

**Stopping Violence Against
Women on Campus:**

**How The Violence Against Women Act
Changes What Colleges Must Do To Comply
With Title IX and the Clery Act**

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Background

The Violence Against Women Reauthorization Act of 2013 (VAWA)

- Four titles of VAWA :
 - Title I: Enhancing Judicial and Law Enforcement Tools to Combat Violence against Women.
 - Title II: Improving Services for Victims of Domestic Violence, Dating Violence, Sexual Assault and Stalking.
 - Title III: Services, Protection and Justice for Young Victims of Violence.
 - Title IV: Violence Reduction Practices.
- Title III of VAWA creates new Clery Act obligations. It parallels and intersects certain Title IX (and other) obligations.

Title III, Section 304 of VAWA

Title III: Services, Protection and Justice for Young Victims of Violence.

- **Section 304:** “Campus sexual violence, domestic violence, and stalking education and prevention.” Also referred to as SAVE Act, in reference to Campus Sexual Violence Elimination Act.
- Amends the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”).
- Clery Act enforced by the Department of Justice (DOJ).

A Brief Step Back: The Clery Act Generally

- Students and families consider various factors – academic, financial, geographic – and campus safety – in selecting post secondary education.
- Clery Act requires school to make certain disclosures of crime statistics and security information and provide safety related information.
- Reporting of designated crime statistics and safety related information must be published in school's publishing **Annual Security Report** (ASR).

A Brief Step Back: The Clery Act Generally

- Clery Act requirements related to campus safety include:
 - Crime statistics
 - Timely warnings.
 - Emergency notifications.
 - Missing persons.
 - Notifications to victims.
 - Resources to victims.

Back to Today and the Future: Section 304 of VAWA

VAWA amends the Clery Act, requiring schools to:

- Report incidents of newly added categories: hate crimes based on gender identity or national origin, and crimes of **domestic violence, dating violence, and stalking**.
- Adopt certain institutional policies to prevent and respond to campus sexual violence.
- Adopt certain student discipline procedures.

Section 304 of VAWA

- March 7, 2013: President Obama signs VAWA into law.
- Section 304 changes take effect in March 2014.
- No Section 304 regulations yet.
- May 29, 2013: Department of Education issues preliminary guidance. Schools to exercise best efforts to include statistics for new crime categories for calendar year 2013 in ASR due in October of 2014.

Section 304 of VAWA

- September 19, 2013: Department of Education announcement of intention to establish negotiated rule making committee for purpose of:
 - Preparing proposed regulations to address VAWA’s changes to the Clery Act; and
 - Also, so “We may propose additional changes to clarify and update the existing campus safety and security reporting requirements.”
- Committee meetings to be held during first quarter of 2014.

Focus for Today

- Briefly review definitions of newly added crime categories of **domestic violence, dating violence, and stalking**.
- Focus on Section 304 requirements for school's policies and procedures to prevent and respond to new categories.
- Address intersection between Section 304 and Title IX/the April 4, 2011 Dear Colleague Letter (DCL) issued by the Office for Civil Rights (OCR).
- Practice tips.

VAWA: New Categories of Reportable Incidents

- **Domestic violence**: includes violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant (“as a spouse”), person with whom victim shares a child, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law (of jurisdiction receiving grant monies).

VAWA: New Categories of Reportable Incidents

- **Dating violence**: violence by a person who has been in a social relationship of a romantic or intimate nature with the victim. The existence of such relationship is determined by (a) its length, (b) its type, and (c) frequency of interaction of persons involved in the relationship.

VAWA: New Categories of Reportable Incidents

- **Stalking**: a course of conduct directed at a specific person that would cause a reasonable person (a) to fear for her, his, or others' safety, or (b) to suffer substantial emotional distress.

VAWA: New Categories of Reportable Incidents

- Raises questions about what must be reported and how to “count” and what hierarchy applies.
- Some continuing guidance from The Handbook for Campus Safety and Security Reporting (Feb. 2011).
- Expect further direction when regulations issued (but no promises on when that will happen).

