

Supportive Measures in Response to Reports of Violence

1. Introduction:Duty to Offer

1.1 SCI Welcome & legal disclaimer



Notes:

1.2 Title Slide



Notes:

1.3 Overview

OVERVIEW

Learning Objectives for this course:

1. Review the duty to offer supportive measures.
2. Understand the need to provide equality in accommodations for all parties.
3. Consider the types of supportive measures available, and when they are appropriate.

Notes:

1.4 Introduction

INTRODUCTION

● DUTY TO OFFER



EQUALITY

TYPES

Supportive measures basics

Institutions have a duty to offer supportive measures, but are not liable under Title IX when parties decline to pursue them.

Title IX and the Clery Act, as amended by the Violence Against Women Act, require equal access to supportive measures for all parties.

Available measures include housing changes, academic modifications, and accommodations for students' physical and mental health.

1.5 clery/vawa i

CLERY/VAWA	2013 Violence Against Women Act amendments to the Clery Act, 34 CFR § 668.46 (b) (11) (iv-v)
 DUTY TO OFFER	Institutions must provide written notification to “students and employees”:
     EQUALITY	About existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within the institution and in the community.
 TYPES	

1.6 clery/vawa ii

CLERY/VAWA	2013 Violence Against Women Act amendments to the Clery Act, 34 CFR § 668.46 (b) (11) (iv-v)
 DUTY TO OFFER	Institutions must provide written notification to “victims”:
     EQUALITY	About options and how to request changes to “academic, living, transportation, and working situations or protective measures.”
 TYPES	Institution <u>must</u> make accommodations • if the victim requests them and • if they are “reasonably available.”

1.7 clery/vawa prot comm

PROTECTED COMMUNICATIONS	2013 Violence Against Women Act amendments to the Clery Act, 34 CFR § 668.46 (k) (3) (iii)
 DUTY TO OFFER	Protected communications
     EQUALITY	Communications between student and institutional officials about interim protective measures are not part of the disciplinary “proceeding”
 TYPES	No requirement to disclose these communications to the respondent

1.8 TIX duty I

TITLE IX	Obligation to remedy discrimination by offering reasonable accommodations
 DUTY TO OFFER	An institution may be liable under Title IX if a reporting individual requests measures, but the institution does nothing. <i>Kelly v. Yale Univ.</i> , No. CIV.A. 3:01-CV-1591, 2003 WL 1563424, at *4 (D. Conn. Mar. 26, 2003).
 EQUALITY	Minimal standard: Recipient cannot act in "deliberate indifference" to student's needs
 TYPES	Response cannot be "clearly unreasonable" in light of the situation. <i>Davis Next Friend LaShonda D. v. Monroe Cty. Bd. of Educ.</i> , 526 U.S. 629, 648 (1999).

1.9 TIX duty II

TITLE IX	An institution does not act in "deliberate indifference" to a student's needs (i.e., no Title IX liability) where the student declines offered services.
 DUTY TO OFFER	It is not plainly unreasonable for an institution "to leave the ball" in the reporting individual's court; the institution's duty is to offer counseling and instruct the reporting individual on the process for obtaining accommodations.
 EQUALITY	<i>Moore v. Regents of the Univ. of California</i> , No. 15-CV-05779-RS, 2016 WL 2961984, at *8 (N.D. Cal. May 23, 2016).
 TYPES	

1.10 TIX duty III

TITLE IX	<u>Title IX Final Rule, § 106.30(a)</u> Supportive measures are:
 DUTY TO OFFER	• non-disciplinary • non-punitive (<i>no interim suspensions allowed</i>) • individualized • offered as appropriate and as reasonably available • without fee or charge to the complainant or the respondent • before or after the filing of a formal complaint • or where no formal complaint has been filed.
 EQUALITY	
 TYPES	

1.11 TIX duty IV

TITLE IX

- DUTY TO OFFER
- EQUALITY
- TYPES

Title IX Final Rule, § 106.30(a)

Required procedures

- Title IX Coordinator engages in “dialogue”
- Institution offers measures “designed” to provide equal access
- Confidential, except when needed to implement the measures (security measures; housing change)

Scope

- Non-exhaustive list of measures offered
- Measures not listed in Final Rule can be offered on equal terms to the parties

2. Equality

2.1 Equality in providing supportive measures



Notes:

