

Title IX and Education Abroad: Draft Resource from The Forum Standards Committee Title IX Working Group (March 2016)

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Overview and Audience

U.S. federal laws create specific obligations for U.S. colleges and universities regarding the prevention, reporting, and response to campus **sexual misconduct**.¹ This document is a resource for Forum member institutions to understand U.S. federal law with regard to sexual misconduct. State law in the United States and international laws are outside the scope of this document.

Forum member institutions have differing obligations with regard to U.S. federal law:

- U.S. **home institutions** are required to comply with the law and to implement best practices to prevent, report, and respond to sexual misconduct. This resource may assist U.S. institutions to meet their legal obligations and to educate their partners about their legal obligations.
- U.S. **program providers** not based at a U.S. institution, but who primarily serve students from U.S. sending institutions, have no legal obligation to comply with these laws. This resource may assist providers to implement institutional practices that support their U.S. sending institutions ability to comply.
- **Host institutions** and program providers based outside the U.S. are not bound to comply with these laws. Indeed, the U.S. legal framework of Title VII, Title IX, Clery, and VAWA is met with countervailing expectations under international laws, and U.S. home institutional policies may contrast with those established by the host institution. In particular, expectations of **confidentiality** and duty of care differ substantially from country to country and institution to institution. This resource may assist overseas host institutions and providers to understand the U.S. legal context, to implement institutional practices that support their U.S. home institution partners' ability to comply, and to convey their own legal and institutional obligations.
- Other Forum member institutions (e.g., insurance companies) may have no obligations under the law and are not the primary audience of this document, but are encouraged to use it to better understand U.S. federal law regarding sexual misconduct and to review their own institutional policies and procedures to assist their fellow Forum member institutions where possible.

All Forum member institutions can endeavor to understand the U.S. legal environment and to educate their partners about their own legal and policy frameworks. An effective response to the evolving expectations around sexual misconduct prevention, reporting, and response will require constructive dialogue among all members of the education abroad field.

¹ All terms in **bold** are included in the Definitions section of the document, following Section 6.

Section 1: Understanding the Law

The U.S. Legal Context

U.S. federal laws create specific obligations for U.S. colleges and universities regarding the prevention, reporting, and response to campus sexual misconduct:

- [Title VII of the Civil Rights Act of 1964](#) (“Title VII”),
- [Title IX of the Education Amendments of 1972](#) (“Title IX”),
- [The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990](#) (“Clery Act”), and
 - [The Violence Against Women Reauthorization Act](#) (“VAWA”), signed in 2014, amended and expanded certain requirements of the Clery Act as they relate to sexual violence.

This Forum resource will focus on crimes of sexual misconduct in higher education where Title IX and Clery/VAWA legislation overlap. As this image illustrates, there are areas of both Title IX and Clery which are outside the scope of this resource.

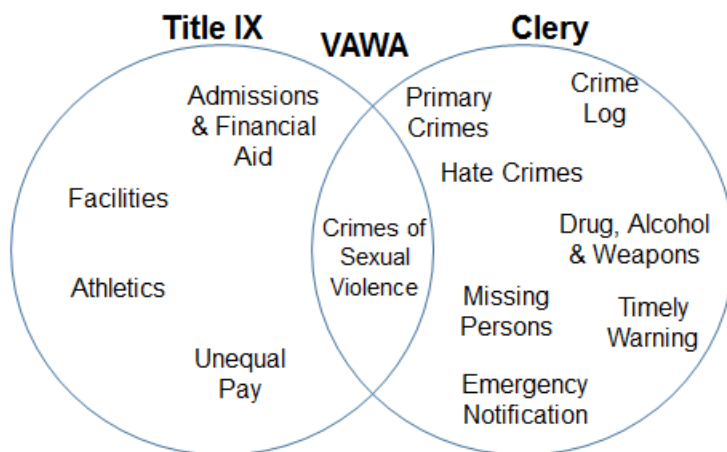


Image courtesy of Joseph Storch, Associate Counsel, SUNY Office of General Counsel

“Sexual Misconduct” is frequently used as an umbrella term used by colleges and universities in relation to Title IX. For purposes of this document, “sexual misconduct” will be used broadly to include both Title IX and Clery crimes including:

- Title IX
 - Sexual harassment including sexual assault and violence that are, at a minimum, violations of state or Federal criminal law, but are also violations of students’ and employees’ civil rights and violations of the institution’s code of conduct and employee handbooks.
 - Involves verbal, nonverbal and physical acts of a sexual nature that are unwelcome and have the potential to create a hostile environment on campus.

- Examples include but are not limited to sexist jokes, gender harassment, flashing, groping, catcalls, rape, relationship based violence, stalking and revenge porn.
- Clery as amended by VAWA
 - Sexual Assault (examples include but may not be limited to rape, fondling, incest, and statutory rape),
 - Domestic violence,
 - Dating violence, and
 - Stalking.

