Overview of the Violence Against Women Act

President Clinton signed the Violence Against Women Act into law on September 13, 1994 (Biden, 2014). According to whitehouse.gov, some hallmarks of the legislation include:

- Strengthening federal penalties against repeat sex offenders
- Ensuring that protection orders are recognized and enforced in all areas of the U.S.
- Providing training for law enforcement and judicial officers
- Establishing the National Domestic Violence Hotline

Since the passage of the law, domestic violence rates have dropped by 64 percent and the cultural perception about violence and rape has shifted (Biden, 2014). However, the issue of sexual abuse still persists, with one in five women in the U.S. reporting that they have experienced a rape or attempted rape.

Campus Sexual Violence Elimination Act

President Obama signed the Violence Against Women Reauthorization Act of 2013 (VAWA) on March 7, 2013, imposing new obligations on college and university campuses under its Campus Sexual Violence Elimination (SaVE) Act provision. These obligations went into effect on March 7, 2014. Final regulations for the Violence Against Women Act (VAWA) were published in the Federal Register on October 20, 2014. The regulations go into effect on July 1, 2015, though the Department of Education expects that institutions will make a good faith effort to immediately implement the changes (New, 10/20/14).

The Campus Sexual Violence Elimination (SaVE) Act “requires colleges and universities... to increase transparency about the scope of sexual violence on campus, guarantee victims enhanced rights, provide for standards in institutional conduct proceedings, and provide campus community wide prevention educational programming.”

— S. Daniel Carter, member of the rulemaking committee for the Violence Against Women Reauthorization Act of 2013

Source: www.cleryact.info/campus-save-act.html

VAWA/SaVE amends parts of the Clery Act and the Higher Education Act of 1965 under the Student Assistance General Provisions (New, 10/20/14). It does not modify Title IX. The most notable amendments are those that require institutions to now include statistics on incidents of dating violence, domestic violence, sexual assault and stalking. According to cleryact.info, only sexual assault statistics were required in the past. Institutions must also include information about certain policies, procedures and programs pertaining to these incidents.
Costs and Benefits of the New Regulations

In providing the new regulations, the Department of Education believes the payoffs of these changes far outweigh the costs (October 2014). Among the stated benefits are:

- Helping prospective students and parents make more informed college decisions
- Further outlining and strengthening the rights of victims by providing improved crime reporting and prevention and education programs
- Protecting the accuser and the accused by ensuring access to:
  - An equitable and transparent judicial process
  - An advisor of their choosing
  - A written explanation of rights and options for victims

Inside Higher Ed reports that student safety advocates are pleased with the fact that both the complainant and the respondent can have an advisor present throughout the process (New, 10/20/14). Though institutions can still limit the role of an advisor, they can no longer prevent an advisor from being present. Some critics, however, warn that allowing students to bring advisors to student conduct proceedings will inevitably lead to more lawyers being involved in the process (New, 6/20/14). This could lead to an imbalance if one student has a lawyer and another does not, or add administrative hurdles and costs for higher education institutions.

The Department of Education divides the costs of the new regulations into two general categories: paperwork and the improvement of security (10/20/14). The Department also anticipates that institutions that must make significant changes to their judicial policies and procedures will incur more costs than those whose policies already align with the regulations. (For more information on the involved costs, please see the “Policies” section of this binder.)

“A benefit of these final regulations is that they will strengthen the rights of victims of dating violence, domestic violence, sexual assault, and stalking on college campuses… [Improve] crime reporting and will help ensure that students, prospective students, families, and employees and potential employees of the institutions will be better informed about each campus’ safety and security procedures. Ultimately, the improved reporting and transparency will promote safety and security on college campuses.”

— U.S. Department of Education

Source: www.federalregister.gov/articles/2014/10/20/2014-24284/violence-against-women-act
Overview of the VAWA Binder

Though changes resulting from the October 2014 rule are many, the Department of Education has not yet issued much guidance as to how institutions of higher education should apply them. The goal of this binder is to help you determine what policies to create, what to put in writing, and what actions to take to protect students and the institution while remaining compliant with the Violence Against Women Act.

On the following pages, we will sort through the new regulations and how they impact:

- Clery Act and Title IX
- Legal issues
- Policies
- Judicial procedures and training
- Prevention and awareness training

While this binder is meant to be a resource that collects comprehensive information about VAWA into one place, we strongly recommend that you consult closely with campus counsel to determine what is most appropriate for your institution. PaperClip Communications does not provide legal advice, and this document should be considered general information only.
Overlap between VAWA, the Clery Act and Title IX

The Clery Act and Title IX are intricate pieces of legislation that affect different areas of the institution (notalone.gov). For example, Title IX covers issues relating to sexual harassment and discrimination, while the Clery Act impacts emergency notification procedures and crime reporting. The goal of Title IX is to ensure equal opportunity for both sexes, while the Clery Act aims to promote safety by providing the community with crime reporting statistics, policies and procedures. And, the goal of VAWA is to reduce the amount of violence perpetrated against women.

