

Overview and Comparison Table for Title VII, Title IX, and the Clery Act for Ombuds

Statement of the Law

Title IX	Title VII	Clery Act
No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.	It shall be an unlawful employment practice for an employer— (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.	See Overview below. (Actual language too extensive to include.)
Primary Enforcement Agency		
Title IX	Title VII	Clery Act
Office for Civil Rights, U.S. Department of Education	Equal Employment Opportunity Commission and through agreements some State Human Rights Agencies	Office of Post Secondary Education, U.S. Department of Education

Note: Important Disclaimer and Limitations

This document is intended solely as an overview of three important anti-discrimination laws. We intend this as a tool to help ombuds be generally aware potential issues and as a discussion tool for a particular training program. This table should not be regarded as legal advice and there is no acceptable substitute for seeking the advice of your own organization's legal counsel when you determine that an issue may exist. Important variations between jurisdictions exist, and laws change as courts interpret them and as legislative authorities amend them. Therefore, never take action based only on this information. Always seek additional counsel to verify the current status of the law in your own jurisdiction. In addition to legal requirements and limitations, many large organizations include policies that interpret the law or that include more stringent requirements as permitted within the context of the particular area. Therefore it may often be important to seek local advice even beyond legal counsel.

Background and Overview

Title IX	Title VII	Clery Act
<p>Title IX was enacted as a part of the Education Amendments of 1972. It is a comprehensive federal law that prohibits discrimination on the basis of sex in any federally funded education program or activity. The principal objective of Title IX is to avoid the use of federal money to support sex discrimination in education programs and to provide individual citizens effective protection against those practices. Title IX applies, with a few specific exceptions, to all aspects of federally funded education programs or activities. In addition to traditional educational institutions such as colleges, universities, and elementary and secondary schools, Title IX also applies to any education or training program operated by a recipient of federal financial assistance. The Department of Education has issued regulations on the requirements of Title IX, 34 C.F.R. § 106.1 et seq. The Title IX common rule published on August 30, 2000 covers education program providers/recipients that are funded by other federal agencies.</p>	<p>As used in this comparison Table “Title VII” refers not only to Title VII of the Civil Rights Act of 1964 (as amended in 1991) but to the larger body of workplace discrimination laws that the Equal Employment Opportunity Commission [EEOC] is charged with enforcing (see detail at end of table). Under the laws enforced by EEOC, it is illegal to discriminate against someone (applicant or employee) because of that person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability, or genetic information. It is also illegal to retaliate against a person because he or she complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. In general, Title VII-type protections apply only in the employment context and must involve one of the protected class categories. It must be shown that the action taken was based on membership in the protected group, and the person challenging the employment action must follow procedure included in the acts for challenging the employment decision by filing a timely complaint with the EEOC, established under the Title VII to review charges of employment discrimination. A significant body of regulations and laws has developed focusing on sexual harassment since approximately 1986 with a major amendment to the Title in the Civil Rights Act of 1991. Most of the applicable laws apply to companies employing above a certain minimum number of employees (which varies depending on the type of organization and may be counted differently depending on their term) but 15 or more employees is a typical standard.</p>	<p>The Clery Act is named in memory for 19-year-old freshman Jeanne Clery who was raped and murdered in her dorm room in Lehigh University in Bethlehem, Pennsylvania. Outraged by the underreporting of crime by universities, her parents lobbied lawmakers to pass the <i>Crime Awareness and Campus Security Act of 1990</i> (20 U.S.C. § 1092(F)). Renamed <i>The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act</i>, The Clery Act is a federal law that requires colleges and universities across the United States to disclose information about crime on and around their campuses.</p> <p>The law is tied to an institution's participation in federal student financial aid programs and it applies to most institutions of higher education both public and private. The Clery Act requires reporting of crimes in nine major categories, some with significant sub-categories and conditions, including:</p> <ol style="list-style-type: none"> 1) Criminal Homicide 2) Sex Offenses 3) Robbery 4) Aggravated Assault 5) Burglary 6) Motor Vehicle Theft 7) Arson 8) Liquor Law Violations, Drug-Related Violations, Weapons Possession 9) “Hate crimes” 10) Domestic Violence, Dating Violence, and Stalking <p>Failure to comply with Clery requirements can result in civil penalties up to \$35,000 per violation and impact an institution's participation in federal student financial aid programs.</p>

