

**WHO IS A MANDATED REPORTER, OF WHAT? -- GETTING SOME CLARITY**  
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One of the most frequent questions we receive at ATIXA is about the sexual misconduct reporting responsibilities of campus employees, especially faculty members. The question is complicated by the fact that three federal laws each impact this duty differently.

The Clery Act

Imposes duty to report incidents in 15 different crime categories (including sex offenses) by all “campus security authorities,” defined as officials who have significant responsibility for student and campus activities. That is a broad requirement, including coaches, RAs, student affairs administrators, housing/residential life, and many other offices and departments. It will also include faculty members who have significant responsibility, defined as doing more than teach, such as advising student organizations, coordinating extern and internships, mentoring programs, etc. Counselors, health service providers and clergy are voluntary reporters under the Clery Act, not mandated. No personally identifiable information needs to be shared by the reporter to satisfy this requirement. It is a real-time reporting requirement where you share information on incidents with Public Safety as soon as you know about the incident.

Title VII

Because the law can impose liability on employers for sexual harassment by employees, colleges tend to impose duties to report broadly, either on all employees, or at least on all supervisory employees. Some faculty members will become mandated to report, therefore, by virtue of their supervisor status.

Title IX

Title IX uses the concept of notice, and imposes obligations for a “prompt and effective remedy” on colleges and universities when notice of sex/gender discrimination or harassment is given to a “responsible employee.” A school has notice if a responsible employee knew, or in the exercise of reasonable care should have known, about the harassment. A responsible employee includes any employee who has the authority to take action to redress the harassment, who has the duty to report sexual harassment to appropriate school officials, or an individual who a student could reasonably believe has this authority or responsibility. Your college or university will define for you if you are a “responsible employee.” Some faculty members will be, and some will not.

Your duties to report may vary based on the law, the situation and your role. Here are some guidelines:

- To make it easier to know what you need to do, our campus has a blanket mandated reporting responsibility on all employees. If you know about sexual harassment, discrimination or sexual assault, we need to know what you know.

- Who you need to share this information with will vary from campus to campus, but your supervisor and the Title IX Coordinator are typically good resources.
- When you report, you may be able to *initially* withhold personally identifiable information (the name of the victim, the name of the accused individual, and other identifying details about witnesses, location, etc.), in cases where the alleged victim is hesitant to have a formal report made and you are not a “responsible employee” under Title IX, as described above. If you are unsure, consult your supervisor.
- Subsequently, campus officials may need additional information from you, but the goal is to empower the victim, to push one domino over at a time, and maintain some control over the process for the victim.
- Faculty members do not have a special privilege or ability to maintain the confidentiality of reports shared with them, and should not promise confidentiality.

## **Mandatory Reporters: A Policy for Faculty and Professional Staff**

This document is intended to outline the College's policy regarding mandated reporting of concerning behaviors, discrimination, harassment and crimes by employees. It explains briefly the meaning and purpose of mandatory reporters, outlines the legal context, and articulates a straightforward set of guidelines for all employees to follow.

### **Mandatory Reporters: What and Why?**

There are three federal laws that establish responsibilities for employees of colleges to report certain types of crimes and incidents, especially sexual misconduct---the Clery Act, Title VII and Title IX. Each of these areas of federal law has a different purpose, but generally the laws are intended to protect members of the campus community, visitors and guests from criminal and discriminatory behavior. The responsibilities established by these laws give rise to the term "mandatory reporter." Reporting of concerning and disruptive behaviors is not legally mandated, but is a policy mandate to assist the BIT in early identification and detection of at-risk situations. Additionally, state law imposes mandates with respect to the reporting of child abuse and sexual abuse as follows...

### **The Legal Context**

The Clery Act creates a duty for institutions to report crimes in 15 different categories and has the broadest scope. It is the College that has the duty to report these crimes and failure to do so can result in substantial fines being imposed on the institution by the Department of Education. Guided by the language of the Clery Act and subsequent amendments, the College is required to define which employees must report crime information they receive.

The language of the Act would allow the College to exclude some faculty some of the time and many professional staff from the obligation to report. Such an approach, however, risks creating confusion for faculty and staff, takes a minimalist approach to the ethical obligation to inform our community about serious crimes, and makes the institution more vulnerable to enforcement action.

Title VII focuses on sexual harassment in the workplace and failure to take appropriate action can lead to financial liability for the College. In this case, the law creates a duty to report for employees who supervise other employees, including students being paid by the College. As with the Clery Act, this language means that some faculty and staff would be expected to report while others might be exempted. Once again, however, this selective approach may create confusion and risk; and it fails to ask all of us to share the responsibility to create a work place free of sexual harassment.

Title IX focuses on the adverse consequences faced by victims of gender discrimination and sexual harassment and creates obligations for the College to investigate and to provide a "prompt and effective remedy." If the victim is a student, Title IX means among other things that the College must provide a safe environment that does not interfere with the victim's right to pursue an education. The College incurs this obligation when a

victim has given notice to a “responsible employee,” or when the College, in the exercise of reasonable care, should have known, about the assault or harassment. As with the other laws, the definition of “responsible employee” under Title IX would allow the College to treat only some faculty and staff as mandated reporters but with the same possibility of confusion and risk of institutional exposure.

