

RIT Public Safety TIX Compliance

NYS Guard Law 2020

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Compliance

Agenda

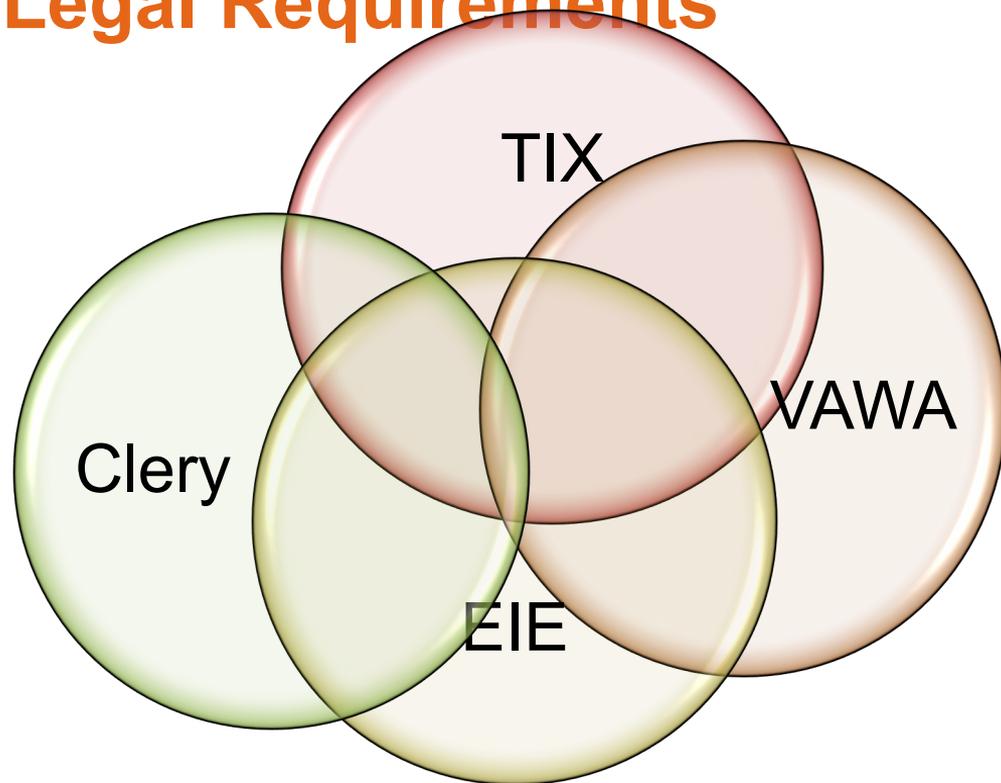
Overview-RIT Policy and Legal Obligations

- TIX
- VAWA
- EIE
- Clery

Public Safety's Role

- Investigations
 - Evidence Collection
- Trauma-Informed Investigations

Legal Requirements



Federal:

- **Title IX (DoE)**
- **Violence Against Women Act**
- **Jeanne Clery Act**

New York State:

- **Enough is Enough Legislation**

When RIT Learns of Discrimination or Harassment

- **RIT is required to:**
 - STOP the discrimination (includes harassment, sexual assault, gender-based violence, domestic and dating violence, and stalking)
 - PREVENT the discrimination from happening again
 - REMEDY the effects
- **RIT must be objective and equitable while doing so**

Title IX Office

- Oversees all reports of sex discrimination on campus
- Enforces the university's non-discrimination policies and ensures compliance with laws
- Educates community about university policies
- Investigates employee reports of sex discrimination
- Works closely with campus partners
- Connects people to university resources
- Listens to community concerns
- Identifies patterns or systemic problems
 - Reports, Investigations, Outcomes

Clery Act

The Jeanne Clery Campus Security Policy & Crime Statistics Disclosure Act

“THE CLERY ACT”

Jeanne Clery was raped and murdered in her dorm room at Lehigh University in 1986.

Her killer was another student.

Her parents believed that they would have been more cautious had they known about other violent crimes at Lehigh.



- Gather and publish crime data to alert students and employees (current and prospective) of dangers on campus
- Timely Warnings and Emergency Notifications
- Daily Crime Log
- Victims Rights, Options and Resources



NYS Enough is Enough 129-B



NYS “Enough is Enough” (Article 129-B)