For more information on the recent history, specific requirements under both Title IX and the Clery Act, please see the supplementary document on pages 18-20.

The Education Abroad Context

The law, at present, does not specifically address the management of a Title IX incident on a university-sponsored activity abroad. Yet, U.S. students are now aggressively educated on their rights and responsibilities at home regarding sexual misconduct; students maintain these expectations when they go abroad. How a particular U.S. college or university interprets its Title IX and Clery Act obligations, and how those obligations play out in education abroad at that institution, is highly dependent on home institutional context and the legal and cultural frameworks in locations abroad.

In recognition of the variety of approaches U.S. college campuses are taking to comply with the requirements under both Title IX and Clery (as amended by VAWA 2013), this document will avoid a prescriptive approach to legal compliance and instead present suggested best practices and queries for Forum members. Education abroad professionals should be mindful of the scope of their professional expertise and work in partnership with Title IX and Clery Act experts and with legal counsel.

Section 2: Pre-compliance

To be able to effectively develop policies and procedures in response to Title IX incidents abroad, home institution education abroad professionals may first need to create mechanisms to document participation in international experiences, engage with their on-campus experts and stakeholders, identify individuals who will need specialized training, alert participants to their rights and responsibilities, and begin a dialogue with receiving partners.

U.S. Home Institutions:

- Create mechanisms to know when *any* student – graduate or undergraduate, degree-seeking or non-degree seeking – is traveling abroad under university sponsorship, whether on an education abroad program or any other international experience (e.g., independent research, internship). Document the location, housing, dates, partners, and other details for each international experience.

- Create mechanisms to identify all faculty and staff who accompany students abroad in the course of their institutional employment; train each individual to comply with institutional policies and reporting procedures when made aware of sexual misconduct abroad.
- Engage with their on-campus stakeholders, including legal counsel, Title IX coordinator, and student life/student affairs administrators. Ongoing dialogue can help on-campus stakeholders understand the unique challenges and context of education abroad programs and ensure that the education abroad office language, policies, and processes align with the overall campus policies relating to Title IX and Clery as amended by VAWA. Small or one-person education abroad offices may need even more support from their on-campus colleagues.
- Identify individuals requiring specialized training:
 - **First Responder**
 - **Responsible Employee** (under Title IX)
 - and/or **Campus Security Authority** (under Clery Act)
- Include explanations in pre-departure materials and/or orientation sessions regarding students' rights under Title IX abroad and access to applicable resources and services. Such resources provide guidance to both **reporting individuals** and **respondents**.
- Consult with your Title IX experts about your campus approach to bystander training and discuss how it will be modified to the international context.
- Note: **Non-residential institutions** that provide or manage housing only for programs abroad must consider the ways that a residential component may impact sexual misconduct cases. For example, how will the home institution respond to allegations in which both the reporting individual and respondent are resident in institutionally-controlled housing? It may be of value to consult with colleagues at residential institutions regarding residential-life-specific policies and procedures related to sexual misconduct.
- Facilitate open discussions with host institutions and program providers about the potential cultural, organizational, regulatory, and legal issues related to dealing with incidents of sexual misconduct in the host country and how these issues may affect policies and procedures; training for faculty and staff; and guidance provided to students.

Host Institutions and Program Providers:

- Seek to understand U.S. Home Institution concerns and requests relating to Title IX and Clery as amended by VAWA.
- Recognize that U.S. institutional partners may be struggling to formulate their institutional response to these relatively new legal expectations; expectations may well evolve over the next few years as the law and its obligations in an international context become further established.
- Convey to U.S.-based sending partners their own cultural, organizational, regulatory, and legal context and how these may impact what is and is not possible to do in response to a Title IX or Clery-type incident.

Queries:

1. Does your institution have mechanisms to document international activities of faculty, staff, and students under institutional auspices?
2. Has your education abroad staff developed working relationships with on-campus experts in Title IX, Clery, and/or student affairs?
3. Have you identified and trained individuals who may be called upon to respond to or report a sexual misconduct incident?
4. Have you included sexual misconduct rights and responsibilities in orientation and informational materials?
5. Have you conveyed to your partners your institutional expectations and legal obligations with regard to sexual misconduct?

Section 3: Affiliations and Partnerships

Education abroad relies on institutional **affiliation agreements** and partnerships to be successful. In the context of Title IX, home institutions are recommended to consult legal counsel and Clery and Title IX experts when developing policies and procedures and when establishing contracts or **memoranda of agreement/memoranda of understanding** that codify those expectations with partners.

