

LEGAL UPDATES

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New Government Releases Relating to Institutional Responsibilities for Campus Safety and Security

The U.S. Department of Education recently released a Dear Colleague Letter (DCL) providing some additional guidance regarding institutions' responsibilities to implement changes to the Clery Act made by the Violence Against Women Reauthorization Act of 2013 (VAWA). Also, Sen. Claire McCaskill (D-Mo.) issued a report resulting from an assessment by her Subcommittee on Financial and Contracting Oversight of how institutions report, investigate and adjudicate allegations of sexual violence.

Dear Colleague Letter – VAWA Amendments to the Clery Act

The VAWA changes to the Clery Act became effective March 7, 2014. However, the department is still in the process of developing the final regulations to implement those changes. In a DCL dated July 14, 2014, the Department notes it expects to publish the final regulations by November 1, 2014, to be effective July 1, 2015. This DCL is an effort to respond to numerous inquiries the department received regarding an institution's responsibilities to comply with VAWA's new requirements pending publication of that final guidance, particularly since an institution's Annual Security Report (ASR) must be published by October 1, 2014, and must address these new requirements.

The DCL first reiterates guidance issued by the department in May 2013: Until final regulations are published, institutions "must make a good-faith effort" to comply with the statutory provisions as written. It then gives some examples as to what would constitute "good faith." Essentially, those examples merely state that a good-faith effort is achieved by expanding existing policy statements and procedures to ensure each new requirement from VAWA is addressed.

The DCL cautions that training that relies upon the latest draft of the proposed regulations may not fully capture what will be required once the final regulations are effective. Nevertheless, we believe those regulations are a good starting point. In previous Legal Alerts, we summarized the new statutory requirements as well the contents of recent draft regulations.

The DCL also reminds institutions they now are to report crime statistics for the new categories of “domestic violence,” “dating violence,” and “stalking.” Definitions of those crimes are included in the DCL and were addressed in our previous legal alert as well. The DCL notes institutions must make a good-faith effort to ensure their statistics in this year’s ASR are accurate and complete, although it acknowledges statistics for the entire 2013 calendar year may not be available. However, the department states statistics for these new crimes are not to be submitted in this year’s independently required Web-based report. Reporting these statistics by that means is being delayed by one year in order to revise procedures once the final regulations are in place.

McCaskill Report

On July 9, 2014, Sen. McCaskill issued a report on “Sexual Violence on Campus.” The report is based in part on a survey of 440 four-year institutions of higher education, including a national sample and separate samples of the nation’s largest public and private institutions. It concludes that many institutions fail to comply with legal requirements and best practices relating to the proper handling of allegations of sexual violence among students. It noted that these problems are found in nearly every stage of the institutions’ responses to such allegations.

Specifically, it found:

1. Lack of knowledge about the scope of the problem, noting that only 16 percent of the national sample conduct climate surveys;
2. Failure to encourage reporting of sexual violence, noting that only about half of the national sample provide either a hotline for survivors or the option to report an assault online;
3. Lack of adequate sexual assault training, noting that more than 20 percent of the national sample fail to provide any sexual assault response training for members of their faculty and staff and more than 30 percent fail to provide any sexual assault training for students;
4. Reported sexual violence goes uninvestigated, noting that more than 40 percent of the national sample had not conducted a single investigation in the past five years and that more than 20 percent of the nation’s largest private institutions had conducted fewer investigations than the

number of incidents they had reported to the Department of Education;

5. Lack of adequate services for survivors, noting that while most institutions use a team approach to respond to sexual assaults, only 25 percent incorporate the local prosecutor's office, only about 50 percent incorporate the services of community victim assistance/advocacy programs, and most do not provide access to a specially trained nurse who can provide medical and other services to survivors;
6. Lack of trained, coordinated law enforcement, noting that 30 percent of the national sample provide no training to their in-house law enforcement personnel on how to respond to reports of sexual violence and more than 70 percent have no protocols regarding how they work with local law enforcement in responding to these kinds of allegations;
7. Adjudication fails to comply with requirements and best practices, noting that more than 30 percent of the national sample fail to provide training regarding "rape myths" to those involved in adjudicating sexual assault claims, more than 40 percent of the nation's largest schools allow students to help adjudicate these cases, and more than 20 percent of the national sample allow the athletic department to have oversight of sexual violence cases involving student athletes.
8. Lack of coordinated oversight, noting that more than 10 percent of the national sample had failed to designate a Title IX Coordinator, as required by law.

What This Means to You

As these documents indicate, matters of campus safety and in particular the problem of sexual violence on campus are receiving significant national attention. It is likely this heightened attention will lead to increased scrutiny, not only from the Office of Civil Rights but also from students, parents and other outside constituencies. Institutions found in violation of any of the myriad legal requirements relating to this topic are subject to significant financial penalties. Therefore, institutions should review their policies and procedures to ensure they comply with current legal requirements as reflected by the changes resulting from VAWA and also the best practices as noted in the McCaskill report.

Contact Information

HUSCH BLACKWELL

Husch Blackwell is available to provide assistance in conducting compliance audits or updating policies. If you have questions or need assistance, please contact your Husch Blackwell attorneys, Joe Cornelison at 816.983.8280 or Hayley Hanson at 816.983.8377.