

Reporting on Student Safety and Security Abroad: Legal Requirements and Best Practices

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I. Introduction:

Colleges and universities send more and more students each year to a myriad of different international higher education experiences. These experiences are a very important part of the educational experience for many students and almost all students have a positive and safe experience when they go abroad. A very small percentage of students who study internationally are arrested, go missing, or are injured or killed. While incidents occur domestically as well, in the international environment, a number of overlapping laws and standards apply to international education, and those different laws and standards are compounded by language and cultural differences in these countries.

Several United States federal laws govern higher education overseas study. These laws should not be confused with risk management standards or best practices for insuring safety. In fact, some of the laws when applied in certain ways may actually lead to greater danger for our students. Colleges should endeavor to comply with the laws discussed in this presentation and outline but should not do so at the cost of properly managing risk.

This conference paper assumes a general knowledge of the Clery Act, Title IX and related obligations.¹ Further, this conference paper concentrates on international reporting and response requirements, not general liability questions in study abroad.²

II. Legal Requirements:

Federal law, regulations and sub-regulatory guidance require that colleges and universities report statistics of certain crimes in specific locations, and take certain actions when they learn of certain crimes and of harassment or unequal treatment on the basis of sex. The laws and guidance overlap somewhat when students study overseas, but they use different standards and definitions that can be confusing to higher education professionals, and the regulatory regimes leave substantial gaps that can be filled by institutional policy.

As a note, the Clery Act (including VAWA) and Title IX are not risk management laws, nor should they be seen as prescriptions for running safe overseas programs.³

¹¹ Rather than including general information this paper will, where applicable, point towards resources that may assist in compliance.

² Readers interested in the more general questions of liability are commended to a recent Journal of College and University Law article on point. See Footnote 20 in Robert J. Aalberts, Chad Marzen, and Darren Prum,

notifications to all victims/survivors of these crimes. Further, the law and the guidance create rules that govern the conduct process. Inasmuch as the same rules apply overseas, institutions (and their vendors and partners) should prepare for the reporting and response requirements of sexual and interpersonal violence in the study abroad environment.

D. Reporting for Clery/VAWA

regardless of whether there is an arrest, trial, or conviction, for Part II drug, alcohol and weapons arrests and referrals for discipline, we only count arrests or referrals for discipline for breaking local law.¹⁸ This leads to significant comparison issues domestically (some states ban all guns from campus while others allow open or concealed carry; state law on possession of marijuana can differ significantly) and even more difficulty internationally.

For example, a 19-year-old student becomes very drunk on a trip to England and is referred for campus discipline at the home campus for possession of alcohol and other bad behavior. While such a violation at the home campus would count for Clery, it does not here as such drinking does not violate local law in London. Additional examples abound. To correctly report, an institution must know what the local law is for each such violation. Frankly, this is a difficult bureaucratic exercise with little practical return for student consumer information. Neither the Department, nor any other federal agency, have

The first definition of non campus property²⁵

acknowledgment that not all VAWA crimes are Title IX discrimination and they are governed by two separate laws). The VAWA and Title IX response requirements include providing information/access to counseling, medical assistance, resources, the student conduct process and the opportunity to report to local law enforcement (as well as the choice not to report).³¹ These rules apply uniformly with no flexibility for programs in the international environment.

There are countries where colleges and universities bring students to study at which a report to local law enforcement will have significant negative repercussions for the reporting student. Some countries do not recognize sexual assault for the crime that it is, while other countries severely punish gays and lesbians, even potentially including the death penalty.³² While academic freedom supports the notion of studying in countries and cultures that have very different views as the United States, institutions should be especially careful in training students (as well as faculty and staff) about the consequences of reporting to local law enforcement (and even the consequences of seeking medical care locally, as some locations are mandated to report to law enforcement). The VAWA requires that the student makes the final decision on whether to report to local law enforcement, but they should do so with eyes wide open through useful and accurate advice by institutional personnel.

