely notice of meetings and who will be present
  - Timely and equal access to information used during disciplinary meetings and hearings

# VAWA, continued

- Officials shall be trained annually, including having no conflict of interest or bias for or against either party
- Reasonably prompt timeframe, which may be extended for good cause with written notice to both parties, stating the delay and the reason
- Both parties shall receive simultaneous notification, in writing, of the result of the proceeding, including rationale, sanctions, available appeal, and any changes to the results, and when the results become final

# Clery Act, amended

## Amended by VAWA, Campus SaVE (Sexual Violence Elimination) Act, effective 2015

- Required an increase in transparency requirements for IHE
- Guarantee rights for survivors (accommodations)
- Establish disciplinary proceedings
- Inclusion of sexual assault, domestic violence, dating violence, and stalking in crime reporting
- Primary prevention and awareness programs for all incoming students and new employees (WSU Title IX- documented in the ASR)
- Campus brochure (VAWA § 304): info for victims, shared with mandated reporters and Officials with Authority (OWA)

# VAWA, 2022

## Reauthorized and effective Oct. 2022

- Revised and expanded definitions, including domestic violence
- Funding for increased services and support for survivors from underserved and marginalized communities, including LGBTQIA+ survivors
- Funding for pilot program: Sexual violence restorative practices
- Task Force on Sexual Violence in Education
- Mandated interpersonal violence campus climate survey
- Examination of student loan issues

# State Law: Sexual Harassment & Violence Policy

## Minnesota State Statute 135A.15

- Required policy, including sexual assault definition, victims' rights, and uniform amnesty
- Coordination with local law enforcement
- Online reporting system, including anonymous reports
- Data collection and reporting to OHE (due Oct 1)

# Policy, continued

- Comprehensive training
  - For new, incoming students: 10-day deadline
  - Requires annual training for campus administrators responsible for investigating or adjudicating complaints on sexual assault or persons responsible for responding to reports of sexual assault—including investigators and decisionmakers
  - Individuals responding to reports of sexual assault
- Student health services screening; counseling designated staff

# Minnesota State Policies and Procedures

- Board Policy 1B.1 Equal Opportunity and Nondiscrimination in Employment and Education
- Board Policy 1B.3 Sexual Violence
- System Procedure 1B.1.1 Investigation and Resolution
- System Procedure 1B.3.1 Response to Sexual Violence and Title IX Harassment



# Overlap and Intersections

Clery and Title IX

# Clery and Title IX: Key Role(s)

## Clery

- Clery Compliance Officer (CCO)
- Campus Security Authority (CSA)

## Title IX

- Title IX Coordinator
- Officials with Authority (OWA)

# Clery and Title IX: Jurisdiction & Conduct

## Title IX

- In the U.S., in the context of any school program or activity
  - On campus property
  - Within buildings and property owned or controlled by a student organization officially recognized by the institution
- Sex discrimination, sex and gender-based harassment, sexual violence
- Roles: status of parties controlling factor
  - Victim: attempting to or engaging in programs or activities at institution
  - Institution has substantial control over respondent and context in which harassment occurred

## Clery Geography

- On-campus, including on-campus Residential Housing
- Public property: property that is within the campus, or immediately adjacent to and accessible from the campus
- Noncampus
  - Property owned or controlled by officially recognized student organizations (Greek)
    - -WSU issue
  - Property owned or controlled by the institution

**Controlling factor: location where the reported crime took place**

**Reportability regardless of the association of the involved parties with the institution**

**Clery Act crimes:**

- Criminal offenses (17)
- Hate Crimes (17+ 4)
- VAWA Offenses
- Arrests or referrals for disciplinary action (Weapons, Liquor, drug law offenses)

**Institutional or System policy/conduct violations do not count**

- Unless they are also Clery Crimes

**Report the incident if the location is unknown or questionable**

# Clery and Title IX: Employee Classifications

## Title IX

- Required: designated, trained, and broadly communicated officials with authority
- Confidential: Process advisors trained and provided by institution
- Encouraged (*see campus policy and process*)

## Clery

- **Campus Security Authority (CSA):**

- A campus police department or campus security department of an institution
- Any individual(s) who have responsibility for campus security but who do not constitute a campus police department of campus security department
- Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses
- An official or an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings
- Official-any person who has the authority and duty to take action or respond to particular issues on behalf of the institution
- CSA designation is based on the function of an individual or office, not their title

- Who is not a CSA?