Home Institutions:

- Create institutional policy and procedure for Title IX compliance abroad.
- Develop standard reporting language and format.
- Establish clear definitions on what constitutes sexual misconduct within their context and communicate this as part of contract negotiations and ongoing provider/host institution relationship management.
- Work with partners, host institutions and program providers to define expectations for students so that if a student communicates with a provider or host institution employee about an assault, they know what to expect regarding confidentiality and reporting vis-à-vis the home institution.
- Establish clear expectations with partners, host institutions and program providers on response, reporting, investigation² and adjudication of any incidents of sexual misconduct involving their students.
- Work with partners, host institutions and program providers to conduct a “gap analysis” to identify conflicts between legal obligations and institutional policy with regard to confidentiality and duty of care. If gaps cannot be resolved to the mutual satisfaction of the partners, a discussion of whether the partnership is viable may be needed.
- Define whether faculty/staff at partners, host institutions and program providers might be considered **Responsible Employees** or **Confidential Resources**.
- Ensure appropriate training of their staff and faculty on response, reporting, and other expectations.

² For more information on Distance Title IX investigation please the supplementary document on pages 21-22.

Queries (for home institutions):

- What are your policies and procedures for Title IX compliance abroad?
- How are incidents reported and in what format?
- How do you set clear expectations with partner, host institutions and program providers on how response, reporting, investigation and adjudication of any incidents of sexual misconduct involving their students will be handled?
- How do you determine if someone at partners, host institutions and program providers are considered Responsible Employees or Confidential Resources?
- How do you ensure that students are informed of policies and procedures?
- How do you identify conflicts between legal obligations and institutional policy with regard to confidentiality?
- How do you ensure that staff and faculty are properly trained on support and reporting requirements?

Program Providers:

- Set clear expectations with home institutions on how providers will handle response, reporting, investigation and adjudication of any incidents of sexual misconduct and any limitations that they face due to institutional, regulatory, and legal issues in the host country.
- Acknowledge expectations and limitations on communications to maintain confidentiality of student incidents in accordance with local laws and institutional policies.
- Work with home institutions to conduct a “gap analysis” to identify conflicts between legal and organizational systems with regard to confidentiality. If gaps cannot be resolved to the mutual satisfaction of the partners, a discussion of whether the partnership is viable may be needed.
- Define whether provider faculty/staff might be considered Responsible Employees or Confidential Resources.
- Ensure appropriate training of their staff and faculty on agreed upon support and reporting and other requirements.

Queries (for program providers):

- How do you determine if you need to comply with Title IX regulations? If you do need to comply, what are your policies and procedures for Title IX compliance abroad?
- How do you set clear expectations with home institutions on how reporting, victim/survivor support, investigation and adjudication of any incidents of sexual misconduct involving their students will be handled.
- How are incidents reported and in what format?
- How do you determine if someone at your organization can be considered a Responsible Employee or Confidential Resource for a home institution?
- What are the limitations or restrictions on reporting due to confidentiality laws in the countries where you are operating and due to institutional policies?

Host Institutions:

- Set clear expectations with home institutions on how host institutions will handle response, reporting, investigation and adjudication of any incidents of sexual misconduct and any limitations that they face due to institutional, regulatory, and legal issues in the host country.
- Acknowledge expectations and limitations on communications to maintain confidentiality of student incidents in accordance with local laws and institutional policies.
- Work with home institutions to conduct a “gap analysis” to identify conflicts between legal and organizational systems with regard to confidentiality. If gaps cannot be resolved to the mutual satisfaction of the partners, a discussion of whether the partnership is viable may be needed.

Queries (for host institutions):

- How do you set clear expectations with home institutions on how reporting, victim/survivor support, investigation and adjudication of any incidents of sexual misconduct involving their students will be handled.
- What are the limitations or restrictions on reporting due to local confidentiality laws and due to institutional policies and how are these laws and policies communicated to the home institution?

Section 4: Student Advising and Orientation

When advising students, through online and in-person communication,

Home Institutions:

- Inform students of their Title IX rights and responsibilities.
- Convey that cultural, organizational, and legal norms and procedures for responding to incidents of sexual misconduct will vary from Title IX and U.S. law while abroad in their host country, while certain rights remain intact.
- Offer students pre-departure orientation that prepares them for the risks of sexual misconduct in their host country and offers guidance on how to minimize these risks.
- Make students aware of confidential resources that are available in the U.S. in case of sexual misconduct.
- Explain how response, reporting, investigation and adjudication of any incidents of sexual misconduct are handled by the home institution.

Queries (for home institutions):

1. How does your organization ensure that students are informed of their Title IX rights and responsibilities?
2. How is information regarding the risks of sexual misconduct incorporated into your pre-departure information?
3. How does your student advising process ensure that students are informed of confidential resources and of the institutional process for reporting, investigating, and adjudicating incidents of sexual misconduct?