Institutions may choose to interim suspend a student accused of certain crimes from a program. It is recommended that in the initial waivers and information that the students sign, that notice be given that a student accused of certain crimes or policy violations of the home institution (as well as the policies of the host institution and third parties) may be interim suspended and sent home at their own expense. This will alleviate difficult conversations with parents (and their lawyers) who will seek institutional reimbursement for the expensive last minute flight from the international location that their student had to purchase. Institutions should also prepare (and work with third party providers to plan and prepare) accommodations for victims and survivors of crimes and policy violations that can include access to counseling (whether local or with institutional counselors over Skype or Google Chat, if permitted by the counselor's license), academic and housing accommodations, and access to the student conduct process, even from a distance. Department Guidance³³ is clear that when making accommodations, institutions must move the student accused of the violation before moving the victim, and must give the victim the choice in how to best accomplish this requirement.

H. Differences With Study Abroad Home Stays:

While the Department's Handbook uses the terms "ownership" or "control" to describe when property is covered under the definition of Clery geography, they only stray from that term once, in the area of home stays. There, the Department's sub-

³¹ For detailed information on these requirements, see Stagg and Storch NACUA Note referenced above.

³² See Terri Rupgar, *Here are 10 Countries Where Homosexuality May be Punished By Death*, THE WASHINGTON POST, available at <http://www.washingtonpost.com/blogs/worldviews/wp/2014/02/24/here-are-the-10-countries-where-homosexuality-may-be-punished-by-death/> (Feb. 24, 2014). The countries referenced are Yemen, Iran, Iraq, Mauritania, Nigeria, Qatar, Saudi Arabia, Sudan, and United Arab Emirates. Note that this is not a complete list.

³³ See April 4 "Dear Colleague" Letter on Sexual Violence, U.S. Department of Education (April 4, 2011).

regulatory guidance says “Host family situations do not normally qualify as noncampus locations unless your written agreement with the family gives your school some significant control over space in the family home.”³⁴ Significant control is not defined,

individual designated by the college or university as the spoke

injuries to students and is, thus, briefly discussed here. In *Munn v. Hotchkiss*,⁴⁴ Cara Munn, a high school student, contracted tick-borne encephalitis while on a trip to China run by her high school.⁴⁵ She was bit by a tick while on an excursion when, instead of taking the cable car down with her teacher and classmates, she and two or three other classmates walked down a path.⁴⁶

Munn and her parents had received extensive pre-trip material from Hotchkiss

Whether the institution maintains documents stating that students will live or study at a specific geographic location; and

Who makes the living or academic arrangements

If the student makes arrangements directly, the property does not count for Clery Act purposes; but

If the institution makes the arrangements, the property may count if it meets the factors delineated above.

Frequently used by students: Third party property, hotels, and hostels.

Property is frequently used by students if it is used for a “long duration” **or** is subject to “repeated use.”

Long Duration: A trip of long duration is a trip to a single geographic location for which the institution has a written agreement for accommodation or other use that includes at least two students for at least 20 nights or 20 days.

Repeated Use: A location is subject to repeated use if the institution has a written agreement for use of the geographic area for at least two students and for at least two nights at least twice within a two calendar year period. If there is a separation of at least two calendar years (730 days between stays), the location would not be subject to counting as a repeated use location.

Host families: Count crimes in the geographic location used for housing students with a host family if the institution has “significant control” of the space. An institution has significant control over a property when the students have a separate entrance to their living space, but not in homes where the students and the host family use the same entrance.

If an institution owns property, crimes are reportable year round.

If an institution controls property pursuant to a written agreement, crimes are only reportable during the times when the institution has control, not before or after.

There is no reporting obligation for public property around Non-Campus property.

Crimes committed at locations that do not meet Clery geography definitions are not counted for Clery Act purposes, although certain crimes may need to be reported to campus officials pursuant to Title IX and other laws.

II- To properly learn of and report crimes that occur in international and domestic education, Campus Security Authorities shall report crimes to the institution’s designated Clery compliance official. In addition, the institution will query local law enforcement and Campus Security Authorities for information about crimes occurring in qualifying geographic locations during times of institutional use and/or control (as defined in Part I).

Campus Security Authorities are:

Police/Campus Security (Department members and others affiliated);

Those designated by the institution as Campus Security Authorities; and

are automatically designated as Campus Security Authorities, regardless of whether they ordinarily possess significant responsibility for student and campus activities.

