

**D'Youville...Responding,
Addressing, Complying
with...**

Federal/State Laws

**Regarding Sexual Misconduct,
Campus Crimes and Educational
Requirements**

TITLE IX, CLERY ACT, SEXUAL ASSAULT VICTIMS BILL OF RIGHTS

- **Title IX (1972):** Protects male and female students from sexual harassment by a school employee, another student or a non-employee third party (i.e. visiting speaker, vendor, etc.)
- **Clery Act (1990):** Amended in 1992, 1998 and 2008 by the Higher Education Amendments; created to hold schools accountable for sharing their safety policies and crime statistics
- **Sexual Assault Victims Bill of Rights (1992):** Requires colleges and universities to afford campus sexual assault survivors certain basic rights, including assistance notifying the police; Schools must have policies in place to address campus sexual assault

DEAR COLLEAGUE LETTER, VAWA and ENOUGH IS ENOUGH

- **Dear Colleague Letter (2011):** Department of Education, Office of Civil Rights to provide policy guidance to recipients with information to assist them in meeting their obligations; does not add requirements to applicable law but provides information/examples to recipients about how OCR evaluates whether entities are complying with their legal obligations and incorporates the preponderance of evidence standard
- **The Violence Against Women Act (VAWA):** Amendments to the Clery Act (2013) expand the rights afforded to campus survivors of sexual assault, domestic violence, dating violence, and stalking
- **Enough is Enough NYS Legislation (2015):** Legislation to curb sexual assault on college campuses; encourages victims of sexual assault on campus to report the incident and bolsters support services for victims; significantly, the legislation adopts a statewide affirmative consent definition for college campuses

WHO and WHAT

Jeanne Ann Clery

- Raped/murdered April 5, 1986
- In her residence hall room
- Doors left open by students presumably unaware of a pattern of serious and violent crimes on campus
- At the time fewer than 5% of schools reported their crime statistics to the FBI

Jeanne Clery Act

- The Jeanne Clery Act, a consumer protection law passed in 1990, requires all colleges and universities who receive federal funding to share information about crime on campus and their efforts to improve campus safety as well as inform the public of crime in or around campus. This information is made publicly accessible through the university's annual security report.

CLERY ACT: What does it require?

- ✓ Make timely warnings.
- ✓ Maintain a public crime log.
- ✓ Disclose campus security policies, procedures and programs.
- ✓ Address the special considerations regarding sex offenses and offenders.
- ✓ Collect, count and classify data-recognize the who, what, where, when and how.
- ✓ Submit, annually, crime statistics to the Department of Education.
- ✓ Prepare and disseminate the Annual Security Report (ASR).

Accessible online:

http://www.dyc.edu/campus_life/services/security/index.aspx

Hard Copy: DAC Security
Desk; College Center Room
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ANNUAL SECURITY REPORT

Brought to you by: The Vice President of Student Affairs and the Director of Security

- **Statements of policy**
- **Campus crime statistics, which include:**
 - **Criminal Homicide: Murder/Non-negligent manslaughter; negligent manslaughter**
 - **Sex Offenses: Forcible; non-forcible; rape; fondling; incest; statutory rape; stalking; dating violence; domestic violence; sexual assault**
 - **Robbery**
 - **Aggravated Assault**
 - **Burglary**
 - **Arson**
 - **Motor Vehicle Theft**
 - **Arrests & Disciplinary Referrals: liquor law violations; drug law violations; illegal weapons possession**
 - **Hate Crimes: larceny-theft; simple assaults; intimidation; destruction, damage, vandalism of property**

COMPARING CAMPUS SECURITY AUTHORITIES with RESPONSIBLE EMPLOYEES



APPROPRIATE REPORTERS

CLERY ACT

- Campus Security Authority (CSA) is a Clery-specific term that encompasses four groups of individuals and organizations associated with an institution
- CSA's primary responsibility:
 - “To report to the appropriate law enforcement personnel (security), or to an official or office designated by the institution, those allegations of Clery Act crimes that he/she concludes are made in good faith.”
- Person's function determines if they are a CSA, not their title

CSA

- A member of a campus police or a campus security department of an institution.
- Any individual(s) who have responsibility for campus security *but* who do not constitute a campus police/security department (e.g. person who is responsible for monitoring the entrance into the institutional property College Center manager).
- Any individual/organization specified in an institution's statement of campus security policy as an individual/organization to which students and employees should report criminal offenses.
- An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings. An official is defined as any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.

COMPARING...

WHO IS A CSA

- Campus police/security
- Individuals responsible for security (e.g. manage access to college property such as CC manager, Fitness Center work study)
- Student Affairs staff
- Director of athletics/coaches
- Faculty advisor to a student club/organization
- Resident assistant/advisor
- Title IX coordinators
- Pastoral Counselors WHEN leading service trips

WHO IS NOT A CSA:

- Faculty WITHOUT responsibility for student/campus activities outside the classroom
- Support staff: clerical, maintenance, food service
- Medical doctors, nurses, responsible for student care
- Pastoral counselors
- Mental health counselors
- Persons *uncertified* but acting under the supervision of an exempt counselor

APPROPRIATE REPORTERS

TITLE IX

- Responsible Employee Standard
A school has notice if a responsible employee “knew or in the exercise of reasonable care should have known” about the harassment
- Includes: “Any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.”