Host Institutions or Program Providers:

- Offer students on-site orientation that prepares them for the risks of sexual misconduct in the host country and offers guidance on how to minimize these risks.
- Help students to understand, in advance of and again in the event of an incident disclosure, the cultural norms around dating and sexuality and legal definitions of sexual misconduct in that country.
- Make students aware of confidential resources in the host program location, should they require support but not wish to file a complaint.
- Explain how response, reporting, investigation, and adjudication of any incidents of sexual misconduct are handled, including communication with the student's home institution and/or emergency contact.
- Alert students who don't want parents to know that insurance claims may automatically go to parent home address for medical/psychological services administered abroad.

Queries (for host institutions and program providers):

1. How does your on-site orientation present information about the risks of sexual misconduct, advise students on how to minimize those risks, and provide students with context for the cultural norms and legal definitions related to dating, sexuality, and sexual misconduct?
2. How does your student advising process ensure that students are informed of confidential resources available to them, and of the institutional process for reporting, investigating, and adjudicating incidents of sexual misconduct – including policies regarding communication with the student's home institution and emergency contact?

Section 5: First-Responder Training for Faculty and Staff Abroad

To develop effective policies, training, and protocols for Title IX incident first response, U.S.

Home Institutions:

- Rely on Title IX experts on campus to develop training programs and materials specific to education abroad first responders. Adapt training protocols to the role and breadth of responsibility of the individual being trained as a responder. Title IX experts can help education abroad faculty and staff understand their responsibilities and their professional limits. For example, it is unwise to engage in a counseling role when one is neither trained nor licensed to do so.

- Define and communicate the institutional understanding of **privacy**. Through training, institutions can help faculty/staff understand the contexts in which they must report Title IX incidents and to whom. Materials can be developed to provide language a First Responder can use to explain this responsibility as well as confidential resources the students can utilize when they do not want the complaint recorded by the institution.
- Emphasize that the most important role of a faculty or staff member who receives a disclosure is to take the matter seriously, help the student understand his/her options, and report as required to the Title IX Coordinator. Institutions can model appropriate responses to a disclosure of sexual misconduct and provide language that conveys compassion, empathy and support. Helping someone know what to say as well as what NOT to say, is equally useful.
- Consider identifying **Deputy Title IX** coordinators for programs with a permanent overseas presence. Permanent, full-time, on-site staff may have a greater role in providing first response and ongoing service to the reporting individual, particularly if they are classified as a Deputy Title IX Coordinator. He or she may draft and distribute the Title IX letter, explain institutional procedures related to a formal complaint, and/or assist with an investigation, etc. Education abroad programs with no permanent on-site staff should develop a process to rely on home school Title IX staff.

Home Institutions, in collaboration with any on-site staff, Host Institutions or Program Providers

- Learn about the risk culture for sexual misconduct and resources for assistance in the host country.
- Help faculty and staff to gain familiarity with cultural, institutional and legal issues related to dealing with incidents of sexual misconduct and the protection of the rights of reporting individuals.
- Develop a medical management plan in concert with the Institution's international medical assistance and insurance provider that is survivor-centric.
- Pre-identify medical facilities that specialize in responding to sexual assault.
- Identify, in advance of need, a variety of resources, in person or in print, to offer support to a survivor. Some examples include local resources, such as victims support programs, host campus resources as well as recommendations from your medical or security assistance provider, the nearest U.S. embassy or consulate as well trusted colleagues.

Host Institutions or Program Providers

- Discuss Title IX and VAWA requirements with U.S. Home School partners in order to understand their requirements, to what extent you can or cannot support their requirements, and where there may be conflicts between Title IX/VAWA and your local/national laws and regulatory frameworks.
- Develop their own trainings for staff who interact with US students that addresses reporting and first responder issues, and particularly addresses any differences that may exist between local policy and US student expectations around issues such as private vs. confidential supports, referring students to confidential supports, and legal/medical referral options and requirements. Be sure trainings address how to accept a disclosure from a student, and how to let students know if their home institution will be notified in case of disclosure.
- Have a protocol in place in the event of a need to separate a reporting student from the accused perpetrator including possible adjustments to housing, class schedules etc. as

needed/requested by the Home School and to the degree possible in the context of local laws/regulatory frameworks.

Queries:

1. What protocols does your institution have in place for identifying and training responders?
2. What roles do your faculty and staff play (first responder, Deputy Title IX coordinator, confidential resource)?
3. Does your institution have a medical management plan for sexual assault or have you identified relevant resources in country for treatment and support?
4. Do home institution and host institution training protocols align with one another?
5. What protocols exist for separating a reporting individual from the respondent while the incident is under investigation?

Section 6: Communication with Families and the Public

A key element to success with Title IX compliance is communication with parents/families and the broader public.

