Minors on Campus & Title IX
Trustee Responsibility & Liability

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Title IX, Protection of Minors, the Clery Act, the Violence Against Women Act and Campus SaVE (Sexual Violence Elimination Act) are all federal regulations that universities must be in compliance with relative to the safety of students, staff and visitors on campus. The circles represent the fact that each of these regulations interconnect and compliance with each assists our universities in ensuring safety.
Protection of Minors

Board of Governors' Policy 2014-01-A: Protection of Minors requires each university to adopt a policy addressing:

- Background Clearances
- Mandated Reporting of Child Abuse
- Maintenance of a Registry of Programs Involving Minors
- Providing Safety and Security in programs including minors (e.g., staffing ratios, transportation, housing)
- Code of Conduct
Board Policy 2014-01-A states:

The purpose of this policy is to promote the safety and security of children who participate in programs held on Pennsylvania’s State System of Higher Education (State System) university property. This policy applies to all State System universities, their sponsoring units, and the Office of the Chancellor. All State System administrators, faculty, coaches, staff, students, independent contractors, and volunteers in State System university-sponsored programs or in programs for minors held on university property must comply with this policy.
Board Policy 2014-01-A Exemptions

(1) Events open to the general public and which minors attend at the sole discretion of their parents or legal guardians.

(2) Private events where minors attend under parental or legal guardian supervision.

(3) Programs designated by the university president or designated official in advance and in writing as exempt from this policy or specific provisions of this policy.

ALL INCIDENTS OF CHILD ABUSE MUST BE REPORTED
Board Policy 2014-01-A

Criminal Background Screening

- All employees and volunteers are required to have criminal background screening clearances in accordance with applicable procedures, standards, and guidelines as established by the chancellor.

- Before being allowed to use or lease university facilities, program administrators and/or independent contractors of non-university-sponsored programs, or nonuniversity groups and/or independent contractors providing services to university-sponsored programs are required to certify that they have conducted criminal background checks and determined the fitness of all authorized adults and program staff.
Protection of Minors: Background Clearances

• Child Protective Services Law as amended effective December 31, 2014, requires all prospective employees, current employees, independent contractors and volunteers to obtain and renew criminal background checks and child abuse clearances on a three-year cycle.

• Employees must also report arrest or conviction of reportable offenses.
Reportable Offenses

Provisions of Title 18 of the Pennsylvania Consolidated Statutes (relating to crimes and offenses) or an equivalent crime under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of the Commonwealth of Pennsylvania:

- Chapter 25 relating to criminal homicide
- Section 2702 relating to aggravated assault
- Section 2709.1 relating to stalking
- Section 2901 relating to kidnapping
- Section 2902 relating to unlawful restraint
- Section 3121 relating to rape
- Section 3122.1 relating to statutory sexual assault
- Section 3123 relating to involuntary deviate sexual intercourse
- Section 3124.1 relating to sexual assault
- Section 3125 relating to aggravated indecent assault
- Section 3126 relating to indecent assault
- Section 3127 relating to indecent exposure
- Section 4302 relating to incest
- Section 4303 relating to concealing death of a child
- Section 4304 relating to endangering welfare of children
- Section 4305 relating to dealing in infant children
- A felony offense under Section 5902(b) relating to prostitution and related offenses
- Section 5903(c) or (d) relating to obscene and other sexual materials and performances
- Section 6301 relating to corruption of minors
- Section 6312 relating to sexual abuse of children

An offense designated as a felony under the act of April 14, 1972 (P.L. 233, No. 64), known as “The Controlled Substance, Drug, Device and Cosmetic Act,” committed within the preceding five-year period.

A founded report or indicated report of child abuse within the preceding five-year period in the statewide database maintained by the Department of Human Services.
Volunteer: Any individual, including students, authorized by an appropriate appointing authority or designee of an appointing authority, who provides services to the university without remuneration from the university. For purposes of this procedure/standard, this includes members of governing bodies and student associations, but does not include student volunteers for university-sponsored, short-term events of limited duration such as move-in days, community service days, commencement, etc.
System Requirements for Background Clearances

All employees, prospective employees, and volunteers are required to have the following background screening clearances (background clearances):

1. A criminal history record check from the Pennsylvania State Police (PSP) or statement from the PSP that the individual has not been convicted of a reportable offense.

2. Certification from the Department of Human Services as to whether the individual is named in the statewide database as a perpetrator in a pending child abuse investigation or in a founded or indicated report of child abuse within the last five years.

3. A federal criminal history record check. The individual must submit a full set of fingerprints to the PSP to obtain this report. The PSP will submit the fingerprints to the Federal Bureau of Investigation for the purpose of verifying the identity of the individual and obtaining a current record of any criminal arrests and convictions.

Volunteers who have been a continuous resident of PA for the last 10 years are not required to have the FBI clearance if they swear or affirm in writing that they are not disqualified from service based upon a conviction or report of an offense listed on Slide 8
System Volunteers (Trustees)

Clearances must be obtained as follows:

1. Prior to approval (effective July 1, 2015), and every three years thereafter.

2. Within 36 months of the date of the most recent background clearances.

3. By July 1, 2016, if background clearances are older than 36 months.

4. By July 1, 2016, if approved as a volunteer before July 1, 2015, but had not received background clearances because the volunteer previously was not required to do so.
Reporting Arrest

All employees, volunteers, and program administrators must provide written notice to the designated person in charge at the university if they or an authorized adult or program staff are:

1. arrested for, or convicted of, a reportable offense that would constitute grounds for denial of employment or participation in a program, activity, or service; or
2. named as a perpetrator in a founded or indicated report of child abuse.

