

Begin forwarded message:

**From:** "Debowes, Mike"

**Date:** February 24, 2014 at 11:05:37 AM EST

**To:** "Gregory, Dennis E."

**Subject: RE: February 24-25, 2014 VAWA Committee Second Session Agenda, Proposed Regulatory Language, and Draft Screen Shots for Reporting VAWA Crimes**

A few quick thoughts to consider sharing today/tomorrow:

Based on pages 20 and 22, it seems that a decision has been made that incidents of DVDVS are NOT subject to the hierarchy rule – is that also your understanding? “In institution must compile the crime statistics required under paragraphs (C)(1) (i) and (II) of this section...” Those sections refer to “Primary Crimes” and “Hate Crimes,” respectively.

What is the definition of “official intervention” as it relates to determining whether two independent stalking offenses have occurred? Draft regs use this language page 21 but there is no corresponding definition.

Regarding the exception to the hierarchy rule for sexual assaults – does this mean if a victim was drinking underage and was assaulted we might count the liquor law violation referral and the assault? As you know the DOE liberally interprets “referred for disciplinary action” to include even a review of names submitted to an official, as well as amnesty and safe harbor policies – so I think the answer is “yes” here, which is a change from past practice, but that clarification could be helpful.

Advisors on page 35 – the regs say “An institution may not limit the choice of advisor for either party.” This means that even if lawyers have been prohibited from participating in the student conduct process, these regs will override that institutional prohibition. However, if limits have been set on what role advisors may play (i.e., they can’t speak) then VAWA Amendments to Clery would still permit institutions to maintain these restrictions – do I have that right? Sounds reasonable to me, though I wonder if/how that regulatory addition will impact initiatives to allow attorneys to actively be involved in conduct processes.

Page 35 “At a minimum, comply with guidance issued by the U.S. Department of Education’s Office for Civil Rights.” Is this codifying the DCL in its entirety (and any subsequent guidance we receive), or just those aspects that pertain to “disciplinary proceedings” that are discussed on pages 33-35? And how are institutions expected to resolve any “perceived conflict of interest or bias for or against the accused or the accuser”? Seems to me a savvy student just keeps alleging bias to stymie the process. What is the threshold here? Will institutions have a mechanism (or permission!) to independently evaluate such perceptions and determine whether the officials involved are sufficiently free of any bias or conflict of interest that the proceedings may continue with the assigned officials? I think some guidance is necessary in the regs. I would not want to permit spurious allegations of bias and COI (not made in good faith) by any party that serves only to delay the process.

Kindest Regards,

Mike