Prior to an incident, Home institutions, Host Institutions or Program Providers:

- Inform the public, including parents and other student family members/friends how the organization handles response, reporting, investigation and adjudication of any incidents of sexual misconduct on their website.
- Include information on the web and in conversations with interested family members and the public about FERPA/HIPAA and/or other applicable local/national laws regarding limitations on communications regarding specific student incidents and efforts to maintain confidentiality of student incidents.
- Include information on the web and in conversations with interested family members and the public about how students identify their emergency contact(s), the organization's emergency contact notification process and insurance benefits for reporting individuals.
- Commit, as possible within local legal and regulatory frameworks, to informing sending institutions of events that impact their students in a timely manner. Additionally, organizations should follow best practices within local legal contexts of issuing Timely Warnings to the student body in general about any potential threat in their community.
- Explain that the cultural, organizational, regulatory, and legal issues related to dealing with incidents of sexual misconduct vary greatly from country to country and that these issues may have an impact on reporting, investigation and adjudication of any incidents of sexual misconduct.

As an incident is under investigation, Home institutions, Host Institutions or Program Providers:

- Communicate only with the student(s) involved and those expressly permitted by the student
- Share process and resource information only (i.e., no specifics of the incident) with anyone other than the reporting individual and/or respondent

- Establish a point person for any external communication (e.g., responses to press inquiries)

Queries

1. How do you ensure that faculty and staff are trained to understand the organization's communication policies and limits with regard to confidentiality, privacy, and U.S. or local legal restrictions?
2. How are your organization's communication policies with regard to confidentiality, privacy, and U.S. or international legal restrictions conveyed to external constituents?
3. How are your organization's sexual misconduct policies (for reporting, investigation, adjudication, and communication) conveyed to external constituents?
4. How does your organization collect emergency contact information from participants and communicate with emergency contacts if an incident has occurred?
5. What are your organization's policies for how timely warnings are written and issued? How are those policies applicable (or not applicable) in the local legal and cultural context abroad?
6. Does your website include information on insurance benefits and other resources for Title IX incidents?

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Definitions

Affiliation Agreement - Arrangement, usually in writing, between a study abroad provider or host institution and a home institution. The affiliation may take many forms. Examples range from a loose relationship giving the provider's programs a higher profile on the home campus, to relationships outlining very specific responsibilities and privileges on both parts, to formal membership in a consortium.

Campus Security Authority: A college or university officer who has significant responsibility for student and campus activities, is a member of the campus police or security department, or has been designated by the institution in its campus security policy as an individual to which students and employees should report criminal offenses and/or sexual harassment.

Confidentiality: A set of rules or ethics, often expressed in the form of a promise, that restricts or limits disclosures of certain types of information.

Confidential Resource: A resource that is not obligated to report information that is given to them. This allows the client to explore his or her options in a non-pressure environment in order to make informed decisions. The only exceptions to this rule are in cases that involve imminent risk of serious harm, emergent hospitalization, or a court order. While specific information may be kept confidential, these incidents may be counted for statistical purposes, as per the [Clery Act](#). (See [source](#).)

Deputy Title IX investigator: A college or university employee charged with assisting in the resolution of complaints involving sexual misconduct, sexual harassment, gender-related violence, including stalking and intimate partner violence and protected class discrimination and harassment involving undergraduate and graduate students. (See [source](#).)

First Responder: In the Title IX context, the first person to receive a disclosure of sexual misconduct and to provide or aid in the delivery of assistance.

Home Institution (or Home School) - The educational institution in the U.S. where an education abroad student is a continuing student, usually working toward the completion of a degree.

Host Institution (or Host School) – The institution that the education abroad student attends while abroad.

Memorandum of Agreement - A written agreement, usually legally binding, through which two or more signatory parties agree to work together toward specific agreed-upon goals.

Memorandum of Understanding - A written agreement signed by two parties that does not legally bind the parties to action. Rather, both parties simply agree to work together toward an agreed-upon goal.

Non-confidential resource: A resource that is required by law to report incidents/violations and take legal, disciplinary or other action accordingly. (See [source](#).)

Non-residential institution: In this context, a U.S. college or university that does not provide any institutionally-owned or institutionally-managed housing for students.

Privacy: A person's right to control access to his or her personal information.

Program Provider (or Independent Program Provider, or Third-Party Provider, or simply Provider) – An institution or organization that offers education abroad program services to students from a variety of institutions. A program provider may be a college or university, a nonprofit organization, a for-profit business, or a consortium.

Reporting Individual: In this context, the person who claims to be the victim of sexual misconduct and reports the crime to the police or officials responsible for investigating the crime.

Respondent: In this context, the person alleged to be the perpetrator of sexual misconduct.

Responsible Employee: Any employee who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate school designee; or whom a student could reasonably believe has this authority or duty.