- Faculty who have no other responsibility for student and campus activity beyond the classroom
- Clerical or cafeteria staff
- CSA exemptions:
  - Pastoral counselor
  - Professional counselor
- WSU-357, MSC Southeast-22
- Title IX and Deputy Title IX Coordinators are CSAs

# Role of a CSA

- Duty to report any Clery crime that is believed to have been made in good faith.
- Report Clery Crimes to the designated person or office
- They are not responsible for investigating reported crimes
- They are not responsible for determining if a crime took place
- They should not attempt to apprehend an alleged perpetrator
- CSA reports may be included in the daily crime log and ASR.
- CSA reports are used to determine if a timely warning notification is required
- Give information, resources, and support
- A report can be made while withholding personally identifiable information.
- Another source for crime incident reporting that people may feel more comfortable speaking with
- They help provide a more accurate campus crime environment
- When in doubt Report It

# What a CSA must do at WSU

1. Complete the D2L training and quiz
  - Starts in August-ongoing
2. Report Clery Crimes to Security
  - In a timely manner
3. Complete the CSA Survey (Qualtrics)
  - Starts January



# Clery and Title IX: Reporting

## Clery

- CSA Report Form-automatically forwarded to Title IX
- Security Reports evaluated for Clery
  - Title IX implications-forwarded to Title IX Office
- Director of Housing & Residence Life
  - Evaluation of all housing reports
  - Sends regular Clery log updates to Security
- Law Enforcement
  - We make the request every year

## MN 135A.15

- Uniform amnesty (Subd. 3)
- Online reporting, including anonymously (Subd. 5)
- Sexual Misconduct, Dating/Relationship Violence, Stalking Report form-
  - Title IX must relay information as a CSA
  - They can withhold personally identifiable information

# Clery and Title IX: Responding to Reports

## Title IX

- Actual knowledge by Title IX Coordinator or OWA to take corrective action
  - offer and provide supportive measures, regardless of complaint filed
  - information about filing formal complaint at institution

# Clery

- **CSA**
  - D-I-G: Disclose, Inquire, Give
  - CSA Report Form
- **WSU Security (on/off duty)**
  - Trauma informed approach
  - Is the scene safe
  - Is the victim safe
  - Seek medical attention if requested or needed
  - Inform the victim of services/options available
    - Advocate, LE, Security, No Report
- Provide “We Care” packet
- Notify Director, complete reports
- Off duty: CSA Report form
- **Residence Life (on/off duty)**
  - Sexual Violence & Misconduct Report Form
    - WSU-Automatically goes to Title IX

# Clery and Title IX: Response Measures

## VAWA

- **Protective measures:** options, assistance, and requests for changes to academic, living, transportation, and work environment
  - if requested and reasonably available
  - regardless of report to campus or LE
  - POLICY: range of protective measures available during disciplinary process

## Title IX

- **Supportive measures:** non-disciplinary, non-punitive, individualized services
  - reasonably available and without a fee or charge
  - regardless of complaint
  - before or after complaint is filed
  - provided to the Respondent as well

# Clery and Title IX: Procedural Elements

## Clery

- **Clery requires the documentation and explanation of what an institution does in the ASR**
- **Say what you do and do what you say**
  - Types of proceedings, steps involved, and timelines for procedures
  - Describe the standard of evidence
  - Sanctions: list all possible for students and staff
    - A range of sanctions is not acceptable
  - Training for investigators and adjudicators
  - Advisor of choice for both parties (present during all meetings)
  - Simultaneous notification in writing to both parties regarding the results of the proceedings

## Title IX

- Specific steps in the disciplinary process
- State standard of evidence: preponderance of evidence
- Sanctions: range imposed
- Training for investigators and adjudicators
- Advisor of choice for both parties (present during all meetings); advisor responsible for conducting cross-examination during live hearing
- Simultaneous notification in writing to both parties regarding the results of the proceedings

# Clery: Closer Look

## Definitions

# Sexual assault

**Sexual Assault (sex offense)** is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

- **Rape** is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling** is defined as the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest** is defined as sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape** is defined as sexual intercourse with a person who is under the statutory age of consent.

# Domestic Violence

Felony or misdemeanor crimes of violence committed

- by a current or former spouse or intimate partner of the victim,
- by a person with whom the victim shares a child in common,
- by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
- by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.



# Domestic Violence: Clarification of terms

- Spouse or intimate partner of the victim
  - Includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.
- Crime of Violence:
  - An offense that has as an element of the use, attempted use, or threatened use of physical force against the person or property of another; or
  - Any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

# Dating Violence

Violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship.

Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does NOT include acts covered under the definition of domestic violence

# Stalking

**Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:**

- **Fear for the person's safety or the safety of others; or**
- **Suffer substantial emotional distress.**

