



**ATIXA Tip of the Week
Newsletter
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The Federal Stalking Definition Is Terrible...Please Stop Using It as Policy

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Friends, the definitions within the Clery Act and VAWA Section 304 are to be used for counting statistics for the Annual Security Report. It is a mistake to also use them as the basis for policy, and Congress never intended for us to do so. Let me illustrate why this can be a problem. The VAWA 304 definition of stalking (which incidentally is the 1994 VAWA definition of stalking) defines stalking as “engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.” Under this definition, if a faculty member repeatedly fails a student on assignments and this results in substantial emotional distress for the student or for a reasonable person, the faculty member is stalking the student. This is patently absurd, right?

Commenters noted this problem to the Department of Education during the negotiated rulemaking process, and there is a note on it in the Final Regulations where the Department essentially says that the definition doesn't violate 1st Amendment rights and isn't overbroad because it is just a standard for collection of statistics. It's not meant to be applied as policy. Yes, Clery/VAWA states that we need to prohibit the crimes of dating violence, domestic violence, sexual assault and stalking, but that does not mean we have to extend that requirement improperly by adopting definitions developed for the gathering of statistics to our internal policy definitions. I have yet to see a well-crafted institutional policy on sexual misconduct or intimate partner violence that does not already include all the elements in the Clery/VAWA definitions. Yet, in policy after policy I am reviewing this summer for clients, state and Clery Act/VAWA definitions have crept into policies on sexual violence, dating violence, domestic violence, and stalking.

Stop this. You all know better, and there is no reason that the passage of VAWA should have resulted in wholesale adoption of federal offense definitions that were not meant as policy at educational institutions, resulting in the abdication of the obligation to write good policy. Get rid of this stuff and write good policy. That's what [ATIXA's models](#) are for. We don't even use the terms domestic and dating violence in the field anymore, so why would you write policies on these as offenses, or worse, incorporate state law into these definitions on top of the VAWA standards? Yet, some of you are doing that, despite the fact that the use of the preferred term of Intimate Partner Violence has been a best practice for years. It's still summer. You still have time to fix this. Please do, or else many of your faculty members might turn out to be stalkers this fall.