All faculty or staff travelling with students overseas or to a distant location regardless of whether it meets Clery geographic definitions established in Part I, are designated as responsible employees for Title IX purposes, and are required to report learned of or observed cases of sex discrimination, including sexual violence, to the institution's Title IX Coordinator or designee.

The institution will query local law enforcement for locations that meet the definitions of Clery Act geography in Part I asking for records of Clery Act reportable crimes occurring during the timeframes in which the institution controlled the property (or if the property is owned, during the entire calendar year). The institution will use "good faith" to contact these law enforcement entities via paper mail, telephone, or electronic messaging, and will keep a record of the contact and whether or not any statistics were received.

Reporting Crimes:

Campus Security Authorities must report all crimes to the individual designated by the institution, with no exceptions.

Crimes are to be reported immediately or as soon as possible.

It is *never* appropriate for faculty or staff to handle crimes in house, investigate, or adjudicate, except as specifically instructed by institutional officials.

It is *never* appropriate for faculty or staff to attempt to mediate an accusation of sexual assault or sexual violence.

With the exception of crimes that include sexual violence or sexual harassment, the Campus Security Authority may keep the identity of the

Definitions:

Home Institution: Student's original institution, from which the degree is anticipated, or to which the study abroad credits will transfer.

Host Institution: Domestic or overseas institution that student from Home Institution will be temporarily enrolled for a term or set length of time.

Provider (Program, Administering, Sponsor): Non-SUNY institution or entity through which an overseas academic program is provided (e.g., partner).

Complainant: Individual with a complaint of sex discrimination, including sexual violence (i.e., victim, survivor, accuser).

Accused Individual: Person accused of misconduct.

Host Institutions and Providers that learn about incidents of sex discrimination, including sexual violence, will work collaboratively with the Home Institution(s) of the complainant and accused individual to ensure the following:

The complainant is notified of any and all options, remedies, resources, and services available through the Home, Host and Provider;

The appropriate institution or entity can conduct a prompt, impartial investigation, which may lead to adjudication through the formal student conduct or Title IX grievance process.

Students participating in study abroad through a Host or Provider are subject to the policies and procedures of the Provider or Host, as well as those of his or her Home Institution.

Which institution takes the lead in investigating and responding to allegations of sexual harassment and/or violence shall be determined immediately following the reporting of an incident. Factors to consider include:

the location of the incident;

the enrollment status of the student(s) involved;

the nature and duration of the program;

the timing of the report (during or after a program).

Generally, the institution with immediate and primary control over the parties and evidence shall lead the investigation and response.

At all times the fairness of the process, effectiveness of the investigation/response, and best interests of the parties shall govern the decision making of SUNY officials.

The Title IX Coordinators of the SUNY institutions should consider all incidents and allegations consistent with their responsibilities to spot patterns and track complaints.

Consistent with working collaboratively, a Host Institution or Provider will promptly provide any incident reports and related information to the Home Institution.

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I. Introduction to The Forum on Education Abroad

The Forum on Education Abroad is a 501(c)(3) non-profit, membership association recognized by the U.S. Department of Justice and the Federal Trade Commission as the [Standards Development Organization \(SDO\)](#) for the field of education abroad. The Forum provides training and resources to education abroad professionals and its *Standards of Good Practice* are recognized as the definitive means by which the quality of education abroad programs may be judged. The Quality Improvement Program for Education Abroad (QUIP) and The Professional Certification for Education Abroad Program provide quality assurance for the field through use of the *Standards* in rigorous self-study and peer reviews for institutions and professional certification for individuals.

The CID was re-released for use in the 2012/13 academic year, and the first full year of data was gathered and reported for 2014.

students still travel to Europe for their education abroad experience. However, the frequency with which incidents occurred in South America and Africa was worth investigating further as 1 in 2 students was likely to have been affected by a critical incident while on either of those continents. With further drilling, it was determined that the incidents that were afflicting students in those two locations were gastro-intestinal illnesses.

Incidents were reported on every type of program (definitions provided by The Forum on Education Abroad's *Education Abroad Glossary* 2nd edition, 2011) although

