



Title IX, Clery & FERPA: Policy Development, Compliance & Ethical Considerations



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Webinar Objectives

- Discuss the challenges of counseling services managing requests for information from health services, the campus BIT/CARE team, students, parents, third-party subpoenas, and security clearance requests.
- Explore why it is important to define, prior to care, whether counseling services fall under FERPA or state confidentiality laws.
- Gain insight into what mental health services should be offered to stay in compliance with Title IX.
- Review ways to present aggregate data from counseling to stay in compliance with school Clery expectations.
- Learn best practices when it comes to counseling policy and procedure manuals.



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Scenario Based Training

- Rather than provide a page-by-page review of policy and notes on these topics, we decided to build out this training based on scenarios.
- Drs. Murphy and Van Brunt will share their expertise in student affairs, faculty, and counseling services to guide you through a dozen common scenarios that arise in this space.
- The next slide will provide some additional resources and guidance related to understanding the next steps.



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Resources

Family Educational Rights and Privacy Act (FERPA) Statute: 20 USC § 1232g

<http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title20-section1232g&num=0&edition=prelim>

FERPA Regulations: 34 CFR Part 99

<https://gov.ecfr.io/cgi-bin/retrieveECFR?gp=1&SID=717aafb0e19bcffaf40b4b007335b2d9&ty=HTML&h=L&mc=true&n=pt34.1.99&r=PART>

FERPA Summary, FAQs & Guidance Letters from Department of Education

<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Clery Act Essentials

https://clerycenter.org/wp-content/uploads/2021/08/NCSAM18_Clery-Act-Essentials_rev2.pdf

Rights & Options Under Clery

https://clerycenter.org/wp-content/uploads/2021/08/NCSAM18_Rights-and-Options_r2.pdf

Violence Against Women Act (VAWA) Definitions and Terms (Clery Checklist)

https://clerycenter.org/wp-content/uploads/2017/04/VAWA_Checklist.pdf

Title IX Final Rule Fact Sheets and Resources

<https://sites.ed.gov/titleix/policy/> <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-summary.pdf>



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Scenario Based Training

A Clery request by campus safety to identify the number of students who came to counseling that experienced a sexual assault.



- Work with them, not against them
- Consider aggregate data
- Have them send what they have, give a +1, +2



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Scenario Based Training

A counseling center providing sexual assault advocacy services for female but not male students, since their treatment providers do not have experience with advocacy for male sexual assault



- Core of Title IX is equity
- Talk optics with counseling
- What do you need to provide services to both?
- Sexual orientation/gender identity problems with this policy?



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Scenario Based Training

Some of the counselors at your school have a license but are unsure if they fall under FERPA or state confidentiality laws to govern their interactions with students.



- This can work and isn't a bad model
- Be clear up front with students
- Be consistent in services
- Consider a brochure/website to clarify



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Scenario Based Training

The school is unsure about whether it should offer confidential resources to students considering a Title IX report or if the school should direct them to counseling support.



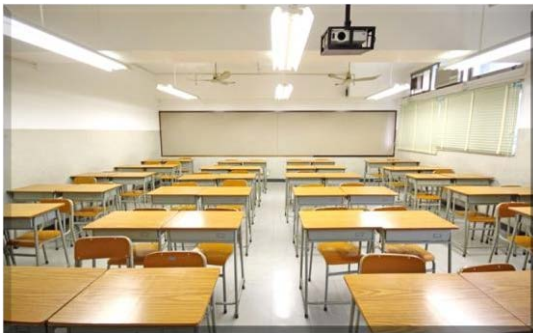
- Diversity of choice in Title IX services
- Understand what CR is and what training is needed
- Must be for reporting and responding (see first bullet)



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Scenario Based Training

The campus BIT requests information from counseling services about a student who made threats during a classroom discussion. The student is in counseling and the services are confidential.



- Consider advising for release of information
- Have a policy before the crisis
- Assess the question behind the question



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Scenario Based Training

The counseling service is approached by the FBI to obtain a security clearance on a graduating senior counseling center client.



- Need the signed release of information from the student
- They are looking at MAJOR red flags and very little else
- While unnerving, this happens - seek guidance from seasoned directors



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Scenario Based Training

A student is hospitalized from health services for psychiatric reasons. The Dean requests details about what happened, and health services is unable to share due to confidentiality.



- Think about this issue prior to crisis; could there be a policy written into health services?
- Are other departments involved that fall under FERPA?
- Is there a HIPAA exemption here?



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Scenario Based Training

A student shares they have been stalked by another student with their faculty, who happens to be a psychologist. The faculty doesn't think they have to report this because of confidentiality.



- Clarify rules of reporting in syllabus and coordinate with Title IX office
- While there may be confidentiality in the counseling center, that is not their role here



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Scenario Based Training

A new counseling center director is tasked to create a counseling manual for their department. They are unsure of how to go about this.



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Counseling Manual

- Is this a manual of policy or procedures?
- Is there an internship or training program that should have its own?
- What problems or issues are trying to be solved with this manual?
- Are there other schools of similar background, size and location that might be willing share?
- Lean into the professional organizations, you will be surprised at how much people are willing to share.

American College Counseling Association (ACCA)

www.collegecounseling.org

Association of College and University Counseling Centers (AUCCCD)

www.aucccd.org



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Scenario Based Training

A counseling client threatens to kill his ex-girlfriend after she breaks up with him. The case is also reviewed by the BIT and the team is considering a duty to warn notification.



- The "duty to warn," or Tarasoff, applies to licensed clinical staff and not BIT/CARE teams
- Know what applies in your state; is it a should, ought or must state
- These are uncommon notification and should made with consult



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