Focus of Coverage		
Title IX	Title VII	Clery Act
<ul style="list-style-type: none"> • Educational institutions receiving federal funding. • Equal access for students regardless of gender. • Focus is on programs not geography. 	<ul style="list-style-type: none"> • Employers meeting minimum size requirements. • Equal treatment of employees and non-discrimination based on a protected class status. • Focus is on employment status not geography. 	<ul style="list-style-type: none"> • Educational institutions participating in federal student aid programs. • Disclosure of campus safety information, including crime statistics and summaries of security policies, and requirements for handling incidents of sexual violence and emergency situations. • Focus is on crime reporting on and near campus.
Major Responsibilities Imposed on Organizations subject to the law		
Title IX	Title VII	Clery Act
<ul style="list-style-type: none"> • Prohibit gender discrimination in on campus. (Sexual violence, sexual harassment and gender-based harassment are considered as prohibited discrimination.) • Disseminate notice of non-discrimination. • Designate at least one employee to coordinate Title IX compliance efforts. • Adopt grievance procedures that allow for prompt and equitable resolution of gender. 	<ul style="list-style-type: none"> • File "Employer Information Report" • Post certain compliance posters ("EEO is the Law" poster) • Maintain application and certain other employment records. • Conduct a prompt and thorough investigation and implement meaningful and effective corrective actions. 	<p>The Clery Act requires colleges and universities to:</p> <ul style="list-style-type: none"> • Publish an Annual Security Report (ASR). • Have a public crime log. • Disclose crime statistics for incidents that occur on campus, in unobstructed public areas immediately adjacent to or running through the campus and at certain non-campus facilities. • Issue timely warnings about Clery Act crimes that pose a serious or ongoing threat to students and employees. • Devise an emergency response, notification and testing policy. • Compile and report fire data to the federal government and publish an annual fire safety report. • Enact policies and procedures to handle reports of missing students.

Notice and Reporting Requirements		
Title IX	Title VII	Clery Act
<p>Persons considered “responsible employees” must report details of an incident of sexual violence or sexual harassment. A “responsible employee” includes any employee:</p> <ul style="list-style-type: none"> • who has the authority to take action to redress sexual violence; • who has been given the duty of reporting incidents of sexual 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. <p>“Responsible employees” receive notice on behalf of the institution and have a duty to report incidents of sexual harassment to the Title IX coordinator or designee. A “responsible employee” must report all relevant details about the alleged sexual violence, including names of those involved and other relevant facts (date, time, location, etc.).</p>	<p>Any employee covered by Title VII can report an issue externally the EEOC. Absent a clear policy to the contrary, supervisors are generally deemed to serve as agents of notice for the organization. Supervisors or with knowledge of harassment in their unit may trigger vicarious liability if the concern is not channeled into a grievance and complaint process that results in prompt and thorough investigation and meaningful resolution. Supervisors who engage in harassment may subject the employer to vicarious liability even if the employer was not on actual notice. Reporting requirements vary from employer to employer and there is no bright line test to determine who places the organization on notice. The EEOC looks at the total circumstances to determine whether the employer knew or should have known. An organization will be held to the terms of its own anti-harassment policies regarding whom it identifies as agents of notice.</p>	<p>Campus Security Authorities (CSAs) are required to report information about crimes. CSAs include:</p> <ol style="list-style-type: none"> (1) Campus police department or campus security department; (2) Individual(s) responsible for campus security; (3) Those identified in an institution’s Campus Security Policy as a place to report criminal offenses; or (4) Official who has significant responsibility for student and campus activities. <p>Each campus is required to review its workforce to identify positions that should be considered CSAs, such as campus housing authorities, student disciplinary authorities, and similar positions.</p> <p>Campus law enforcement officials or security departments are required to report detailed information in a daily crime log (e.g. type of crime, case number, date/time crime reported and occurred, location, disposition). Other “campus safety authorities” (CSAs) are required to report aggregate information.</p> <p>According to the Clery Handbook, the Act requires institutions to disclose statistics for reported crimes based on:</p> <ul style="list-style-type: none"> • Where the crimes occurred, • To whom the crimes were reported, • The types of crimes that were reported, and • The year in which the crimes were reported.