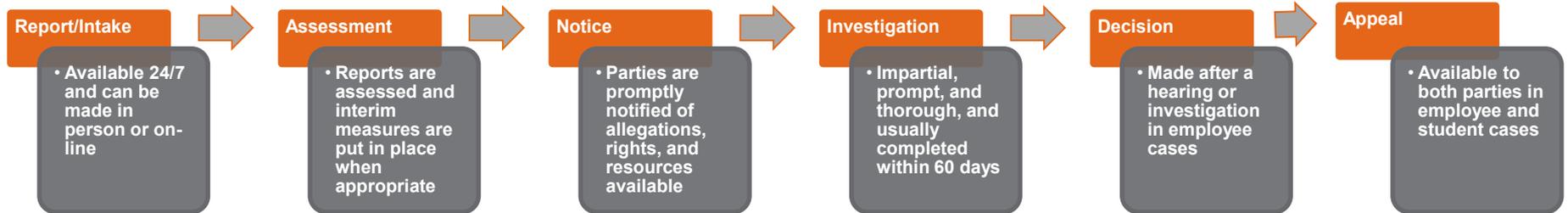
- Signed into law July 7, 2015
- Uniform definition of “affirmative consent”
 - **“Yes means Yes”**
- Good Samaritan/Amnesty Policy
- Student Bill of Rights
- No Contact Orders
- Required option of appeal - board or panel
- Transcript Notations (1 yr. after return)
- Biennial climate assessment
- State Trooper Education/involvement
- October 2019- data to NYS Education Department
- Age of Consent in NY



is clear	Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.
is not coerced	Consent cannot be given when it is the result of any coercion , intimidation, force, or threat of harm. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.
is active	Consent is active , not passive. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Silence or lack of resistance, in and of itself, does not demonstrate consent.
is the responsibility of the person(s) initiating	Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
can be withdrawn at any time	Consent may be initially given but withdrawn at any time . When consent is withdrawn or can no longer be given, sexual activity must stop.
cannot be given when a person is incapacitated	Consent cannot be given when a person is incapacitated , which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

Process Flow: *Investigation, Accountability, and Resolution*

Title IX Process



Initial Intake of Report

If Report Starts With PS

Threat assessment: PS naturally, when case is imminent threat, **need to coordinate effort for emergency suspension or removal from housing and inform SC and TIX.**

If Report Starts with TIX

Threat assessment: TIXC will loop in PS and SC when applicable.

***Emergency removal from housing or Emergency removal (suspension)**

Emergency and Supportive Measures

- Public Safety Officers will no longer seek to relocate or alter a Respondent's housing, classroom or work assignments.
- The goal of initial outreach with both parties is an equitable, supportive experience.
- A verbal **Mutual** No Contact Order may be put in place prior to TIXC notification.
- In cases where there is immanent threat of physical safety a supervisor will be contacted to coordinate further.

Intake

Gatekeeping:

- **All possible TIX cases will be forwarded to the TIXC who will make determination if TIX applies- internal procedure**
 - PS may conduct a preliminary investigation/conversation with complainant
 - TIXC will outreach to complainant and may meet with complainant or seek additional information

Intake

Gatekeeping (continued):

- Upon receipt of signed statement of rights from complainant or meeting with complainant TIXC will ascertain if complainant wishes to proceed through a full investigation and hearing or will assess if less formal resolution may be appropriate and discuss options- internal procedure

TIXC- NOI – (Notice of Investigation) - Internal Procedure

Once determined TIX applies and case is proceeding to an investigation TIXC will send out NOI to both parties. The NOI will include NCO (No Contact Order), if applicable, and any other supportive or emergency measures.

- TIXC requests to meet with both parties to provide all process and resource information in person.

PS/TIX-Investigation

- **Trained PS investigators meet with parties. Witnesses to receive witness handout (in the works)**
- **Collect evidence** 
- **Revisit any party with additional information or questions that may result from interviews**
- **TIX Investigator will work with PS Investigator to confirm investigation is complete**
- ***PS provides TIX with all incoming documentation**

Evidence Collection

- RIT “should not obtain as part of an investigation any evidence, directly relating to the allegations in a formal complaint, that cannot be legally shared with the parties.”
85 Fed. Reg. at 30,435.

Why is this so important?

The new TIX Regulations allow for cross examination by both parties' advisors on their behalf during the hearing.

If any party declines to be cross examined, **ALL** material that party provided including written statements is not to be used for a determination.

Evidence Collection

Now more than ever it will be important to collect evidence from all parties if available. In other words, Complainant says there is a record of a text conversation and provides the record. Ask the Respondent for the same text conversation. Did they submit the whole thread? Or just the messages that painted them in a good light?

Evidence Collection

- If one party submits a screenshot or text thread, verify w/ the other party that they indeed sent in.
- If a party is presenting screenshots, ask to see the actual message or exchange on whatever platform it was created on (Instagram, FB messenger, etc) to verify validity, include a log of dates and times.

Evidence Collection

- If a W is requested for interview by one of the parties, ask what info they might have to contribute. If it could in any way corroborate (or disprove) any part of the allegations, the interview should be done. If it is in no way relevant to any portion the allegations, document that the party wanted that person interviewed, and why you did not do it.
- Document all attempts to reach out to parties and witnesses, including dates, times and methods (email, call, etc). Parties are “not believing” that solid efforts were made to interview potential **witnesses**.

Evidence Collection

- Consider getting phone records, if relevant. You don't need a subpoena necessarily. The parties should be able to pull up records online. Depending on the phone company, they may be able to go back quite some time. They also should be able to pull up PDFs of prior bills, which should cover texts and calls.
- Collect all evidence offered. It may not seem relevant in the beginning of the investigation, but by the end it may be.