Joe to review

2.2 student services

COUNSELING SERVICES	Institutions must engage all parties to the student conduct process in an even-handed fashion.
DUTY TO OFFER	This includes offering equitable access to counseling services.
EQUALITY	<i>Doe v. Univ. of Denver</i> (D.Colo. 2018), affirmed, (10th Cir. 2020).
	• Prevention and advocacy services • Health & Counseling Center • Chaplaincy
	<i>Yu v. Vassar Coll.</i> (S.D.N.Y. 2015)
	Compare, <i>Mancini v. Rollins Coll.</i> (M.D. Fla. 2017)
TYPES	

2.3 disability

DISABILITY SERVICES	Institutions also have a Title IX responsibility to provide equal access to disability accommodations to the Reporting Individual and Respondent
DUTY TO OFFER	The student has the obligation to inform the Title IX or conduct official of the need for the accommodation.
EQUALITY	There's no "constructive" notice, even if that student has received academic accommodations in the past. <i>Rossley v. Drake Univ.</i> , 342 F. Supp. 3d 904, 930 (S.D. Iowa 2018), <i>aff'd</i> , 979 F.3d 1184 (8th Cir. 2020).
TYPES	

Notes:

2.4 *doe v quinnipiac*

For example, in *Doe v. Quinnipiac Univ.*, a university accommodated a respondent diagnosed with ADHD by providing him extra time to review a two-hundred and fifty page investigative report and submit a written response.

The university subsequently provided three accommodations at the seven-hour hearing.

First, it arranged for all questions regarding a specific event and date to be kept together.

Second, it allowed him several minutes "to process questions and regroup, with assistance if necessary" so that he could "recall the context of the question at hand."

Third, he was given breaks every 15 to 20 minutes to ease his cognitive load from the questioning, during which time he could "clear his head" and confer with his advisor.

Doe v. Quinnipiac Univ., No. 3:17-CV-364 (JBA), 2017 WL 1206002, at *2 (D. Conn. Mar. 31, 2017); *Doe v. Quinnipiac Univ.*, No. 3:17-CV-364 (JBA), 2019 WL 3003830, at *4 (D. Conn. Jul. 10, 2019).

Notes:

2.5 *quiz: moving violations*

MOVING VIOLATIONS?

- ☐ DUTY TO OFFER
- ☐ EQUALITY
- ☐
- ☐
- ☐
- ☐
- ☒ TYPES

You receive a complaint of sexual assault in a residence hall. The students share the same residence hall floor, and the reporting individual asks that the respondent be moved. The respondent says that this move is illegal and prejudices their guilt. **Can the respondent be moved?**

2.6 min burdens I

MINIMIZING BURDENS	DUTY TO OFFER	Title IX Final Rule
	EQUALITY	• Does not prohibit supportive measures from imposing a reasonable burden on the other party; respondent may be moved or put in different classes or dining hall depending on circumstances. 85 Fed. Reg. 30026, 30231 (May 19, 2020). • But no presumption about who should be burdened • "If, however, the complainant wishes to avoid all physical sightings of a respondent and not only an order prohibiting communications, if appropriate the complainant may receive a supportive measure in the form of an alternate housing assignment." 85 Fed. Reg. at 30184.
	TYPES	

2.7 min burdens II

MINIMIZING BURDENS	DUTY TO OFFER	Case law holds that victim-centered" solutions do not violate Title IX
	EQUALITY	But accommodations cannot show gender bias A university may extend supportive measures to the reporting individual, and not give those same benefits to the accused person, because it has "a legitimate and reasonable bias in favor of alleged victims of sexual assault." <i>Doe v. Columbia College Chi.</i>, 299 F. Supp. 3d 939, 956 (N.D. Ill. 2017), <i>aff'd</i>, 933 F.3d 849 (7th Cir. 2019).
	TYPES	

3. Types

3.1 Types of supportive measures



Notes:

Joe to review

3.2 housing

HOUSING

- DUTY TO OFFER
- EQUALITY
- TYPES
-
-
-
-

Administrative move, not a sanction

Failure to move respondent may violate reporting individual's Title IX rights.

J.K. v. Arizona Bd. of Regents, No. CV06-916-PHX-MHM, 2008 WL 4446712, at *17 (D. Ariz. Sept. 30, 2008);

Doe 1 v. Howard Univ., No. 17-CV-870 (TSC), 2019 WL 3037605, at *8 (D.D.C. July 11, 2019).

No protected property interest in residence hall.
Doe v. Devonshire, 181 F. Supp. 3d 146, 152 (D. Mass. 2016).