Recognized Exceptions Notice and Reporting Requirements

Title IX	Title VII	Clery Act
<p>Positions specifically exempted from any Title IX reporting requirements include (by the Office for Civil Rights of the U.S. Department of Education), include:</p> <ul style="list-style-type: none"> Professional (licensed) counselors, whose official responsibilities include providing mental health counseling to members of the institution's community. This includes in-house counselors, contract counselors, and others whose licensure is pending such as counseling and LSW interns. Pastoral counseling provided by a recognized religion. <p>Other positions that a campus may identify as confidential and which may report anonymous/non-identifiable information, include:</p> <ul style="list-style-type: none"> Non-licensed staff in women's centers, victim's advocacy roles. 	<p>Title VII is administered by the Equal Employment Opportunity Commission [EEOC], which issues guidance and (liberally) interprets applicable court interpretations. There is no true analog to the "Dear Colleague Letter," However, the following principles generally apply:</p> <ul style="list-style-type: none"> Generally, any manager or supervisor who has knowledge of a complaint by an employee or who has knowledge of a situation that violates the organization's anti-harassment policy is considered an agent of the employer for purposes of placing the organization on notice (thus triggering an obligation for a prompt and thorough investigation). Generally, any person with significant supervisory duties (the court has narrowed its interpretation) who engages in harassment themselves, may create vicarious liability for an employer. The employer may identify authorities for notice purposes, and better practice dictates a narrow group of authorities who place the employer on notice (so that these people can be trained to respond effectively and reliably). <i>However, the employer will be held to compliance with its own policies.</i> 	<p>Positions specifically excepted from Clery reporting requirements include:</p> <ul style="list-style-type: none"> Professional (licensed) counselors, whose official responsibilities include providing mental health counseling to members of the institution's community. This includes in-house counselors, contract counselors, and others whose licensure is pending such as counseling and LSW interns. Pastoral counseling provided by a recognized religion. <p>Positions that are confidential but with anonymous/non-identifiable reporting requirements:</p> <ul style="list-style-type: none"> Anyone who is designated or could, by virtue of their job responsibilities may be required to report crime information but without personally identifiable information