Sexual Misconduct: “Sexual Misconduct” is frequently used as an umbrella term used by colleges and universities in relation to Title IX. For purposes of this document, “sexual misconduct” will be used broadly to include both Title IX and Clery crimes including:

- Title IX
 - Sexual harassment including sexual assault and violence that are at minimum, violations of state or Federal criminal law, but are also violations of students’ and employees’ civil rights and violations of the institution’s code of conduct and employee handbooks.
 - Involves verbal, nonverbal and physical acts of a sexual nature that are unwelcome and have the potential to create a hostile environment on campus.
 - Examples include but are not limited to sexist jokes, gender harassment, flashing, groping, catcalls, rape, relationship-based violence, stalking, and revenge porn.
- Clery
 - Sexual Assault (examples include but may not be limited to rape, fondling, incest, and statutory rape),
 - domestic violence,
 - dating violence, and stalking.

Additional Resources for Definitions:

<http://www.wcsap.org/glossary-legal-terms>

<http://mncasa.org/glossary-of-terms>

<http://www.duhaime.org/LegalDictionary.aspx>

Resources and Links

Education Abroad Title IX Resources

The Clery Act and Education Abroad: Understanding Crime Reporting Requirements
http://www.nafsa.org/Find_Resources/Supporting_Study_Abroad/The_Clery_Act_and_Education_Abroad_Understanding_Crime_Reporting_Requirements/

The Forum on Education Abroad Standards Toolbox
<https://forumea.org/customwidget/standards-toolbox-widget/>

NAFSA Supporting Study Abroad Resources
http://www.nafsa.org/Find_Resources/Supporting_Study_Abroad/

Risk management Considerations Regarding the Clery Act, VAWA and Title IX When Students Study Abroad in URMIA Government and Regulatory Affairs BLAST
https://higherlogicdownload.s3.amazonaws.com/URMIA/9c74ddba-4acc-4dcd-ba3a-d6cd4c945342/UploadedImages/documents/grac/GRABlast_Clery_Act_VAWA_TitleIX_20160124.pdf

Legislation Links

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 (“Clery Act”)
<http://www.gpo.gov/fdsys/pkg/STATUTE-104/pdf/STATUTE-104-Pg2381.pdf>

The Violence Against Women Reauthorization Act (“VAWA”), signed in 2014, amended and expanded certain requirements of the Clery Act as they relate to sexual violence.
<https://www.govtrack.us/congress/bills/113/s47/text>

Title VII of the Civil Rights Act of 1964 (“Title VII”).
<http://www.eeoc.gov/laws/statutes/titlevii.cfm>

Title IX of the Education Amendments of 1972 (“Title IX”),
<http://www.justice.gov/crt/about/cor/coord/titleixstat.php>

Professional Organizations

Association of Title IX Administrators
<https://atixa.org/>

National Association of College and University Attorneys (NACUA) Title IX Training
<http://www.nacua.org/>
http://www.nacua.org/onlinecourses/title_ix_coordinator_training_2014/index.asp

University Risk Management and Insurance Association (URMIA)
<http://www.urmia.org/home>

Title IX University Resources

Appalachian State University, Resource Guide for Responding to Sexual Assault
<http://sexualassault.appstate.edu/sites/sexualassault.appstate.edu/files/University-Resource-Guide.doc>

California Polytechnic, San Luis Obispo Faculty Handbook for Cal Poly Global Programs
http://www.international.calpoly.edu/files/travel/faculty_handbook_2015.pdf

Northwestern University Information and Options for Survivors of Sexual Misconduct Abroad
<http://www.northwestern.edu/studyabroad/guide/health-and-safety/emergencies/information-and-options-for-survivors-of-sexual-misconduct-abroad.html>

St. Olaf College Title IX: Be Safe Studying Off-Campus
<http://wp.stolaf.edu/title-ix/be-safe-when-studying-off-campus/>

University of Minnesota International Resources for Sexual Assault and Harassment
<http://global.umn.edu/travel/assault/index.html#!>

Supplement 1: Recent History of Title IX and VAWA

Sexual misconduct is a serious issue on US college campuses; reported incidents do not represent the entirety of the problem. Widely accepted statistics indicate that 1 in 4 to 5 U.S. college women are survivors of sexual assault or attempted sexual assault. (The National Institute of Justice, 2001). Over the last several years, increasing public scrutiny – by the media, by advocacy organizations, by reporting individuals and their families – has focused on the way in which U.S. colleges and universities respond to campus sexual misconduct, including what kind of prevention and training programs they provide for employees and students; what kind of data is made publicly available about incidents of campus sexual misconduct; how institutions respond to and handle accusations and disciplinary procedures related to campus sexual misconduct; and what kinds of support and resources are provided to survivors of campus sexual misconduct.

In **April 2011**, the U.S. Department of Education’s Office of Civil Rights issued a “Dear Colleague Letter” addressing the Title IX implications of campus sexual misconduct. While the “Dear Colleague Letter” is not law, it gives insights into what OCR will consider when investigating an institution, which will include a review of training, compliance, reporting, and procedures relating to campus sexual misconduct. An OCR investigation that results in a negative judgment against a college or university can, in theory, result in the loss of federal funding. However, instead OCR usually negotiates a Voluntary Resolution Agreement with the institution.