3.3 housing ii

HOUSING

DUTY TO OFFER

EQUALITY

TYPES

Developing trend: Housing move as a “sanction”

Eighth Circuit (AK, IO, MN, MO, NB, ND, SD) holds that requiring victim to move is not “deliberate indifference.” *Mahe v. Iowa State Univ.*, 915 F.3d 1210, 1211 (8th Cir. 2019).

Court (erroneously) identifies moving respondent as "a form of disciplinary action"

Compare, Title IX Final Rule: policies must clearly identify administrative actions, such as a housing change, as administrative and not a sanction.

3.4 academic I

ACADEMIC CHANGES

DUTY TO OFFER

EQUALITY

TYPES

An institution has a Title IX obligation to provide "reasonable accommodations to complete and succeed in [their] course work." See, *Doe 1 v. Howard Univ.*, No. 17-CV-870 (TSC), 2019 WL 3037605, at *15 (D.D.C. July 11, 2019).

Unclear if requiring reporting individual to change class schedule violates Title IX

It's legal: *Doe v. Univ. of Cincinnati*, 173 F.Supp.3d 586 (S.D. Ohio 2016).

Maybe not: *Terrell v. Delaware State Univ.* No. CIV.A. 09-464 (GMS), 2010 WL 2952221, at *3 (D. Del. July 23, 2010).

Notes:

- Proposed rule: the recipient must apply either the preponderance of the evidence standard or the clear and convincing evidence standard. The recipient may, however, employ the preponderance of the evidence standard only if the recipient uses that standard for conduct code violations that do not involve sexual harassment but carry the same maximum disciplinary sanction.
- You should use the same standard of proof for all cases of violence, not just sexual violence; the distinction should be, if any, between violent and non-violent violations
- An institution would be able to reserve the clear and convincing evidence standard for SIV cases, but then use the lesser standard for other types of misconduct
- The recipient must also apply the same standard of evidence for complaints against students as it does for complaints against employees, including faculty.

3.5 academic II

ACADEMIC CHANGES	Outlier to know about: <i>Kelly v. Yale Univ.</i>, No. CIV.A. 3:01-CV-1591, 2003 WL 1563424, at *5 (D. Conn. Mar. 26, 2003).
DUTY TO OFFER	University declined Reporting Individual's request that both she and respondent be prohibited from attending classes.
EQUALITY	
TYPES	Court found no deliberate indifference in this response, as it considered that this remedy could amount to penalty before a finding of responsibility.
	While not a penalty – it was an administrative measure – it was likely an unreasonable request under the circumstances.

Notes:

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3.6 health I

PHYSICAL AND MENTAL HEALTH	Title IX and ADA/Section 504 Accommodations
DUTY TO OFFER	PTSD accommodations: remove notations regarding dropped classes, allow remote coursework, switch to classes where respondent unlikely to be.
EQUALITY	<i>Shank v. Carleton Coll.</i> , No. 16-cv-01154, 2019 WL 3974091 (D. Minn., Aug. 22, 2019).
TYPES	Remember:
	• Student must request accommodations
	• When it receives request, institution must engage in dialogue with student to determine if accommodation is reasonably available

3.7 health II

PHYSICAL AND MENTAL HEALTH	Limits
● DUTY TO OFFER	Not required to postpone midterm or provide psychiatric referral; allowing Reporting Individual to withdraw from classes is sufficient. <i>Doe v. Princeton Univ.</i> , No. 17-CV-1614 (PGS), 2018 WL 2396685, at *6 (D.N.J. May 24, 2018), <i>aff'd</i> , 3rd Cir., Oct. 25, 2019.
● EQUALITY	
● TYPES	Not liable for psychological impact of alleged assault (nightmares, trouble trusting others, anxiety when alone). The institution's liability rests on the nature of its response. But institution not liable for psychological impact of Title IX investigator's questioning. <i>Roe v. Penn. State Univ.</i> , No. CV 18-2142, 2019 WL 652527, at *8 (E.D. Pa. Feb. 15, 2019).
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3.8 health II

SUMMARY	
● DUTY TO OFFER	• Institutions are obliged to provide supportive measures to all parties to a disciplinary proceeding arising from sexual and interpersonal violence
● EQUALITY	• These measures must be offered on an equal basis to all parties
● TYPES	• When necessary, accommodations may be granted to one party, but not the other, as long as the decision is made without respect to gender
●	• An administrative measure is not a disciplinary sanction
●	
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3.9 Next Steps

Please go to the next slide to complete this module.