Where is the connection between the three laws? They all impact an institution’s response to sexual assault and violence. Another similarity between Title IX and the Clery Act is that any institution that receives Title IV funds under the Higher Education Act (federally funded grant, loan and work study programs) is responsible for being compliant with the Clery Act and Title IX (NotAlone.gov).

As previously mentioned, when VAWA was reauthorized in 2013, it amended the Clery Act, not Title IX. However, there is some overlap with Title IX requirements and new Clery Act requirements, particularly in the area of sexual assault prevention and awareness programming.

Similarities

In a presentation for the National Association of College and University Attorneys on May 31, 2013, Andrea Stagg and Joseph Storch, both associate counsel for the State University of New York (SUNY), outlined these areas where the Clery Act and Title IX align:

- Ensuring prompt, fair and impartial investigations and resolutions
- Providing equitable access for the complainant and respondent
- Providing simultaneous and equitable notification to the complainant and respondent about the outcome of student conduct proceedings and the options regarding an appeal
- Prohibiting institutional retaliation against the complainant or respondent

In addition, institutions are expected to provide sexual assault awareness and prevention programming under both Title IX and VAWA. In a Dear Colleague letter regarding Title IX written in 2011, the Department of Education explained that institutions would be expected to implement “preventative education programs” and make victim’s resources available. The programs should include:

- Information about to whom an incident should be reported
- What constitutes harassment and violence
Overlap between VAWA, the Clery Act and Title IX (continued)

- Policies relating to student conduct procedures
- Potential consequences of violating those policies

VAWA also outlines expectations for campus prevention and awareness programs, which must include information about (Department of Education, 10/20/14):
- The prohibition of dating violence, domestic violence, sexual assault and stalking
- Information about related policies and procedures
- Definition of “consent”
- How bystanders can safely and positively intervene
- How community members can reduce the risk of sexual crimes

Another area of alignment between VAWA and Title IX is the requirement that the institution offer training for students, staff and faculty members – particularly those who will deal with reports of sexual offenses. The Department of Education (4/14) explains that in regards to Title IX, all employees who might learn of sexual offenses should undergo a training that includes the following:
- “How to prevent and identify sexual violence, including same-sex sexual violence
- “The behaviors that may lead to and result in sexual violence
- “The attitudes of bystanders that may allow conduct to continue
- “The potential for re-victimization by responders and its effect on students
- “Appropriate methods for responding to a student who may have experienced sexual violence, including the use of nonjudgmental language
- “The impact of trauma on victims”

Under Title IX, the training is expected to be performed on a “regular” basis.

VAWA goes a bit farther and requires mandatory, annual training for officials who conduct disciplinary proceedings (Department of Education, 10/20/14). It requires that primary prevention and awareness programming be offered to all incoming students and new employees, encouraging institutions to make this mandatory in order to increase participation. And ongoing campaigns must be offered to all community members, covering the above-listed items for prevention and awareness programs.

Differences

In reviewing the October 20, 2014 rule regarding VAWA in the Federal Register, one difference that immediately springs to attention is the lack of specificity surrounding an institution’s standard
Overlap between VAWA, the Clery Act and Title IX (continued)

of evidence for student conduct proceedings dealing with sexual violence. Title IX clearly states that the preponderance of evidence (more likely than not) standard should be utilized (U.S. Department of Education, 4/4/11).

On the other hand, in regards to VAWA/Clery, the Department of Education wrote that it disagreed with the assertion that it “should require that … institutions use the preponderance of evidence standard or any other specific standard when conducting a disciplinary proceeding. Unlike Title IX, the Clery Act only requires that an institution describe the standard of evidence it will use in a disciplinary proceeding” (10/20/14). The Department went on to state that institutions can comply with both Title IX and the Clery Act by using the preponderance of evidence standard and then disclosing that in the annual security report. In other words, the Department did not feel it had the purview to establish a standard of evidence when modifying the Clery Act’s standards of reporting. However, it expects that institutions will comply with Title IX and the preponderance of evidence standard.

Stagg and Storch of SUNY also point out some other differences between Title IX and VAWA (5/31/13):

▪ Cases of domestic violence, dating violence and stalking
  » For sexual harassment cases, Title IX requires simultaneous written notice and notification about resources about the student conduct process, support options and the pursuit of criminal complaints
  » VAWA expects these notices and notifications to happen in cases of domestic violence, dating violence and stalking as well

▪ The information that is collected about crimes/incidents
  » When an incident occurs, Title IX requires information about who was involved and potentially where it happened, but not when it happened
  » Clery requires information about where and when an incident happened, but not who was involved

▪ Confidentiality
  » Title IX expects that institutions will respect a complainant’s confidentiality to the highest degree possible while still following through on the obligation to respond and potentially investigate
  » VAWA expects that institutions will publish information about confidentiality in the annual security report

▪ Institutions are expected to “balance the need to provide information to the campus community while also protecting the confidentiality of the victim to the maximum extent possible” (Department of Education, 10/20/14).