



# **FEDERAL LAWS ADDRESSING SEXUAL VIOLENCE IN HIGHER EDUCATION**

**Senate Higher Education Committee Study Session**

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# SEXUAL VIOLENCE & INSTITUTIONS OF HIGHER EDUCATION IN THE NEWS

- High profile sexual assault controversies: Penn State, University of Virginia, Florida State, University of Oregon
- Within the past four years, the Department of Education has commenced over 85 Title IX investigations
- White House Task Force to Protect Students From Sexual Assault

# TITLE IX

- Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.*
- Prohibits discrimination on the basis of sex in education programs and activities operated by recipients of Federal financial aid assistance
- Best known for impact on college athletics
- Also prohibits gender discrimination in provision of services and employment

# APRIL 4, 2011

## DEAR COLLEAGUE LETTER

- Department of Education's Office of Civil Rights (OCR) guidance on compliance with Title IX
- Sexual violence is a form of sexual discrimination prohibited under Title IX
- Letter focuses primarily upon student-on-student sexual violence (although employees in education programs are also covered under Title IX)

## DEAR COLLEAGUE LETTER (CONT.)

“If a school knows or reasonably should know about student-on-student harassment [which includes sexual violence] that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.”

# DEAR COLLEAGUE LETTER (CONT.)

- Extend jurisdiction to off campus conduct when conduct impacts campus
- Appoint Title IX coordinator to administer complaint and investigation process
- Seek to inform and obtain consent from complainant before beginning an investigation
- Create process for determining whether institution can honor request for confidentiality
- Conduct a prompt, thorough, and impartial investigation
- Implement interim remedies in tandem with investigation and disciplinary process

# DEAR COLLEAGUE LETTER (CONT.)

- Reform Disciplinary Procedures
  - Preponderance of the evidence burden of proof
  - Complainant receives equal access to relevant witnesses and evidence
  - Complainant receives equal access to procedures, including right to appeal
  - Investigators and adjudicators receive training on investigating and conducting hearings involving allegations of sexual violence and harassment
  - Accused and accuser receive simultaneous written notice of outcome

# THE CLERY ACT

- The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (1990)
- Requires institutions of higher education to record and disclose information about campus crime
- Enforced by the United States Department of Education
- Violators subject to fines up to \$35,000 per violation or loss of financial aid



# REAUTHORIZATION OF THE VIOLENCE AGAINST WOMEN ACT (2013) (VAWA)

- Amends Clery Act
- AKA the “Campus Sexual Violence Elimination (SaVE) Act”
- Final rules developed through negotiated rulemaking published in October 2014

# VAWA/CAMPUS SAVE ACT REQUIREMENTS

- Adds new sexual violence offenses to Clery reporting requirements
  - Sexual offenses
  - Domestic violence
  - Dating violence
  - Stalking
- Two new hate crimes
  - National origin
  - Gender identity

# VAWA/CAMPUS SAVE ACT (CONT.)

- Requires institutions to develop and submit a “**statement of policy**” describing
  - Programs to prevent sexual violence, including education programs to promote awareness of sexual violence with both new and current students and employees
- Statement of policy regarding procedures for responding to a sexual violence complaint, including
  - Making written notice of sexual violence resources available to victims of sexual violence
  - Providing written notice of victim’s rights and options to any employee or student who reports being a victim of sexual violence

## VAWA/CAMPUS SAVE ACT (CONT.)

- Statement of policy regarding procedures for reporting sexual violence, including information in writing regarding
  - Proper preservation of evidence of violation
  - Procedures for protecting complainant's confidentiality
  - Official responsible for receiving complaints
  - Alternatives for reporting incident (campus security, local police, sheriff's office, etc.)
  - Directive to honor victim's decision regarding reporting incident to law enforcement
  - College should offer to assist student to file complaint with law enforcement

## VAWA/CAMPUS SAVE ACT (CONT.)

- Publish potential disciplinary sanctions that can be imposed for sexual violence offenses
- Statement of policy regarding disciplinary procedures providing
  - Prompt, fair, and impartial proceedings
  - College personnel trained to conduct investigation and hearing process that protects the victim's safety and promotes accountability
  - Accuser and accused receive the same procedural opportunities, including the right to appeal
  - Simultaneous written notice to accuser and accused of outcome, right to appeal, and when decision becomes final

# OCR GUIDANCE AND REGULATIONS

- April 4, 2011 Dear Colleague Letter  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>
- Questions & Answers on Title IX & Sexual Violence (April 29, 2014)  
<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>
- Federal Regulations implementing VAWA/Campus SaVE Act (effective July 1, 2015)  
<https://www.federalregister.gov/articles/2014/10/20/2014-24284/violence-against-women-act>

# QUESTIONS