VAWA: New Categories of Reportable Incidents

- Examples of potential issues and sources of confusion:
 - Definitions of domestic violence, dating violence, and stalking are broad.
 - To what extent do changes go beyond Clery's long-standing focus on *where and when* crime occurred?
 - Is there a new focus on *who and what*? *Who* are the accused and the victim, and *what* is the nature and specifics of their relationship?
 - Location (bricks and cyberspace).
 - Sexual assault - definition under uniform crime reporting system of Federal Bureau of Investigations.

VAWA: Some Steps to Take Now

- Statement of Policy.
- Disciplinary proceedings.
- Training.
- Best efforts to include statistics for new categories for calendar year 2013 in October 2014 ASR.

VAWA: Written Statement of Policy

- VAWA focuses on proactive and reactive components for written policies and procedures.
- ASR must include a Statement of Policy on the school's:
 - Programs to prevent domestic violence, dating violence, sexual assault, and stalking.
 - Procedures in place for school to follow when responding to a report of a domestic violence, dating violence, sexual assault, or stalking incident.
- *Pre-VAWA Clery Act requires school to have written statement of its policy on campus sexual assault programs and procedures followed once a sex offense has occurred.*

VAWA: The Statement of Policy and Education Programs

- **Schools must have Education Programs:**

To promote prevention and awareness of offenses of domestic violence, dating violence, sexual assault, and stalking (in addition to rape and acquaintance rape).

- Must be offered to all incoming students and new employees.
- *Note: OCR DCL “recommends” that institutions implement preventative education programs.*
- *Remember: VAWA and Clery Act and regulations are law. DCL is statement of OCR enforcement policy.*

VAWA: The Statement of Policy and Education Programs

- **Education Programs must include:**
 - Statement that the school prohibits these offenses.
 - Definition of these offenses in the applicable jurisdiction.
 - Definition of consent, with reference to sexual activity, in applicable jurisdiction.

VAWA: The Statement of Policy and Education Programs

- “Safe and positive options for bystander intervention” that person may take to “prevent harm or intervene” where there is risk of the offenses.
- Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks.
- On-going “prevention and awareness campaigns” for “students and faculty” on above. (Include employees too.)

VAWA: The Statement of Policy and Notification to Victim

- Schools must provide certain written notification to victims.
 - Schools must inform victims (following report of sex offense, domestic violence, dating violence, sexual assault, or stalking) of:
 - Importance of preserving evidence that may be necessary proof.
 - To whom the incident should be reported.
- *Remember: Victims refer to both students and employees.*

VAWA: The Statement of Policy and Notification to Victim

- Processes to obtain protective orders, such as no contact orders (by institution), or restraining orders and similar court orders.
- Victim's option to:
 - Notify law enforcement authorities on-campus and local police.
 - Be assisted by campus authorities in notifying law enforcement authorities if victim wishes.
 - Decline to notify such authorities.
- *Note: Pre-VAWA Clery Act requires school to inform students of some procedures victims should follow, but not as specific as required by Section 304.*

VAWA: Statement of Policy and Student Disciplinary Proceedings

- Schools must have a student disciplinary policy and process in place to respond to reports of sex offense, domestic violence, dating violence, rape, acquaintance rape, sexual assault, or stalking.
- The disciplinary process must provide a prompt, fair, and impartial investigation and resolution.
- Disciplinary proceedings must be conducted by officials who receive annual training on:
 - issues related to domestic violence, dating violence, sexual assault, and stalking, and
 - how to conduct an investigation and hearing process that protects the “safety of victims and promotes accountability.”

VAWA: Statement of Policy and Student Disciplinary Proceedings

- Student disciplinary proceeding to be conducted based upon the “statement of the standard of evidence [or proof]” included in the written policy.
- VAWA does not require a specific standard.
 - *Note OCR DCL directs a standard of “preponderance of the evidence.”*
 - *OCR DCL is not legislation.*
 - *Still open question: Whether OCR's position withstand scrutiny of court adjudication?*

VAWA: Statement of Policy and Student Disciplinary Proceedings

School's Student Disciplinary Process must:

- Provide the accuser and accused with same opportunities to have others present during the disciplinary proceedings, including opportunity to be accompanied to related meetings or proceedings by an advisor of their choice.
 - Inform the accuser and accused *simultaneously*, in writing, of:
 - The outcome of a disciplinary proceeding that arises from allegations of domestic violence, dating violence, sexual assault, or stalking.
 - The school's procedures (if any) for the accused and accuser to appeal the outcome of the institutional disciplinary proceeding.
 - Any change to outcome that occurs before outcome becomes final.
 - When outcome becomes final.
- *Note: Notification provisions under OCR DCL, pre-VAWA Clery, and FERPA are more nuanced.*