## **College Policy**

The College has decided to adopt a policy that defines all employees as mandatory reporters. If you learn about sexual harassment, discrimination or sexual assault, you are expected to promptly contact the campus Title IX Coordinator, [ ] or [the Director of Sexual Assault Services]. [She] will take responsibility for prompt notification of the Department of Public Safety and other appropriate College officials. Other serious crimes covered by the Clery Act (defined on the attached sheet) must be reported to the Department of Public Safety. All concerning and disruptive behaviors must be timely reported to the BIT at [using the online incident reporting form].

When reporting sexual harassment or discrimination or sexual assault, a College employee may initially be able to omit personally identifiable information (the name of the victim, the name of the accused individual, and other identifying details about witnesses, location, etc.). The Title IX Coordinator [and/or Director of Sexual Assault Services] will guide you with regard to how much detail is needed in an initial report. Subsequent to an initial report, campus officials may need additional information in order to fulfill the College’s obligations under Title IX. In taking these subsequent actions, the College will always be guided by the goals of empowering the victim and allowing the victim to retain as much control over the process as possible, but no employee (other than counselors, health care providers and clergy) can or should promise confidentiality. Counselors, health service providers and clergy are voluntary reporters, not mandated by law, but College policy creates an expectation to report non-personally identifiable information unless the reporter believes doing so would cause harm to the victim.

The Clery Act requires reporting of 15 serious crimes, including sexual assault. Sexual harassment and discrimination are not covered by the Clery Act, but reporting of such incidents is required under Title IX. Employees are expected to report crimes covered by the Clery Act to the Department of Public Safety without delay. Employees may choose -- but are not required -- to provide personally identifiable information (the name of the victim, the name of the accused individual, and other identifying details about witnesses, specific location, etc.) unless a clear threat to health or safety is present, as determined by DPS.

The Clery Act does not establish an obligation for Public Safety to conduct an investigation of the reported crime, only to report the crime as a statistic following Clery Act guidelines. In some cases, DPS may also be required to release a timely warning to the community about a threat to the community. In such cases, an initial investigation or determination of the nature of the threat may be conducted, after which a warning will be issued immediately.

**Mandatory Reporting Under the Clery Act, Title VII and Title IX:**  
**Guidelines for Employees of [ ] College/University**

1. The College has defined all employees, both faculty and professional staff, as mandatory reporters.
2. When an employee becomes aware of an alleged act of sexual harassment, discrimination or assault, the employee must promptly contact the Title IX Coordinator [and/or...]. The employee should use the Sexual Assault Reporting Form, which can be found on the website at [ ]. Alternatively, the employee may call the Title IX Coordinator and then follow-up by filing the form.
3. The Title IX Coordinator will promptly inform the Department of Public Safety about the report.
4. When an employee thinks that a student may be about to report an act of sexual harassment, discrimination or assault, the employee should, if at all possible, tell the student that the College will maintain the privacy of the information, but the employee cannot maintain complete confidentiality and, is required to report the act and may be required to reveal the names of the parties involved. If the student wishes to proceed, the employee should inform the student of the implications of sharing the names of the parties involved, which puts the College/University on notice.
  - a. Rather than speaking to the student about confidential information, the employee should offer to refer or accompany the student to Counseling Services or Health Services during the hours that those offices are open: Monday-Friday, 8 a.m. to 5 p.m.
  - b. The student can be referred to the Sexual Assault Response Team/hotline at any time of the day or week, including daily 5 p.m. to 8 a.m. and weekends. ###-###-####
5. The Sexual Assault Response Team is also available to provide guidance on how to handle a situation to faculty and professional staff at any time.
6. Under the Clery Act, College employees are mandatory reporters for a broader array of serious crimes, including the following:
  - a. Murder & Non-Negligent Manslaughter--The willful killing of one human being by another.
  - b. Negligent Manslaughter--The killing of another person through gross negligence.
  - c. Robbery--The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.
  - d. Aggravated Assault--An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)
  - e. Burglary--The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.
  - f. Motor Vehicle Theft--The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned, including joyriding.)

- g. Arson--Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.
- h. Arrests for Weapon Law Violations--The violation of laws or ordinances dealing with weapon offenses, regulatory in nature, such as: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; furnishing deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the aforementioned.
- i. Arrests for Drug Abuse Violations--Violations of State and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include: opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics (Demerol, methadones); and dangerous nonnarcotic drugs (barbiturates, Benzedrine).
- j. Arrests for Liquor Law Violations--The violation of laws or ordinances prohibiting: the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public conveyance; and all attempts to commit any of the aforementioned. (Drunkenness & driving under the influence are not included in this definition.)
- k. Disciplinary Referrals for Weapon Law Violations
- l. Disciplinary Referrals for Drug Abuse Violations
- m. Disciplinary Referrals for Liquor Law Violations
- n. Hate Crimes
- o. Sex Offenses
  - i. Forcible--Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.
  - ii. Sex Offenses-Nonforcible--Unlawful, nonforcible sexual intercourse.
    - 1. Incest. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
    - 2. Statutory Rape. Nonforcible sexual intercourse with a person who is under the statutory age of consent.<sup>1</sup>

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<sup>1</sup> 34 C.F.R. Part 668, Appendix E to Part 668.47.