Implications for Ombuds

Title IX	Title VII	Clery Act
<p>An ombuds whose roles, responsibilities and limits to authorities are clearly articulated in their campus setting and who consistently practice to IOA Standards of Practice and Code of Ethics would not be considered a “responsible employee” because he/she does not have the authority to take action to redress sexual violence and has not been given the duty of reporting. If an ombuds office advertises its confidentiality on websites, brochures and other promotional materials and informs the visitor of its Standards of Practice then a student should not reasonably believe an ombudsperson has this authority or duty.</p>	<p>An ombuds whose roles, responsibilities and limits to authorities are clearly articulated in their campus setting and who consistently practice to IOA Standards of Practice and Code of Ethics should not be considered a point of notice or “an agent” of the organization because they are independent of the management structure and offer a confidential reporting channel. In the corporate context, a number of laws encourage organizations to establish confidential reporting channels such as the Sarbanes-Oxley Act of 2002. The 2004 American Bar Association <i>Standards for the Establishment and Operation of Ombuds Offices</i> discuss notice in the general context and the legal community recognizes that an ombuds, whose roles include adequate independence, impartiality, and confidentiality and who whose functions do not include management roles and authorities should not be deemed an agent of the organization for purposes of notice. The ABA standards includes six provisos regarding an ombuds and notice that include:</p> <ol style="list-style-type: none"> 1. <i>A recognized exception to confidentiality to address an imminent risk of serious harm;</i> 2. <i>Notifying visitors that important rights may be affected regarding formal processes when using an ombuds;</i> 3. <i>Absent consent, communications with an ombuds do not constitute notice to the organization;</i> 4. <i>Working with an ombuds may address the concern, but not protect the rights of all involved;</i> 5. <i>An ombuds is not a substitute for a lawyer or counselor.</i> 6. <i>A person may wish to consult with a lawyer with respect to rights that may be affected.</i> 	<p>An Ombudsperson is not:</p> <ol style="list-style-type: none"> (1) A campus police department or campus security department; (2) An individual responsible for campus security; (3) Identified in an institution’s Campus Security Policy as a place to report criminal offenses; or (4) An official who has significant responsibility for student and campus activities. An official is defined as <i>any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.</i> <p>An ombuds whose roles, responsibilities and limits to authorities are clearly articulated in their campus setting and who consistently practice to IOA Standards of Practice and Code of Ethics would not be considered a CSA. They are not involved in campus security and are not listed as a place to report criminal offenses. In addition, ombuds do not have the authority and the duty to take action or respond on behalf of the institution. Quite the contrary, ombuds are strictly confidential. Notice to them does not constitute notice to the university and they have no responsibility and cannot take action on the campus’ behalf.</p>

Key Reference Materials		
Title IX	Title VII	Clery Act
<p>Web: (Office for Civil Rights, U.S. Department of Education) www2.ed.gov/about/offices/list/ocr/index.html</p> <ul style="list-style-type: none"> • See new IOA Web-site of Title IX Resources • U.S. D.Ed, <i>Dear Colleague Letter</i>, April 4, 2011 • U.S. D.Ed <i>Questions and Answers on Title IX and Sexual Violence</i>. • <i>Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault</i> • U.S. Department of Justice Manual on Title IX. • <i>Intersection of Title IX and the Clery Act comparison table</i>, available at: https://www.notalone.gov/assets/ferpa-clerychart.pdf 	<p>Web: Equal Employment Opportunity Commission — www.eeoc.gov</p> <ul style="list-style-type: none"> • EEOC Compliance Manual — eeoc.gov/laws/guidance/compliance.cfm 	<p>Web: Campus Security, U.S. Department of Education — https://www2.ed.gov/admins/lead/safety/campus.html</p> <ul style="list-style-type: none"> • The Handbook for Campus Safety and Security Reporting (Clery Handbook) — • http://www2.ed.gov/admins/lead/safety/handbook.pdf

Laws Enforced by EEOC

Title VII of the Civil Rights Act of 1964 (Title VII)

This law makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

The Pregnancy Discrimination Act

This law amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The Equal Pay Act of 1963 (EPA)

This law makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The Age Discrimination in Employment Act of 1967 (ADEA)

This law protects people who are 40 or older from discrimination because of age. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Title I of the Americans with Disabilities Act of 1990 (ADA)

This law makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

Sections 102 and 103 of the Civil Rights Act of 1991

Among other things, this law amends Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases and sets caps on the damage amounts available to some parties.

Sections 501 and 505 of the Rehabilitation Act of 1973

This law makes it illegal to discriminate against a qualified person with a disability in the federal government. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

The Genetic Information Nondiscrimination Act of 2008 (GINA)

Effective - November 21, 2009, this law makes it illegal to discriminate against employees or applicants because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e. an individual's family medical history). The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.