Credibility

- Make note in your reports of any discrepancies, especially if the party has been interviewed more than once. Point out discrepancies between what a party said and what the evidence says. Point out nervousness, body language, emotion etc. Do NOT say “Complainant was not credible” or “It appeared Respondent was lying”. These are analyses, and that is the Hearing Officer’s job to determine.

More Important information to include

Keep up the great work with this!

- Who reported the incident-third party, complainant themselves, anonymous, a neighbor?
- Where and when did the incident take place (include this information at top of PS report not the PS office as location)
- **Ask complainant what they want out of reporting-investigation? A hearing? The behavior to stop?**
- Provide details about supportive or emergency measures taken
 - No contact or PNG
 - Class schedules-are they in class together and if so was anything done
 - Housing
 - Do they work together

Relevancy

- **“Relevant”** evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.
- **“Relevant”** evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX

Relevancy and Grievance Process

- **Evidence and questions about the complainant's sexual predisposition or prior sexual behavior unless:**
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - They concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).

Relevancy Contd.

- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

Role of Public Safety

Role of Public Safety

- **Threat assessment (Emergency Measures)**
 - PNG for Non Members
 - Emergency Removal
 - Administrative Leave
- **Trauma-informed intake**
 - Caring
 - No judgment
- **Partner with LE & TIX**
 - Civil Rights investigation; right to an advisor
 - Case management
 - Orders of Protection
 - Attend Conduct Hearing
- **Supportive Measures**
 - CARES/RESTORE
 - Medical/SANE/Psych
 - Student Bill of Rights
 - Law Enforcement
 - Housing
 - Classes
 - Work assignments
 - No Contact

RIT

Investigation Report

Investigative Report

- **TIX Office compiles and reviews all PS investigative material, may request clarifying questions and may ask PS to obtain more information.**
- **TIX Office creates preliminary investigative report with the goal of completion 5 business days after the investigation is closed. TIX Office shares preliminary investigative report (review of evidence) with parties with a ten day review and response period.**



Investigative Report

- **TIX Office compiles all new material and requested modifications into the Final Investigation Report for distribution to Student Conduct and Conflict Resolution.**
- **Student Conduct provides the report to the parties with no fewer than 10 days to review and prepare for the hearing.**



A few more things to consider

- Risk reduction vs Prevention
- What to avoid:
 - Victim-Blaming (“they probably didn’t understand you were saying ‘no’” or “well they didn’t say you had to stay”)
 - Judging (“why would you go home with them?”)
 - Lecturing (“next time don’t drink as much”)
 - Doubt (“We get this report a lot – girls go out and drink and then the next day feel bad”)
 - Low importance on impression in the moment (“why didn’t you leave” without emphasizing accused’s size, weight, gaze, intimidation)
 - Intimidation (“you’re going to face much harder questions in court”)
 - Providing “fatherly” or “motherly” advice (“well it looks like you’ve learned some lessons from this”)
 - Minimizing (“I’m glad it wasn’t worse”)

CARES/RESTORE can talk through alcohol use, dangerous behaviors, or unhealthy relationships, at a more appropriate time

*It **is** appropriate to discuss the danger-level associated with the reported incident*

- Neurobiology of Trauma
 - Central (vs periphery) details
 - Habits & reflexes
 - Memory and recall
- Understanding victim's experience
 - Objectification and disconnect
 - Power, dominance, loss of control

Instead of:	Consider:
Rapid fire questions with minimal pauses and frequent interruptions	Open-ended questions allowing time for full answers before moving to the next question
“What happened next?” (linear memory)	“What are you able to tell me about your experience?” “Tell me more about that (gaze, tone, feeling).” “Do you remember how you responded?”
“Did you say no?” / “Did you resist?”	“Do you remember communicating, with words or behavior, that you didn’t want this to happen?”
“Why didn’t you fight or run?”	“What thoughts were you having at that point?” “What were you feeling when s/he did that?”
“Did s/he use physical force to restrain you?”	“Can you describe why you felt forced to stay.” “At what point did you realize you couldn’t leave?”
“Did s/he (scare, threaten, yell, etc.) you?”	“How did you feel when that happened?” “Is there anything that stood out to you?”
“Was s/he bigger than you?”	“How tall was s/he? How much did s/he weigh?”
“Do you notice any lingering signs of trauma?”	“How has this impacted your daily life?” “How are your eating / sleeping habits since this happened?”

Instead of:	Consider:
Visible frustration over inconsistency	“I just need to clarify, did you ____ (call for help)?”
Questions regarding behavior by victim, such as drinking, drugs, clothing, choosing to walk home with accused	Precede with reassurance that the question isn't out of doubt or blame, just to collect facts and corroborate victim's story
“I believe you.”	“I care a lot about what happened and I can help connect you with resources that can help.”

Upcoming Training- Online Modules

- **Sexual Harassment Legal Definitions**
- **Recognizing & Responding to Stalking**
 - **Trauma Informed Best Practices**
- **Online Harassment**
- **Title IX Final Rule Basics**





Thank you!!!

RIT | **Title IX**