

GOVERNMENT AND REGULATORY AFFAIRS

BLAST**Risk Management Considerations Regarding the Clery Act, Violence Against Women Act (VAWA) and Title IX When Students Study Abroad¹***January 2016***STATUTE/REGULATION SOURCE**

The Clery Act, as amended by the Violence Against Women Act, 20 USC 1092(f); 34 CFR 668.46. Title IX of the Education Amendments of 1972, 20 USC 1681.

BRIEF DESCRIPTION

The Clery Act, as amended by the Violence Against Women Act, and Title IX of the Education Amendments of 1972 place requirements on colleges and universities to report certain crimes occurring in certain overseas locations and also to take action in response to reports of certain crimes and unequal treatment on the basis of sex. The laws do not have uniform rules and must be carefully read together to understand obligations. While it is important to comply with the laws, it is even more important to develop policies, procedures and training methods to prevent such violations and respond promptly to reported violations. Keeping students safe and successful in study abroad requires us to go beyond the minimum requirements of the law. .

POTENTIAL/ACTUAL IMPACT TO HIGHER EDUCATION

The Clery Act and Title IX require colleges to respond to violence, report certain incidents of violence and develop prevention programming.

DISCUSSION

Two federal laws govern college and university reporting of and response to certain crimes and harassment. The Clery Act, as amended by the Violence Against Women Act (VAWA), requires that colleges report certain crimes that occur in certain geographic locations. Title IX requires that colleges appropriately respond to reports of unequal treatment on the basis of sex or gender in a way that tracks such reports and ameliorates the impact of unequal treatment. While the laws overlap in certain circumstances, they should be read and analyzed separately as they have different rules, standards, methods and enforcement entities.

The Clery Act

Initially passed in 1990, the Clery Act is primarily a consumer reporting law that requires colleges to disclose in an annual report and a crime log certain crimes occurring in certain geography for the preceding three calendar years. There are other requirements as well (timely warnings, missing persons, fire reporting, etc.) that are not treated in detail in this GRAC Blast.

For purposes of overseas reporting, the most common geographic location is a Non-Campus location.² To qualify as Non-Campus, a geographic location must be owned or controlled, defined by the Department of Education (ED) as having a written agreement for use, by the institution, frequently used by students and not within the same reasonably contiguous geographic area as the main campus. These include research facilities, hotels and apartment complexes, classroom buildings, and other locations owned or rented by a college where students stay for an extended period. There are also some On Campus locations overseas, if a geographic location can be defined as a branch or separate campus. On Campus locations may also have a public property reporting requirement.

Clery Act reportable crimes³ that occur in these locations must be reported in the Annual Security Report (ASR) and Crime Log (if the institution has a police or security department). Crimes must be included in the ASR and Crime Log if they are reported to a Campus Security Authority or local law enforcement.

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Title IX

Title IX of the Education Amendments of 1972 is a civil rights law that guarantees equal ability to participate in educational programs regardless of sex. In recent years, the ED's Office for Civil Rights (OCR) has placed an emphasis on preventing sexual violence, an extreme form of sexual harassment that can cause victims and survivors to not complete their education. Most prominently, the OCR issued an April 4, 2011, Dear Colleague Letter establishing standards for responding to such violations.⁴ Although courts are split, it is generally presumed that Title IX applies globally, not just in the United States.⁵

The Violence Against Women Act (VAWA)

In a way, the VAWA amendments to the Clery Act are a hybrid of traditional Clery and Title IX. The three new reportable Clery Act crimes (domestic violence, dating violence and stalking) are reported using traditional Clery geography. But while the reporting side of the law reads like traditional Clery, the action and response side of the law looks more like Title IX. That is, the law is concerned more with *who* is a victim of a crime rather than *where* geographically the crime occurred. Colleges are required to provide reporting victims with certain resources, take action against assailants that are within the jurisdiction of the college, and conduct programming to prevent such crimes.