Continue to next slide to Complete Module

If you are an attorney and would like CLE credit, please fill out the form at this link:
<https://docs.google.com/forms/d/e/1FAIpQLSfTIIYqBEI07RC-lwPckh715GQZNikBUP7ipLJVx6SBO2K60g/viewform>

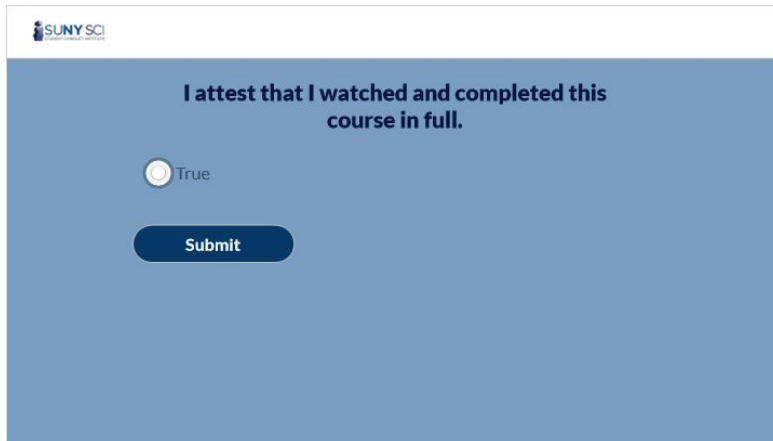
For written materials and related case law on the subjects discussed in this module, you can access the casebook from your online platform landing page.

Notes:

4. Exit Questions

4.1 Attest

(True/False, 100 points, 1 attempt permitted)

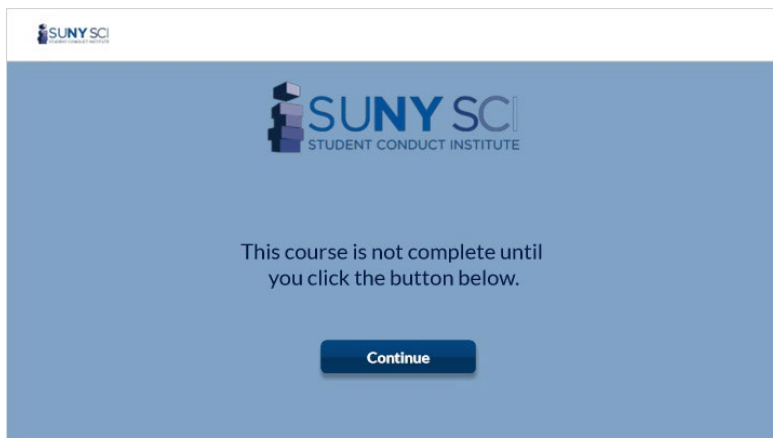


The screenshot shows a slide with the SUNY SCI logo in the top left corner. The main text reads "I attest that I watched and completed this course in full." Below this text is a radio button next to the word "True". At the bottom of the slide is a dark blue button with the word "Submit" in white text.

Correct	Choice
X	True

4.2 Results Slide

(Results Slide, 0 points, 1 attempt permitted)



The screenshot shows a slide with the SUNY SCI logo in the top left corner. The main text reads "This course is not complete until you click the button below." Below this text is a dark blue button with the word "Continue" in white text.

Results for

4.1 Attest

Result slide properties

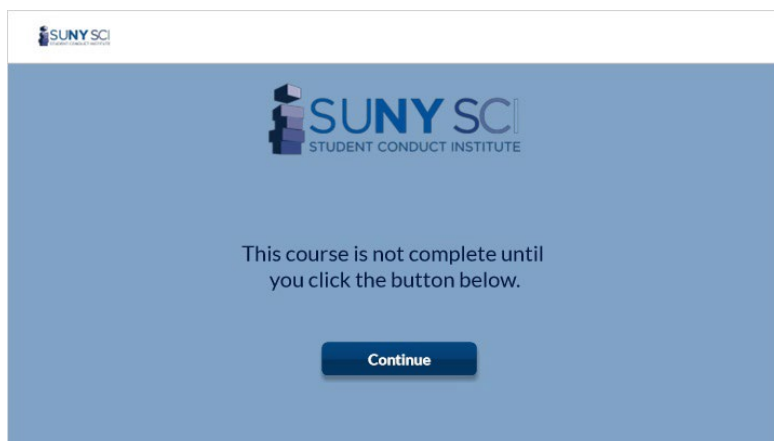
Passing Score

80%

Success (Slide Layer)



Failure (Slide Layer)



4.3 End Course



We invite you to take an optional Course Feedback Survey to help our team improve your learning experience. The link to this survey is located in the Table of Contents menu.

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End Course