



## 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](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](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](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](http://www.collegecounseling.org)

**Association of College and University Counseling Centers (AUCCCD)**

[www.aucccd.org](http://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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