ACTION

Thinking About the Laws and Risk Management in an Overseas Environment

Traditionally, the Clery Act and Title IX look backwards. The Clery Act requires colleges to report certain crimes occurring in certain locations in the three prior calendar years, and Title IX requires that colleges respond to unequal treatment on the basis of sex in a way that limits its effects and prevents its recurrence. VAWA looks both backwards and forwards. In addition to response, VAWA requires that colleges take proactive steps to educate students about violence, including both risk reduction and (importantly) bystander intervention.

Simply gathering statistics to publish in the Crime Log and ASR at a later date is insufficient. A reading of Title IX guidance and VAWA together requires a comprehensive (and time-sensitive) response to any sexual or interpersonal violence occurring overseas.

Action/Response:

While it is likely that all faculty and staff traveling with students overseas qualify as both Campus Security Authorities (CSA) under the Clery Act and Responsible Employees (RE) under Title IX,⁶ risk managers should consider simply making a blanket rule that institutional employees accompanying students overseas (except in the rare circumstance that the employee is present as a pastoral or professional counselor) are covered by both requirements and must report incidents of sexual and interpersonal violence to institution officials charged with response.

Conversely, third party providers would not technically qualify as CSAs or REs under ED's interpretations. The responsibility is with the institution, not external parties. Institutions can use contracts to require employees of third party providers to notify the institution of relevant incidents as if they were CSAs or REs.⁷

When a report of sexual assault, domestic violence, dating violence or stalking is received by an institution representative, whether employed by the institution or a third party, time is of the essence in responding. Institution representatives must be trained that they can never handle reports of violence "in house." That is to say, unless they have received appropriate training and responsibility for doing so, they should not conduct an investigation or take other action except in coordination with institution professionals charged with responding. Institution professionals should *never* seek to mediate reports of sexual assault or bring parties together to discuss and attempt to resolve complaints.

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When an institution receives a report of sexual or interpersonal violence, it has obligations to provide resources to victims⁸ and to investigate and potentially take action against assailants. Unlike the traditional Clery Act reporting requirements which are based on geography, Title IX and VAWA response/action requirements are based on whether the institution has jurisdiction over the student. In certain cases, a student from school A assaults a student from school B. In such a case, school B would be primarily responsible for providing resources while school A would be primarily responsible for investigation and discipline.

One difficulty in complying is that institutions often have many people accompanying students overseas, some of whom live at the location, and they may not have a strong relationship with the Title IX coordinator, counseling services and other key offices. To address this issue, the author developed a model, the Hub and Spoke model, for rapid communication and response when a report of such violence is received overseas. The “hub” in the Hub and Spoke model is a professional from international education (in the example below, the international program director) who is in regular communication with professionals from the offices of counseling, Title IX, university police or campus security, academics and student conduct.

The arrows in the model go both ways as these offices should be meeting with the hub on a regular basis to share information and cross-train. When a report comes in to a representative in the field, they should quickly contact the international program director. The director can then put into place training to gather information on resources, investigation and conduct while providing the appropriate information to relevant offices. In Step 2, these offices, through the director hub, provide this appropriate and customized information to the representative in the field and to local resources in the study abroad environment and, through them, provide resources to victims and begin investigations of actions by the perpetrator.

This is not the only model, but the key is having a person who can bridge the gap between offices that would rarely interact and, in bridging that gap, can accelerate the appropriate response to violence. A rapid response is an appropriate way to address violations that are often dangerous, violent and traumatic. Once received, the institution should, for the most part, respond using the same resource and conduct process that it does for violations committed on or near the campus.

