

LEGAL UPDATES

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Professional

HAYLEY E. HANSON
KANSAS CITY:
816.983.8377
HAYLEY.HANSON@
HUSCHBLACKWELL.COM

University's Fine of \$82,500 Reflects Importance of Filing Complete and Accurate Security Reports

Under the Clery Act, institutions receiving federal financial aid under Title IV of the Higher Education Act must prepare, publish and distribute an Annual Security Report (ASR) by October 1 each year. Among other requirements, the ASR must include a description of the institution's campus security policies in various specified areas, a description of specified campus safety and crime prevention programs, procedures for timely warnings and emergency response, and the statistics for the three most recent calendar years about certain crimes that occurred on campus, in or on certain noncampus buildings or property and on certain public property within or immediately adjacent to the campus. If the institution has multiple campuses, these statistics must be reported for each one. Under Department of Education regulations, a fine of up to \$27,500 may be imposed for each failure to comply with these requirements.

On April 2, 2013, the Education Department informed the University of Texas at Arlington (UTA) of its intent to assess a fine of \$82,500 for inaccuracies in its crime statistics for 2008. Specifically, it found that an act of forcible fondling had been improperly classified as an assault instead of a forcible sex offense. UTA had used its judgment in categorizing the offense based on some of the surrounding circumstances rather than following the definition of forcible fondling as defined by the FBI in its Uniform Crime Reporting Program. The Education Department also found that a violent assault by one family member on another had been recorded as an "assault of a family member," an act of domestic violence not then reportable under Clery¹. Because of the injuries that were inflicted, the offense should instead have been recorded under Clery as an aggravated assault. In addition to these two misclassifications, officials found that UTA had underreported its liquor law

violations, drug law violations and weapons law violations by seven, 16 and four, respectively.

In assessing the amount of the fine, the Education Department noted that it considers both the size of the institution and the gravity of the offense. As to the size of the institution, the assessment depends on whether it is above or below the median funding levels for Higher Education Act Title IV programs in which the institution participates. In UTA's case, it exceeded these median levels and so was treated as a large institution. As to the gravity of the offense, the violations were "serious" because they "endangered UTA's students and employees who must be able to rely on the disclosures of campus crime statistics, policies and statements ... in order to take precautions for their safety." In addition, the Education Department stated that it "considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and ... failure to comply with those requirements constitutes an inability to administer properly the Title IV programs."

Based on the above factors, UTA was assessed the maximum fine of \$27,500 for each of the two misclassifications and a fine of \$5,000 for each of the liquor, drug or weapons violations that were underreported, up to the maximum \$27,500. UTA has requested a hearing concerning the proposed fine.

¹ As a result of amendments to the Clery Act from the recently passed Violence Against Women Reauthorization Act (VAWA), domestic violence along with dating violence and stalking will become additional crime categories for which institutions must gather statistics. These amendments also specify additional requirements for student disciplinary procedures and additional policies to address and prevent campus sexual violence. The effective date of these additional requirements is May 7, 2014. So far, the Education Department has not issued guidance regarding its implementation of VAWA.

What This Means to You

Department of Education audits of institutional security reports are increasing, and any omissions or errors based on the requirements of the Clery Act are taken seriously and will likely result in fines. It is important that higher education institutions clearly understand those requirements, including the definitions of the crimes for which statistics are to be compiled and ensure their Annual Security Reports are complete and accurate. A good resource for this purpose is the *Handbook for Campus Safety and Security Reporting*, which may be found at www2.ed.gov/admins/lead/safety/campus.html. We at Husch Blackwell can also conduct audits of your security reports and advise as to any deficiencies.

Contact Information

If you have questions, please contact your Husch Blackwell attorney, Joe Cornelison at 816.983.8280 or Hayley Hanson at 816.983.8377.

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