In **March 2014**, the Violence Against Women Reauthorization Act (“VAWA”), including changes to the Clery Act, was signed into law. The VAWA amendments added, among other things, domestic violence, dating violence and stalking to the list of Clery crime types, which already included sexual assault.

In **April 2014**, two additional resources were released. First, OCR published an additional guidance document, “Questions and Answers on Sexual Violence.” Then, additional suggestions were released in the White House Task Force “Not Alone” document. Neither has the force of law but the OCR document tells us what OCR might be looking for in a review and the White House documents tells us the Obama administration’s approach on the issues.

In **September 2014**, the White House Task Force updated the “Not alone” website with their suggestions, which again, have no force of law. The following month, in **October 2014**, the Department of Education released final regulations regarding the obligations of colleges and universities under the Clery Act amendments.

Legal Definitions and Requirements of the Law: the Clery Act

The purpose of the VAWA amendments, as stated by the preamble to the law, is “to improve education and prevention related to campus sexual violence, domestic violence, dating violence, and stalking.” VAWA expanded Clery crime reporting requirements in three key ways:

1. Annual Security Report
 - o Domestic violence, dating violence and stalking are now added to the list of Clery reportable crimes and

- National origin and gender identity are added to the existing Clery hate crime prejudice categories.
2. Sexual Violence Policy and Procedure Requirements
 3. Sexual Violence Prevention and Training Requirements

The requirements for policy, procedure and training are too large and detailed for the scope of this document. However, notably, the law requires that both the reporting individual and respondent be notified, in writing, of specific options and processes. For example, a reporting individual must be given the option to notify law enforcement, receive campus assistance in notifying law enforcement or to decline to notify law enforcement. Similarly, the law requires that respondents understand their options and that the University process provide for fairness and due process protections.

In regards to training, the law now requires both primary and ongoing prevention and awareness programs for new students and new employees. Training must address bystander intervention and “risk reduction to recognize warning signs... and avoid potential attacks.”

The Clery Act is enforced by the Clery Compliance Division of the Department of Education. Each violation carries the possible of a \$35,000 fine and because this multiplies by the number of violations identified, six figure fines are routine in the Clery space.

Legal Definitions and Requirements of the Law: Title IX

Title IX protects students, employees and the public from sex related discrimination under any education program or activity receiving Federal financial assistance. Title IX protections are broader than Clery and protect from any sexual misconduct including sexual harassment, sexual assault and any verbal, nonverbal or physical acts of a sexual nature that are unwelcome and have the potential to create a hostile environment on campus.

Title IX requires that institutions have a process for resolving complaints of sexual misconduct that includes prompt steps to stop the harassment, prevent its reoccurrence, remedy the effect and prevent retaliation. As part of this process, each campus must identify a Title IX Coordinator who will oversee the institutional compliance with the law. The institution must also define who is a Responsible Employee on their campus and assure that all Responsible Employees immediately notify the Title IX Coordinator if they become aware of a possible Title IX violation. The Title IX Coordinator then has additional very specific requirements they must fulfill under the law including informing the reporting individual in writing about available supports and services, the grievance procedure on campus, and available interim remedies before an investigation or hearing takes place.

Title IX is enforced by the Office of Civil Rights (OCR) of the Department of Education and an audit is triggered by a complaint filed directly with OCR. Enforcement options include the loss of an institution’s federal financial aid program, however, generally Voluntary Resolution Agreements are negotiated in which the institution agrees to make changes and improvements to address violations. OCR has very aggressively been enforcing Title IX in recent years. Notably, Title IX also grants a private right of action so an individual can bring a suit against their institution directly and seek damages for failing to comply with Title IX.

Context for the Changes and the U.S. Higher Education Community's Reaction

Many higher education professionals in the U.S. have voiced concerns about possible unintended consequences of the law and guidance, including potential impacts on student confidentiality, due process for the respondent, and the fiscal burden created by reporting and training expectations.

At the same time, there is a broad understanding of, and support for, the goals of these changes and amendments to the law – namely, to create a more survivor-centered reporting and response process, to ensure that survivors of campus sexual misconduct have access to resources and support, and ultimately to reduce incidence of sexual misconduct on campus. While there are many competing statistics regarding the amount of campus sexual misconduct, the reality is that many of our students are survivors of terrible sexual crimes.