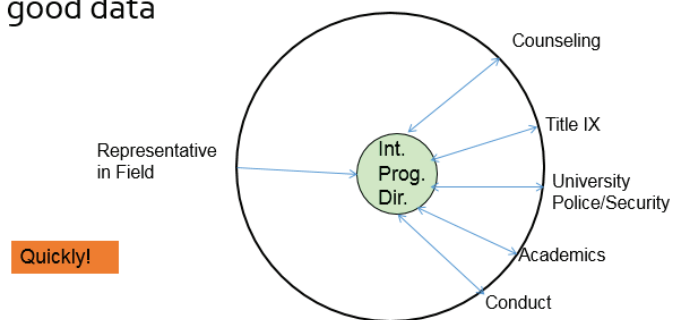
Education and Training

Prior to traveling overseas, students should receive training on risk reduction and violence prevention. Among other things, training must remind students that the institution prohibits VAWA crimes, define the crimes, define consent, provide information about safe and positive bystander intervention, and educate on risk reduction, including recognizing warning signs of abusive behavior and how to avoid potential attacks.

Over time, institutions should endeavor, alone or in partnership with other institutions, to develop sexual and interpersonal violence prevention trainings that are specific to the country or region being visited. Not all countries are the same. The risk profile is different in Canada and Saudi Arabia. Some countries are hostile to gays and lesbians, while others have laws surrounding sexual assault and domestic violence that differ significantly from protections in America. By training students to assist each other, to engage in bystander

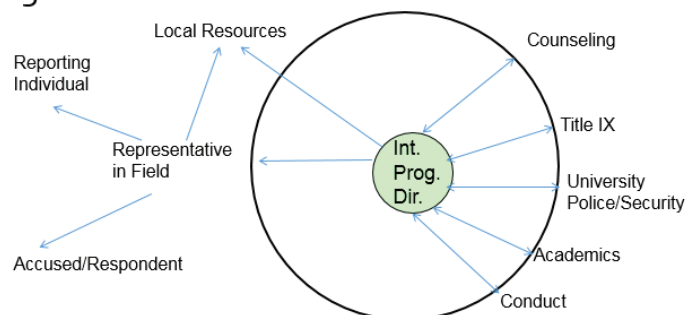
STEP #1:

Storch Model: Hub and Spoke for efficiency and good data



STEP #2:

Storch Model: Hub and Spoke for efficiency and good data



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intervention, and to understand the specific risks posed in that country, institutions can prevent many violations from occurring. Institutions should not and cannot simply offer training in risk reduction (walk in groups, watch your drink, lock your door) but must go beyond to educate about avoiding committing these violations and, if a bystander to such a violation, engaging in direct, distracting or delegated bystander intervention.

CONCLUSION

The Clery Act, Title IX and the Violence Against Women Act contain requirements for institutions to respond to sexual and interpersonal violence but also to provide advance training and guidance to help reduce violence. By carefully developing plans tailored to specific study abroad locations and mindful of the need to make connections between staff in the field and personnel on campus trained in responding to violations, institutions can prevent violence on study abroad and respond rapidly and effectively when such violence occurs.

