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With New Academic Year Approaching, Colleges and Universities Should Check Regulatory Compliance

The start of another academic year provides a good opportunity to verify compliance with key federal regulatory requirements. Below is a brief, but nonexhaustive, list of areas that institutions should check.

Family Educational Rights and Privacy Act (FERPA). Each institution must publish an annual notice informing students of their rights under FERPA. Posting the notice on your website satisfies this requirement. Although no deadline is specified, the beginning of the academic year is an appropriate time to ensure your notice is free of the following common errors:

- Failure to inform students of procedures for exercising their rights.
- Failure to define “school official” with a “legitimate educational interest” with regard to nonconsensual disclosures.

In addition, schools should remind staff and faculty of requirements for confidentiality of educational records.

Voter registration. On July 1, 2013, the U.S. Department of Education released a “Dear Colleague” letter, GEN-13-17, reminding “covered institutions” that they must distribute voter registration forms to their students. Most institutions of higher education will qualify as “covered institutions.” The voter registration requirement specifically does not apply to schools in Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, Wyoming, Puerto Rico, Guam, the Virgin Islands and American Samoa.

Institutions must make the forms widely available to students and distribute them individually to degree or certificate program students physically in attendance. Schools may distribute the forms by email if:

- The email messages are devoted exclusively to voter registration.
- The messages contain an acceptable voter registration form or Internet address where the form may be located.

No deadline is specified for distributing voter registration forms by email. Institutions distributing paper forms must request them from their states no less than 120 days prior to the state's deadline for registering to vote for certain elections.

Drug and alcohol abuse prevention. Institutions must distribute annually to students and employees various specific information concerning drug and alcohol abuse prevention programs, detailed at 34 Code of Federal Regulations (CFR) Section 86.100. Unlike other required disclosures that are specifically allowed to be made by “electronic media,” alcohol and drug prevention information must be distributed “in writing.” Because there is limited guidance on what qualifies as “in writing,” we recommend distributing hard copies of this information.

Copyright infringement policies. Annually, schools must make available to current and prospective students policies and sanctions related to copyright infringement, detailed at 34 CFR Section 668.43(a)(10). Institutions may distribute this information via mailings, electronic media or other appropriate publications.

Clery Act annual security report.

- **ASR.** Schools must publish their annual security reports (ASR) by Oct. 1. Requirements for ASRs appear in the U.S. Department of Education's “Checklist for Campus Safety and Security Compliance,” at Appendix E of the Handbook for Campus Safety and Security Reporting (www2.ed.gov/admins/lead/safety/handbook.pdf). Note that ASRs must contain certain prescribed language in policy statements.
- **Local law enforcement.** Institutions must also make good faith efforts to collect certain crime statistics from local law enforcement agencies that exercise jurisdiction over the institution's Clery geography. Make these requests soon in order to collect information in time for the Oct. 1 ASR deadline. Do not forget to

include a list of the institution's noncampus property in making this request.

- **Distributing the ASR.** Colleges and universities must distribute ASRs to all currently enrolled students and employees by Oct. 1. Note that there are specific requirements for how schools distribute ASRs, particularly with regard to electronic distribution.
- **Emergency response and evacuation testing.** Institutions must test their emergency response and evacuation procedures at least once a year. This requirement involves more forethought and planning than most realize. Specifically, tests must:
 - Be scheduled (a false alarm or actual emergency will not suffice).
 - Contain drills, which are activities that tests a single procedural operation (e.g., test of initiating a cell phone alert system);
 - Contain exercises, which are tests involving the coordination of efforts (e.g., coordination with local first responders); and
 - Contain activities for reviewing, assessing, and evaluating the test.
- **Publishing emergency response and evacuation procedures.** In connection with at least one test each year, schools must publicize their emergency response and evacuation procedures. Simply having a notice posted on the institution's web site will not suffice; the publication must be made in a manner that will attract the individual student's and employee's attention, such as by a "blast" email containing a link to the procedures on the web site.

Amendments to Clery Act in the reauthorization of the Violence Against Women Act (VAWA). The March 2013 reauthorization of VAWA amended the Clery Act in some significant ways. The changes are effective March 7, 2014, so institutions will be expected to implement them during this academic year. Schools must

- Collect additional crime statistics.
- Provide new educational programs for students and employees.
- Implement some new student discipline requirements.

Additional details on these requirements may be found in the Legal Alert issued on March 8, 2013, titled “New Violence Against Women Act Expands Campus Protections and Responsibilities.” The U.S. Department of Education is expected to issue guidance on these matters in the months ahead. We will issue further alerts as guidance is released.

Anti-discrimination. Presumably, your institution already has a comprehensive anti-discrimination policy in place and you should ensure it is current. In particular, institutions should note the student pregnancy discrimination and accommodation guidance contained in the U.S. Department of Education’s June 25, 2013 “Dear Colleague” letter, available at: www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.html.

In addition to having current policies, federal regulators require each institution to publicize the names and contact information of officials responsible for coordinating the institution’s compliance with anti-discrimination laws, particularly laws prohibiting sex (Title IX) and disability discrimination. We recommend a “blast” email reminding students and employees that these policies exist and giving them a link where they can review them on your school’s website.

What This Means to You

Checking now on your compliance with the areas listed above – as well as other regulatory requirements – can help you avoid problems later and contribute to another successful academic year. If you need further assistance in these matters, Husch Blackwell can provide policy audits, guidance, or training to assist.

Contact Information

For more information concerning this or other issues affecting educational institutions, please contact your Husch Blackwell attorney or a member of our education practice.