VAWA: Statement of Policy and Student Disciplinary Proceedings

School's Student Disciplinary Process must:

- Address how victims' confidentiality will be protected, including record-keeping that excludes personally-identifiable information on victims.
 - Provide for timely warnings to campus community on crimes that are a threat to students or employees. Report should withhold the names of victims as confidential.
- *Note: FERPA recognizes that in cases of emergency, information can be released without consent when needed to protect health and safety of others.*
- *Note: OCR DCL requires institutions to respect requests for confidentiality to the extent possible while addressing obligation to investigate and respond.*
- *Note: OCR DCL does not mandate that school's written policy address victim's confidentiality.*

VAWA: Statement of Policy and Student Disciplinary Proceedings

School's Student Disciplinary Process:

- Identify possible “sanctions or protective measures” the school may impose following a final determination of the reported incident.
- Include written notification to students and employees about existing resources (e.g., counseling, health, mental health, victim advocacy, legal assistance) available for victims on-campus and in community.
- Include written notification to victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if requested by the victim and if such accommodations are reasonably available.

VAWA: Practical Guidance for Implementation

- **Coordination between school's constituents is crucial.**
- Who are the possible constituents?
 - Campus Public Safety
 - Clery Coordinator
 - Campus Security Authorities
 - Title IX Coordinator
 - Student Affairs
 - Investigators/hearing board members
 - Human Resources
 - Others?
- Who needs to be at the table and when?
- Reexamine roles in context of Section 304 changes to Clery Act and on-going Title IX obligations.

Elements of Effective Prevention of Prohibited Conduct



VAWA: Practical Guidance for Policy Review and Update

- Policy Review and Update
- Identify all of school's policies, publications, and procedures related to crime prevention, reporting and investigation, sexual assault and other sexual misconduct, sexual harassment, alcohol and drug rules and penalties, and student discipline.
- “Walk” through school's website and links to understand how a student, employee, DOJ, OCR, etc. will navigate and access the school's policies.
- Examples of where these policies and publications might be located:
 - SAR.
 - Public Safety publications.
 - Title IX materials.
 - Student handbook and employee handbook.
 - Student Affairs Office and Health Services Office: pamphlets, information sheets and brochures.
 - Other?

VAWA: Practical Guidance for Policy Review and Update

- Identify who has “ownership” of all of above related policies and publications, jointly, and as a whole.
- Conduct periodic meetings among those who have “ownership” to identify issues and assess compliance.
- Resources:
 - The to-be issued regulations.
 - The Handbook for Campus Safety and Security Reporting (Feb. 2011). Very helpful explanations and sample forms in the appendix (but not law).
 - Government websites.
 - Caution on relying on unofficial sources.

VAWA: Practical Guidance for Training

- Think about training in terms of:
 - On what topics.
 - For whom.
 - When.
- Topics for training:
 - Clery Act generally.
 - Title IX generally.
 - VAWA's amendments to Clery Act, and its own mandated training topics.
 - School's own published materials and procedures.

VAWA: Practical Guidance for Training

- Persons to be trained:
 - Identify from list of possible constituents.
 - Don't forget the investigators and hearing board members (especially “rotating” or transient roles).
- Training of Campus Security Authorities (CSA) is critical.
 - Do your CSA's know who they are?
 - Do they understand their essential link to School's Clery compliance?
 - Do any school policies unknowingly “over-designate” CSA?

VAWA: Practical Guidance

- Don't wait; start compliance efforts now.
 - Update policies and procedures.
 - Plan for trainings.
 - Conduct trainings.
 - Plan for the October 2014 ASR to include statistics on new categories.
- Process is dynamic and fluid.
- Extra emphasis on coordination of multiple constituents.
- Be on look-out for further interim guidelines from the Department of Education and the to-be issued regulations.

Questions?

Important Notice

This PowerPoint should not be distributed nor should it be used as the sole source of information when addressing any legal issues. Specific circumstances may lead to different application of different laws. Also, federal and state laws change frequently. If you have specific questions, consult legal counsel.