SOURCES AND REFERENCES

1. Author Joseph Storch is an Associate Counsel at the State University of New York Office of General Counsel and Chair of the SUNY Student Affairs Practice Group. In addition to campus representation, he concentrates his practice on compliance with the Clery Act, Title IX and the Violence Against Women Act and assisting institutions in both complying with the law and in developing strategies to go beyond the legal requirements to best protect students. He is a graduate of SUNY Oswego, *summa cum laude*, has a Masters of Public Policy from the University at Albany, and a law degree from Cornell Law School. He has presented at two URMIA conferences.
2. Geographic reporting requirements are treated in more detail in Joseph Storch, "The Clery Act and Overseas/Distance Study: New Developments and Compliance Guidance," *NACUA Notes*, available at <http://www.higheredcompliance.org/resources/publications/CleryActAbroad.pdf> (Apr. 5, 2012) Pages 2-5.
3. A list of Clery Act reportable crimes and their definitions, updated following passage of the 2013 Violence Against Women Act Reauthorization, may be found at <https://www.gpo.gov/fdsys/pkg/FR-2014-10-20/pdf/2014-24284.pdf>, pages 62789-62790.
4. US Department of Education Office for Civil Rights, "April 4, 2011, Dear Colleague Letter," available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html>.
5. For a deeper analysis, see Joseph Storch, "Reporting on Student Safety and Security Abroad: Legal Requirements and Best Practices," National Association of College and University Attorneys Conference Paper, available at http://www.nacua.org/securedocuments/programs/June2015/05D_15_6_33.pdf (June 2015).
6. To learn more about reporting rules and distinctions between Campus Security Authorities and Responsible Employees, see Andrea Stagg and Joseph Storch, "Crime and Incident Reporting Guidelines for CSAs and Responsible Employees," available at http://www.nacua.org/documents/CrimeIncidentReportingGuidelinesCSA_September2014.pdf (Sep. 2014).
7. For example, see SUNY Clery and Title IX Procedure for International Programs, available at <http://forumea.org/wp-content/uploads/2014/08/SUNY-Clery-Policy-for-Council-on-International-Programs-FINAL-11-14.pdf>.
8. Among other things, institutions must inform victims of available sanctions and protective measures; evidence preservation; protective measures, such as no contact orders from the institution, orders of protection; procedures for institutional disciplinary procedures; Interim remedies, including options for and assistance with changing academic, living, transportation, and working situations, if requested and reasonably available; how institution will protect victim confidentiality while still doing public recordkeeping and providing protective measures; and how to report the offense on and off campus. Additionally, institutions must provide reporting victims with information about confidentiality, existing and available counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims both on and off campus; and equitable opportunities for victim and accused. For a free resource that can assist institutions in providing customized visa and immigration resources, see <http://www.suny.edu/violence-response/Visa-and-Immigration-Resource/>.

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FOR MORE INFORMATION

- Joseph Storch, "The Clery Act and Overseas/Distance Study: New Developments and Compliance Guidance," *NACUA Notes*, available at <http://www.higheredcompliance.org/resources/publications/CleryActAbroad.pdf> (Apr. 5, 2012), p. 2-5.
- Joseph Storch, "Reporting on Student Safety and Security Abroad: Legal Requirements and Best Practices," National Association of College and University Attorneys Conference Paper, available at http://www.nacua.org/securedocuments/programs/June2015/05D_15_6_33.pdf (June 2015).
- SUNY Clery and Title IX Procedure for International Programs, available at <http://forumea.org/wp-content/uploads/2014/08/SUNY-Clery-Policy-for-Council-on-International-Programs-FINAL-11-14.pdf>.
- Joseph Storch, "Implications of the Clery Act and Title IX for Overseas and Distance Locations," URMIA webinar, available at <https://www.youtube.com/watch?v=BaFEU8QihTM&feature=youtu.be> (Feb. 5, 2013).
- Joseph Storch, "Properly Classifying Geographic Locations for Clery Act Annual Security Report Purposes," available at http://www.higheredcompliance.org/resources/resources/ProperlyClassifyingGeoLocale_CleryAct.pdf (May 2013).
- Andrea Stagg and Joseph Storch, "Crime and Incident Reporting Guidelines for CSAs and Responsible Employees," available at http://www.nacua.org/documents/CrimeIncidentReportingGuidelinesCSA_September2014.pdf (Sep. 2014).
- Forum on Education Abroad Standards of Good Practice, <https://forumea.org/resources/standards-of-good-practice/>.
- Dana Wilkie, "Complying with Clery," *International Educator*, available at http://www.nafsa.org/_/File/_/ie_novdec14_supplement.pdf (Nov./Dec. 2014).
- Wilson Ring, "Sexual assaults in study-abroad programs draw new attention," *Associated Press*, available at <http://bigstory.ap.org/article/fe678066c1224607a2f5a0baad0aaab3/college-rape-debate-overseas-study-crimes-gain-attention> (Oct. 8, 2015).

This document is not legal advice. For legal advice, please contact your legal counsel.

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