RESPONSIBLE EMPLOYEE

- Title IX Coordinator is a responsible employee
- Faculty advisors (academic, clubs/organization)
- Deans of the college and department chairs
- Athletic department staff and team coaches
- Residence life director and staff
- College president and members of the president’s council
- All administrators and support staff

NYS LEGISLATION: ENOUGH IS ENOUGH

WHAT IS IT?

- The most aggressive policy in the nation to fight against sexual assault on college/university campuses in New York State
- The new “Enough is Enough” legislation requires all colleges to adopt a set of comprehensive procedures and guidelines, including a uniform definition of affirmative consent, a statewide amnesty policy, and expanded access to law enforcement to better protect all of New York’s college students from rape and sexual assault

WHY WAS IT CREATED?

- “I am proud to sign into law the most aggressive policy in the nation to fight against sexual assault on campus.” Gov. Cuomo
- US Dept. of Justice, Bureau of Justice Statistics (1995-2013):
 - Females 18-24 had the highest rate of rape and sexual assault compared to females in all other age groups
 - Estimated % of completed or attempted rape victimization among women in higher education is 20-25% during the course of a college career
 - 80% of victimizations of students go unreported to police vs 67% of nonstudent victims
 - 9 in 10 victims of rape and sexual assault knew their attacker
 - Victims are more likely to: suffer academically, from depression, post traumatic stress disorder; abuse alcohol/drugs, contemplate suicide



Vice President Biden, remarks on the release of a White House report on sexual assault, April 29, 2014

“We know the numbers: one in five of every one of those young women who is dropped off for that first day of school, before they finish school, will be assaulted, will be assaulted in her college years.”

KEY COMPONENTS of THE LEGISLATION

Uniform Affirmative Consent Policy

“Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.”

CONSENT PRINCIPLES

- Consent to any sexual act or prior consensual sexual activity between or with any other party does *not* necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol
- Consent may be initially given but withdrawn at any time
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm
- When consent is withdrawn or can no longer be given, sexual activity must stop

ALCOHOL and DRUG AMNESTY

Every institution shall adopt and implement the following policy as a part of its code of conduct.

(The college's name has been inserted into the appropriate placeholders within the policy.)

“The health and safety of every student at D’Youville College is of utmost importance. The college recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The college strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to college officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking or sexual assault to the college’s officials or law enforcement will not be subject to disciplinary action by the college for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.”

NOTE: Amnesty applies to individuals only, *not* clubs/organizations.

DEFINITIONS TO KNOW

- **Dating violence:** means violence committed by a person who
 - (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - (B) 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
 - The frequency of interaction between the persons involved in the relationship
- **Domestic violence:** includes felony or misdemeanor crimes of violence committed by a current or former spouse 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, 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.

DEFINITIONS continued

- **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - (A) fear for his or her safety or the safety of others; or
 - (B) suffer substantial emotional distress
- **Sexual assault:** Offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation:
 - Sexual assault is any type of sexual contact or behavior that occurs without the explicit consent of the recipient. Falling under the definition of sexual assault are sexual activities as forced sexual intercourse, forcible sodomy, child molestation, incest, fondling, and attempted rape.

RESPONSIBILITIES

Title IX Coordinator

- The college official charged with ensuring the college's overall compliance Title IX and related college policy
 - handles reports pertaining to undergraduate or graduate students (Debbie Owens, Title IX Coordinator, CC 111; 716-829-8198)
 - Human Resources handles reports pertaining to employees or a third party (Beth Metz, Human Resources Director, 631 Niagara St.; 716-829-7811)

Confidential Resources (CR)

- Discussing allegations of sexual misconduct with this resource will *not* result in a report to the Title IX Coordinator
- On Campus CR's include:
 - Personal Counseling Center (1st floor Marguerite Hall; 716-829-7819)
 - Health Center (1st floor Marguerite Hall; 716-829-8777)
 - Campus Ministry (KAB 121; 716-829-7672)
- Off Campus CR:
 - Crisis Services (716-834-3131)

“MUSTS” TO REMEMBER

- If a student comes to you with a report of any sexual assault it is imperative that you state the following:
“You have the right to make a report to campus security, local law enforcement, state police, or choose not to report; to report the incident to D’Youville College authorities; to be protected by the college from retaliation for reporting an incident; and to receive assistance and resources from the college.”
- Report crimes of any nature to the appropriate college officials. When in doubt, go to the Title IX Coordinators. Let the appropriate college officials determine the next step to be taken in any process.

RESOURCES

- **Sexual Misconduct/Harassment:**
<http://www.dyc.edu/disclosures/titleix.aspx>
- **Campus Safety:**
http://www.dyc.edu/campus_life/services/security/index.aspx
- **Director of Security: 716-829-7551**
- **Vice President of Student Life: 716-829-8366**
- **Title IX Coordinator, Undergraduate/Graduate Students: 716-829-8198**
- **Human Resources, Employees/Third Party: 716-829-7811**
- **Personal Counseling: 716-829-7819**
- **Health Center: 716-829-8777**
- **Campus Ministry: 716-829-7672**
- **Crisis Services: 716-834-3131**