The employee, volunteer, or program administrator shall provide such written notice within 72 hours of arrest, conviction, or notification that the person has been listed as a perpetrator in the statewide database.

The failure of an employee or volunteer to make a written notification as required above is a misdemeanor of the third degree and shall be subject to discipline up to and including termination or denial of employment or volunteer position.

The failure to report an arrest or conviction is only a crime for volunteers and employees who have direct contact with minors. If you are not sure whether your scope of trusteeship puts you within that category, you should consult with the Office of Chief Counsel.
Mandated Reporter

- Board Policy 2014-01-A: *Protection of Minors*
  In a situation of suspected child abuse, all State System administrators, faculty, coaches, staff, student workers, contractors, and volunteers are considered mandated reporters.

All members of the University’s Council of Trustees are considered mandated reporters.
Mandated Reporter Responsibilities

- Mandated reporters must immediately make an oral report of suspected child abuse to the Department of Human Services (DHS) by calling 1-800-932-0313, or a written report to DHS using electronic technologies when available. If an oral report is made, a written report shall also be made within 48 hours to DHS.

- Immediately following the report to DHS, the mandated reporter must notify the designated person in charge at the university, who will assume responsibility for facilitating the university’s cooperation with the investigation of the report.

If in doubt about who to report concerns or incidents to at your university, any report can be made to the Director of Human Resources or the University Title IX Coordinator.
Mandated Reporter Training

- Many of the universities have provided training to faculty, staff, and students regarding their responsibilities as mandated reporters.
- System-required mandated reporter online training will be available in fall 2015.
- Members of University Councils of Trustees will be required to take the online training in fall 2015.

The online training module will take one hour to complete. The module will be standard across the System, but can be customized with information specific to your university such as policy and contact information.

If you are not aware of the contact person on your campus for Protection of Minors this training module will provide that information.
There is no question that System universities must comply with the regulations listed as Federal Law. However, we are also aware that items listed as Federal Guidance must be followed as part of our compliance efforts.

Resolutions Agreements are agreements that have been made between the Office of Civil Rights (OCR) and universities who have been cited as not meeting OCR/Department of Education standards for addressing sexual misconduct on their campuses. These agreements also provide guidance to universities across the country, including the System in how to address issues of sexual misconduct.
Risks of Noncompliance: Fines and Civil Liability

- Administrative Penalties
  - $35,000 per Clery Act violation
  - Recent rise in OCR complaints, investigations, and determinations
  - 2013: Eight fines from $82,500 to $280,000 totaling $1,455,000
  - U.S. Department of Education may revoke funding, but has never done so (Tufts was publicly threatened in April)

- Civil Litigation
  - By Victims
  - By Accused

There is currently pending legislation to increase university fines to $150,000 or 1% of a university’s total operating budget.
Risks of Noncompliance: Reputational Damage

- Media coverage of complaint and investigation
- Viral campaigns on social media
- Impact on applications
- Publication of factual findings
Title IX

• “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 educational program or activity receiving federal financial assistance.”

• Title IX of the Education Amendments of 1972 and Implementing Regulations at:

Title IX applies to any university receiving federal financial aid.
Title IX

- Title IX of the Education Amendments of 1972 is a federal law intended to end sex discrimination in all areas of education.
- Title IX applies to all recipients of federal funds both public and private institutions.
- Title IX applies to educational **program equity**, such as in athletics, and also to **sexual harassment and sexual assault**.
The Violence Against Women Reauthorization Act (VAWA) imposes new obligations on universities under Campus SaVE.

- Expands Clery reporting obligations: domestic violence, dating violence, stalking.
- Additional hate crime categories: gender identity and national origin.
- Requires written notice to persons reporting sex offenses.
- Imposes new requirements for Title IX grievance procedures.
- Imposes new training requirements for students, faculty, and staff.

Title IX guidelines require that universities use a Preponderance of Evidence standard when adjudicating sexual misconduct cases. This is a lower standard than Beyond a Reasonable Doubt, which is used in the courts. Because of this a student found guilty of violating university standards of behavior may not be found guilty of sexual misconduct/assault in the legal system.

Universities are also required to provide education for students and staff on Title IX sexual misconduct awareness and prevention.
Essential Title IX Compliance Elements

Once a school has notice of sexual harassment/sexual misconduct, the school must:

1. Take immediate and appropriate steps to investigate what occurred and take interim measures.
2. Take prompt and effective action to:
   • End the harassment.
   • Remedy the effects.
   • Prevent the recurrence.

A remedy may be counseling for the victim and a judicial hearing to determine if sexual misconduct has occurred.
Responsibilities Under Title IX

- All employees and volunteers are required to report incidents of sexual misconduct to the university Title IX Coordinator, wherever the incident occurs.

- Only individuals having a documented privilege as confidential employees under Title IX are exempt from reporting incidents of sexual misconduct to the Title IX Coordinator.

- All members of University’s Council of Trustees must report known incidents of sexual misconduct (student-on-student, employee-on-student, contractor/third party-on-student) to the Title IX Coordinator.

Individuals with confidential privilege may include university Health Center staff, Counseling Center Staff, staff with professional licensed confidential privilege such as a Victims Advocate or member of the Clergy.
Title IX

• Creates a private right of action.

Universities can be held liable for student-on-student harassment if they have actual knowledge of harassment and are deliberately indifferent by taking no action.
Every Pennsylvania State System University has a Title IX Coordinator. Do you know who that individual is at your university?
Compliance and Equity Webpage

- For more information regarding Title IX and Minors on Campus, view:
  
  http://www.passhe.edu/inside/ce/Pages/Office-of-Compliance-and-Equity.aspx