- 1 in 4 to 5 US college women experience sexual assault or attempted sexual assault. (The National Institute of Justice, 2001)
- 90% of college rape survivors know their attacker. (The National Institute of Justice, 2001)
- Women ages 20-24 are at the greatest risk for domestic violence. Overall, 1 in 4 women will experience domestic violence in her lifetime. (Safe Haven 2012)
- 52% of US college women report knowing a friend who has experienced violent and abusive dating behaviors. (College Dating Violence and Abuse Poll, 2011)
- The highest risk of stalking is seen in ages 18-24 (the Stalking Resource Center)

It is fair to say that many if not most colleges and universities in the U.S. take these issues very seriously and are currently engaged in efforts to determine how best to balance compliance with the law, meeting the resource needs created by the law, and supporting reporting individuals. Notably, education abroad adds a complicating factor on top of an already complicated situation on US college campuses. In addition to all the risk factors on US college campuses, students abroad face language barriers and cultural barriers. Further, it is well known that many of our education abroad students take on a vacation mentality while abroad that causes them to make decisions and take actions they might not take while at home.

Supplement 2: Title IX Distance Investigations

If campus-based investigations of Title IX complaints are considered complicated, it's even more so abroad. A Home Institution Title IX investigation abroad is separate from investigation by local law enforcement or the host institution, if applicable, and is limited by the level of ownership or control the institution has over the learning environment. Beyond Title IX rights and Home Institution policies, local laws and/or host institution policies also govern the reporting individual's and respondent's rights, adding to the legal complexity.

Most U.S. colleges and universities have limited or no experience formally investigating a claim of sexual assault abroad, and should not proceed without engaging with the right individuals and resources. Distance investigations are extremely complicated, but must be carried out with the same degree of accountability and professionalism as if they were occurring on campus. Home Institutions should review the scope of the **campus security authority** staff responsibilities and degree of training to determine if they may be able to assist with some aspects of the process and also consider carefully the role of education abroad faculty or staff in Title IX investigations. Home Institutions can either employ or contract with trained Title IX investigators.

The following questions are designed to help Home Institutions consider, in advance of need, what to expect from a Title IX distance investigation to be as useful as possible in the process.

Evidence Collection and Analysis

The interplay between local law enforcement, campus security, and/or private security (if applicable) is complicated. Every effort should be made to determine each party's role and responsibilities in the event of a Title IX investigation, particularly when it comes to the collection of evidence.

A Sexual Assault Nurse Examiner (SANE) is a registered nurse who has received special training so that s/he can provide comprehensive care to sexual assault reporting individuals within the US context. In addition s/he is able to conduct a forensic exam and may provide expert testimony if a case goes to trial. However, SANE nurses, or their equivalent, are often not available abroad. Each country has its own laws and regulations surrounding the collection of evidence and may mandate that only a government certified clinician be permitted to collect evidence and have it be legally admissible in court.

- Will the institution take into possession evidence that is not being processed by law enforcement agencies (e.g., because of reporting individual unwillingness to proceed criminally)? How will all evidence be stored, transferred, and documented?
- Will the institution take evidence that must be obtained through computer forensic analysis?
- Who will process the data? How will it be stored? How will it be shared? What forensic evidence is admissible?
- Will the institution allow polygraph test/results from respondent or reporting individual? Or other professional evidence? Physician's testimony on nature and extent of injuries. If so will the institution allow the opposite party to present evidence to the contrary in the results?

- Does the institution require taping of proceedings or statements? Will the institution allow taping of the proceedings by reporting individual, respondent, or witnesses?
- Will evidence not uncovered by investigation be allowed to be submitted by either respondent or reporting individual during hearing?
- In the event of a trial, will the student require legal representation and if so who will be responsible for those costs?

Translators (if applicable)

- Will the institution provide translators for the witnesses, reporting individuals, or respondent? If not, who will provide the translators?
- Will the translator count as the advisor?
- How will the translator be credentialed?
- How will documentary evidence be translated for the report?
- Will respondent or reporting individual be able to provide conflicting translations?
- Will translators be allowed during hearing?

Distance Interviews

- Does the institution allow for remote interview technologies (Skype, telephone) in the investigation? Note: some countries do not allow Skype.
- How will you credential witnesses to ensure equitable interviews and investigations and to know who you're interviewing is the person they say they are?
- What are your institution's alternatives? Will your institution conduct a similar investigation and hearing process for distance investigations? Or will your institutions only provide accommodations for distance Title IX incidents?

Timeframe

- Does your institution follow an investigatory timeline?
- Will your institution make exceptions or accommodations to that timeline for distance investigations? Is it included within your institutional policies?

Hearing Panel

- Will you allow distance communications in your hearings and appeals for respondents, reporting individuals, and witnesses?
- Once the investigatory report is completed will supplemental reports be allowed or generated after finalization prior to the hearing? For example, if witnesses who did not respond to request for comments are available after finalization of report and become available for hearing process.

Redaction

- Who will have the authority to redact the finalized report?
- What is the institution's process for redaction?

Information Sharing

- How will sensitive information (evidence) which cannot be emailed be provided to hearing panel members, respondents, and reporting individuals?
- How will control be kept over such documentation by the institution?
- Who will have authority to redact evidence? Do the institutional policies allow for this?