

United States Senate

WASHINGTON, DC 20510

December 20, 2013

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Ave, SW
Washington, DC 20202

Dear Secretary Duncan:

I understand that the Department of Education has established a Negotiated Rulemaking Committee that will meet in early 2014, to negotiate the consensus recommendations for proposed regulations to implement amendments made to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), made by the Violence Against Women Reauthorization Act of 2013 (VAWA). I originally drafted these amendments to the Clery Act as freestanding legislation, the Campus Sexual Violence Elimination (Campus SaVE) Act (S. 834).

The amendments to the Clery Act address the high rate of domestic violence, dating violence, sexual assault and stalking (collectively referred to as “intimate partner violence”) at institutions of higher education, providing these institutions with much-needed guidance to enable a full and appropriate response. The underlying provisions in the Clery Act amended by VAWA were commonly referred to as the “Campus Sexual Assault Victims’ Bill of Rights” for roughly the last two decades.

As the rulemaking process begins, I wanted to highlight several important issues that I believe need to be addressed, to ensure that the implementation of these amendments to the Clery Act is in line with the intent of the original legislation. This letter highlights my recommendations, and I respectfully request that it be shared with the negotiated rulemaking committee to help inform their work.

The first and most important issue pertains to the standard of evidence to be used for disciplinary proceedings. The original Campus SaVE Act included the preponderance of the evidence standard, along with a requirement that proceedings be “prompt and equitable,” consistent with requirements under Title IX and current guidance under that statute from the Office of Civil Rights (OCR). The language ultimately included in VAWA does not codify those requirements, but is not intended to supersede them, either. The intent is that institutions will still be subject to Title IX obligations, as interpreted by OCR, to use the “preponderance of the evidence” standard in all Title IX covered cases, and to include a statement to this effect in their annual reports as required under the Clery Act, as modified by the VAWA amendments, starting in 2014.

Second, while developing the Campus SaVE Act, I worked with stakeholders to draft a provision asking institutions to describe how they will help enforce orders of protection, no contact orders, restraining orders, etc. The intent was to ensure, to the extent possible, that institutions would take all reasonable and lawful steps to uphold these orders.

The remaining issues have to do with specific definitions. The VAWA amendments omitted definitions of “primary prevention,” “bystander intervention,” and “risk reduction.” As the definitions included in S. 834 had the support of the coalition of the organizations who endorsed the Campus SaVE Act and the VAWA amendments, I ask that any regulatory definitions be consistent with these definitions (enclosed with this letter).

The VAWA amendments provide that “sexual assault” should be defined as a forcible or nonforcible sex offense as classified by the Federal Bureau of Investigation’s Uniform Crime Reporting (UCR) program. The intent was to apply these terms, which are defined by UCR’s National Incident-Based Reporting System (NIBRS) and have been a part of the Clery Act’s statistical reporting provisions since 1992, to all provisions of the VAWA amendments. They are more inclusive than the traditional UCR reporting provisions, enjoy the support of the coalition that supported the VAWA amendments, and are familiar to institutions.

Additionally, the VAWA amendments require institutions to allow both parties in a campus disciplinary proceeding (referred to as “the accuser” and “the accused” in the law) “an advisor of their choice.” This provision was intended to eliminate the practice of some institutions to deny either party the opportunity to have a support person. However, I understand that some institutions have an intermediate approach that restricts who may serve as a support person. The intent of the VAWA amendments is to allow both parties to have an advisor accompany them who can provide direct support to the individual without actively participating in the process.

Finally, the Campus SaVE Act originally included a definition of “results” as it pertains to campus disciplinary proceedings that was borrowed from existing FERPA regulations. As this is a definition currently used at, and understood by, institutions of higher education, it is logical to continue using the existing definition in this context.

I hope that this information is informative as the implementation of the VAWA amendments to the Clery Act continues. Please do not hesitate to contact my Legislative Assistant, Sara Mabry (sara_mabry@casey.senate.gov or 202-224-6324) with any questions, or if I can be of further assistance during this process.

Sincerely,

A handwritten signature in blue ink that reads "Bob Casey, Jr." in a cursive, stylized script.

Robert P. Casey, Jr.
United States Senator

Addendum: Campus Sexual Violence Elimination Act Definitions

The term **primary prevention** means programming and strategies intended to stop domestic violence, dating violence, sexual assault, or stalking before it occurs through the changing of social norms and other approaches.

The term **bystander intervention** means safe and positive options that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual.

The term **risk reduction** means options for recognizing warning signs of abusive behavior, and how to avoid potential attacks.

The term **results** means a decision or determination, made by an honor court or council, committee, commission, or other entity authorized to resolve disciplinary matters within an institution of higher education.