UNDERSTANDING THE FACULTY’S MANDATORY REPORTING OBLIGATIONS

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What are faculty mandatory reporting obligations when they become aware of an incident of sexual harassment/violence under:

- The Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics (Clery Act)
- Title IX

Are there exceptions to the mandatory reporting obligation?
Clery Act requires mandatory reporting of crimes, including the sexual misconduct crimes of domestic violence, dating violence, and stalking, by Campus Security Authorities (CSAs): defined as certain groups of students, employees, staff.

- Goal: so current/potential students, their families, and the public know about dangers on campus.
- Clery also defines prejudice based on national origin and gender identity (along with race, gender, sexual orientation) as hate crimes that must be reported.
- Campus Security Authorities are mandatory reporters.
- But who is included in the definition of a CSA?
Campus Security Authorities/Mandatory Reporters Under Clery

Four types of individuals are considered to be Campus Security Authorities/mandatory reporters:

1) Campus police department or campus security

2) Any individual who has responsibility for campus security who is not an official member of campus police or security department

3) Any individual who is identified in policies as a person to whom a student should report criminal offenses

4) Any individual with significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings

- Broadly defined to ensure complete coverage and thorough reporting of crimes
Some Campus Security Authority Interpretations

• CSAs:
  ▫ Athletic department members (coaches, AD)
  ▫ Coordinator of Greek affairs
  ▫ Resident Assistants and Resident Directors
  ▫ Student employees at dormitory front desks
  ▫ Student Affairs personnel
  ▫ Faculty advisor to a student group

• Not a CSA:
  ▫ Faculty with no responsibility beyond the classroom
  ▫ Cafeteria personnel or clerical staff
Under Title IX

- A “Responsible employee” under Title IX is required to report incidents of sexual harassment/violence that they witness or are advised have occurred to the University's Title IX Coordinator (or other appropriate University designee)
- Most institutions consider faculty, like other members of the university community, to be responsible employees
- Helps assure that the University takes immediate and appropriate steps to address and investigate incidents of sexual harassment/violence in accordance with its policies and Title IX mandates
Responsible employee includes any employee:

- who has the authority to take action to redress sexual harassment/violence;
- who has been given the duty of reporting incidents of sexual harassment/violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee;
- or whom a student could reasonably believe has this authority or duty.

Colleges must notify employees that they are defining them as responsible employees.
Whether an employee is a responsible employee...

- Depends on factors such as
  - Age and education level of the student
  - Type of position held by the employee
  - Formal and informal school practices and procedures

- Most college policies define faculty as responsible employees and mandatory reporters
Responsible employees must report:

- To the Title IX Coordinator or other school designee
- All relevant details about the alleged sexual harassment/violence that the student or other person has shared and that the school will need to determine what occurred and to resolve the situation
- Names of the alleged perpetrator if known, student who experienced the sexual harassment/violence, other students involved in the alleged sexual harassment/violence, all relevant facts (date, time location)
Liability

- Under Title IX, the university is held liable for sexual harassment or misconduct that it knew or should have known about.

- An institution can be held liable for violating Title IX if it is “deliberately indifferent” to incidents of sexual harassment/violence on its campus.
A broad net of responsible employees and CSAs

- Many institutions designate all employees as responsible employees under Title IX and CSA under Clery
- Provides more likelihood that all crimes and incidents of sexual harassment/violence will be reported and investigated
- Provides institutions with more knowledge to know what measures are necessary to prevent sexual harassment/violence
- Provides the institution with some protection against a finding that it “knew or should have known” of an incident or was “deliberately indifferent”
Exceptions to Mandatory Reporting Requirements
In reporting such allegations, the employee must disclose the name of the victim to the Title IX Coordinator unless one of the following exceptions applies:

- The victim is a student and the employee holds a statutory privilege (i.e. professional or pastoral counselor); or

- The victim is a student, the employee learned of the allegations while providing assistance to the student in the capacity of a nonprofessional counselor or advocate, and the university president, with the approval of the Office of University Legal Counsel, has designated the position of the employee as exempt from the reporting acquirements because he/she holds a privilege.

- In both of these exceptions, the employee may be a faculty member.
AAUP’s position on faculty as mandatory reporters under Clery

- Campus Sexual Assault: Suggested Policies and Procedures statement (November 2012) ; approved in October 2012 by the Association’s Committee on Women in the Academic Profession and its Subcommittee on Sexual Assault on Campus.

- The Clery Act defines Campus Security Authorities as “…school officials who have ‘significant responsibility for student and campus activities’ such as judicial affairs directors.”

- AAUP states, “It is the view of this committee that faculty members, as a general rule, do not fall into this category and are therefore not mandated Clery reporters.”

- “As a consequence, faculty members are thus usually not expected to be trained investigators, nor, except in specific circumstances as defined by individual institutions, are they normally expected to be mandated reporters of incidents about which they are told or happen to learn.”
Academic/Research exceptions to faculty mandatory reporting obligations

Other exceptions to a faculty member’s reporting obligation are when incidents of sexual violence are communicated by a student:

1) During a classroom discussion
2) In a writing assignment for a class
3) As part of a university-approved research project
Why these exceptions?

- A student would not expect his/her disclosure in the context of any of the aforementioned activities to “trigger a reporting obligations under Title IX.”
Academic/Research exemption does not include abuse of minors

- The disclosure of sexual violence against a child (under 18 when the incident occurred) is not exempt from the faculty member’s Title IX reporting obligation
- Mandatory child abuse reporting laws
Some employers are requiring faculty to add language about mandatory reporting to their syllabus

- Example: Pennsylvania State System of Higher Education
- Letters to presidents/provosts/Title IX coordinators May and July 2014 clarifying faculty’s reporting obligations
Cheyney University and its faculty are committed to assuring a safe and productive educational environment for all students. In order to meet this commitment and to comply with Title IX of the Education Amendments of 1972 and guidance from the Office for Civil Rights, the University requires faculty members to report incidents of sexual violence shared by students to the University’s Title IX Coordinator. The only exceptions to the faculty member’s reporting obligation are when incidents of sexual violence are communicated by a student during a classroom discussion, in a writing assignment for a class, or as part of a University-approved research project. Faculty members are obligated to report sexual violence or any other abuse of a student who was, or is, a child (a person under 18 years of age) when the abuse allegedly occurred to the person designated in the University protection of minors policy. Information regarding the reporting of sexual violence and the resources that are available to victims of sexual violence is set forth at: http://www.cheyney.edu/president/Title-IX.cfm.
Faculty Pushback

- Faculty union filed grievance on grounds that Title IX and OCR didn't require this language in syllabi, that classroom teaching faculty have always had complete control over the content of their syllabi, and that control was preserved by the past practice clause of the Collective Bargaining Agreement (Ar. 31.F)
The PA Labor Relations Board disagreed

- Union alleged violation of Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA)
- Board said it was well-settled that the direction of personnel falls within a public employers managerial prerogative under Section 702 of PERA, 43 P.A. Sec. 1101.702
- Since APSCUF allegations fall under the scope of managerial prerogative, failure to state a cause of action under Sec. 1201(a)(5).
Various state laws requiring mandatory reporting
Questions?

- Thank you.
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