

LEGAL UPDATES

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New Violence Against Women Act Expands Campus Protections and Responsibilities

An updated version of the Violence Against Women Act (VAWA) was signed by the president on March 7, 2013. Aimed at preventing campus violence, some of the new VAWA provisions expand protections and provide funding to combat violent crime on campuses. At the same time, they impose additional responsibilities on institutions of higher education.

Specifically, Section 304 of VAWA, which incorporates the earlier Campus Sexual Violence Elimination (Campus SaVE) Act, includes the following changes:

Annual Security Report (ASR) Crime Reporting and Definitions

Categories of hate crime prejudice now include national origin and gender identity.

Crimes now include domestic violence, dating violence and stalking incidents reported to campus security or local law enforcement.

Definitions now include those for dating violence, domestic violence, stalking and sexual assault.

ASR Policy Statements

Policy statements must now cover domestic violence, dating violence and stalking.

Statements about procedures following reports of covered offenses change from those used with “sex offenses” to those used with incidents of “domestic violence, dating violence, sexual assault or stalking.”

“A statement of the standard of evidence that will be used” during conduct proceedings must appear in the ASR. (Though no particular standard is required, a prior Department of Education Dear Colleague Letter (DCL) suggests preponderance of the evidence.)

Several provisions codify the DCL, requiring ASR policy statements to include:

Procedures for victims to follow in the event of a covered offense, including specific information on preserving evidence, reporting, victims’ rights and institutional responsibilities.

Notification of existing victim counseling, health and advocacy services.

Notification about options for changing academic, living, working and transportation arrangements.

Information for employees reporting covered offenses.

Information about confidentiality.

Procedures for disciplinary action, including details on investigations, hearings, notice and appeals.

Possible sanctions and protective measures imposed following a final determination in covered offense proceedings.

Domestic violence, dating violence, sexual assault, and stalking are added to “rape, acquaintance rape” for education and awareness programs discussed in ASR policy statements.

Education Programs

ASR policies must also address two types of education programs:

Incoming students and new employees must receive “primary prevention and awareness programs,” including certain prohibitions, definitions, methods of intervention and information on risk reduction.

Schools must offer “[o]ngoing prevention and awareness campaigns for students and faculty,” with the same inclusions as above.

Timely Warnings

When providing timely warnings, schools are now required to withhold victims’ names as confidential (as the vast majority already do).

Available Guidance

We do not yet know whether, when or how the Department of Education will release and implement guidance. Several issues remain unsettled, including specifications for meeting the new VAWA requirements. In the past, the department has invoked the negotiated rulemaking process for preparing regulations.

Effective Date

According to VAWA, the changes take effect in October 2014 and apply to the October 2014 ASR. However, the October 2014 ASR will include statistics from all of 2013, and schools have not been collecting the expanded statistics to date. In the past, the department has delayed implementation and/or enforcement of new legislation pending guidance and regulations.

What This Means to You

Schools can take several steps to prepare for compliance, while awaiting further guidance and regulations:

Alert campus security and others responsible for collecting crime statistics to expand their efforts in light of the new reporting requirements. Pending guidance, keep new statistics separately identifiable.

Review current policies and required statements and consider possible changes.

Begin to evaluate your student, faculty and employee education programs in light of the new requirements.

We will continue to track this evolving area of law.

Contact Information

If you have questions, are interested in available student/faculty/employee training, or for more information about the implications of this rapidly developing trend for your institution, please contact your Husch Blackwell LLP attorney, Hayley Hanson at 816.983.8377 or Anne Cartwright at 816.983.8351.

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