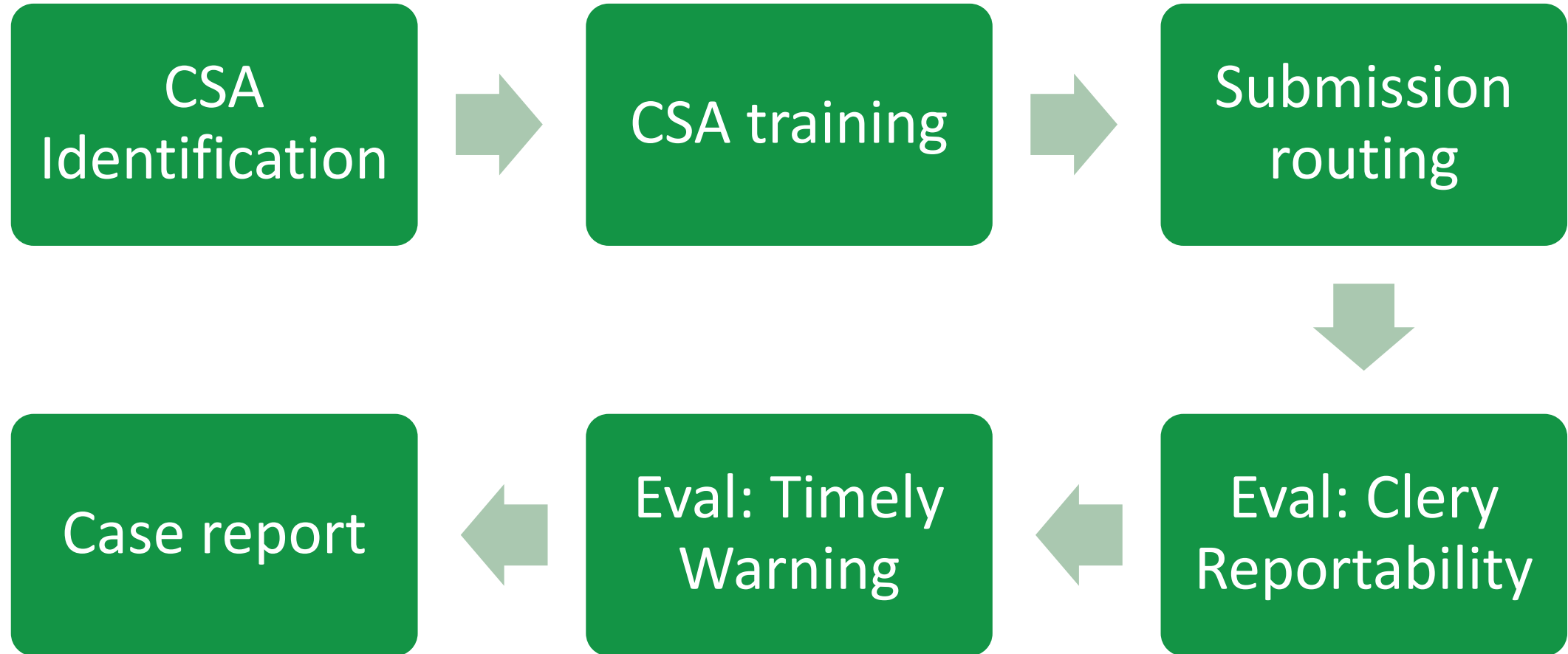
For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling

# Clery on Campus

Winona State University

# Process at Winona



# Why is your Clery Compliance Officer (CCO) so demanding?

- Aggregate data is not enough
- Crimes need to be reported “in a timely manner” to evaluate the need for a timely warning notification
- We could lose Title IV funding (Federal Financial Aid)
- Reputational Damage
- Institutional fines over \$67,544 per violation
- The ASR (Clery Report) is an Institutional Report, not a Security report
- Much of the information contained within the ASR comes from other institutional departments or people not associated with Security/Public Safety

# CSA Identification and Training at WSU

1. Schedule meetings with the people who help compile the CSA lists
  - Cabinet, Deans, Housing & Residence Life, Athletics, Director-Student Club Advisors, Dean of Students-Student Life
  - Education and answer any questions they have
2. Emails sent to specific people and departments
  - Provide a template (Excel)
3. Filter the lists and add them to D2L
  - Email the CSAs to notify them of their designation and what it means
  - Direct them to the CSA Training
  - Utilize Supervisors and Cabinet to help get the training completed



2023-2024 Campus  
Security Authority (CSA)  
FY24CSA • Professional  
Development

# The Path Forward

## 2016-Making connections with colleagues and other partners (non-institutional)

- Education of the Clery Act
  - Identification of the most impactful improvements that require the least amount of hardship
- Identification of key people/positions that directly impact Clery compliance efforts
  - Cabinet, Deans, Faculty Leadership, Housing & Residence Life, Athletics, Director-Student Club Advisors, Dean of Students-Student Life
- Tried to minimize the additional work for others
- Education, Education, Education, and Education of your colleagues and partners
- Identify processes that can be streamlined
  - Utilize IT expertise
- Do not take it Personal
  - People generally do not like the message
- “Borrow” from others
  - No need to reinvent the wheel
- Keep moving forward



# WSU-The Challenge of Advocates as CSAs

Identify the key players

Educated myself on their needs

Listened

Educated them on what the institution needed and why

Build trust-never ends and is easily lost

Made them part of the process as much as I could

Explained my thinking process and the factors that influence me

Ran through scenarios

Willing to take criticism

Periodically revisit processes

# Action Items

## Team approach on campus

- Identify who you regularly work with and focus your energy on them
- Start a Clery Team
  - WSU may only meet once a semester

## Who is your CCO

- Rely on your CCO or other CCOs to help guide you

## ASR Improvements

- Utilize other ASRs to determine what you have or do not have
  - System Office template utilization
  - Make a list of what you need to update or start doing



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