

Campus SaVE

Earlier this year, Congress enacted legislation that will impose additional duties on colleges and universities participating in Title IV financial aid programs. In March the Campus Sexual Violence Elimination Act (Campus SaVE) was passed as part of the reauthorization of the Violence Against Women Act. Campus SaVE represents, primarily, another step in the federal government's effort to require a more effective response by institutions of higher education to instances of sexual violence on their campuses.

Campus SaVE actually amended the Clery Act, the federal law that requires each institution to collect statistics regarding certain campus crimes (Clery reportable crimes). This data and, in addition, information about the institution's security policies must then be disclosed, in the form of an Annual Security Report (ASR), to current and prospective students and employees. The new law is aimed at increasing transparency by *expanding the types of sexual violence incidents* that must be disclosed. The list of Clery reportable crimes already included forcible sex offenses (rape, sodomy, fondling) and non-forcible sex offenses (incest and statutory rape), which are now encompassed in the broader term, "sexual assault," used in Campus SaVE. Under this statute, institutions will now be required to gather data about three new offenses - dating violence, domestic violence, and stalking. The federal definition of these crimes is to be used. Dating violence relates to violence committed by one in a social relationship, romantic or intimate, with the victim, while domestic violence encompasses violent acts committed by a current or former spouse or cohabitant or by one sharing a child with the victim. Stalking refers to a course of conduct directed toward an individual causing, under a "reasonable person" standard, that individual to fear for her/his personal safety or otherwise to suffer substantial emotional distress.

Under the Clery Act, institutions are also to report instances of "*hate crimes*." These are Clery reportable crimes in which the victim is selected because of his/her actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability. Campus SaVE makes two changes in this requirement. First, it adds the three offenses mentioned above to the list of Clery reportable offenses for the purpose of hate crime reporting. Secondly, it adds "gender identity" and national origin to the list of bias categories.

Another aspect of Campus SaVE is its enhancement of the rights of a victim of sexual violence. A student or employee who reports being subjected to sexual violence is to be provided by the institution with a *written statement explaining her/his "rights and options."* This explanation is to cover a variety of matters, including the following: the institutional official to whom an alleged offense should be reported, the option to report or not report the matter to local police authorities, possible protective measures while disciplinary proceedings are ongoing, information about those proceedings, possible sanctions against an offender, victim confidentiality policies, and campus and community resources for the victim. The description of institutional disciplinary proceedings, under Campus SaVE, must include certain assurances, such as the fact that participating officials will be trained annually on sexual violence issues and on how to conduct a fair investigation and hearing, the right of both the victim and the accused to have an advisor during the proceedings, appeal rights, etc.

The remaining major part of the Campus SaVE Act relates to policy statements that are to be developed and made a part of a university's ASR. Broadly speaking, the policy statements are to describe "prevention and awareness" programs presented to incoming students and employees and, on an ongoing basis, to existing students and employees. The content of these programs should generally parallel the information included in a victim's notice of rights, as set out above. There are a couple of additional matters, however. Not only must the educational program deal with the definition of the three new Clery reportable crimes, but it must cover the definition of "consent" in the context of sexual activity, which is often an issue in forcible sex offense cases. It must also suggest safe options for bystander intervention, and it must discuss possible warning signs for harmful behavior and avoidance measures for potential victims.

The effective date of this new law is one year after its passage. This is understood to mean that policy statements should be in place and be included in the 2014 ASR, the required publication date for which will be on or before October 1, 2014. Data concerning Clery reportable offenses is reported for the most recent three calendar years, so statistics for the three new offenses, if included in the 2014 ASR, will have to be collected during the period from January through December 2013 of the current year. This presents some obvious difficulties, particularly since the Campus SaVE Act did not become law until March 2013. Administrative regulations, when they are finally promulgated by the Department of Education, may offer some help here. Commentators are suggesting that an institution use "best efforts" to capture as much data about the new Clery reportable crimes for 2013 as is feasible, recognizing that these statistics may not be "complete."

Congress' concern about sexual abuse can be traced back almost two decades. In 1992 it amended the Clery Act, through a bill entitled the Campus Sexual Assault Victim's Bill of Rights, to require institutional officials to provide certain kinds of information to assault victims. Under the amendment, an institution was further obligated to adopt a sexual assault program and to include a summary of that program in its ASR. Finally, the amendment replaced "rape" as a reportable offense with a broader cluster of crimes under the heading, "forcible or non-forcible sex offenses." The Violence Against Women Act (VAWA) was passed in 1994, providing federal funding for prosecution of violent crimes against women. VAWA was reauthorized and expanded in 2000 and 2005. Most recently, Congress passed the VAWA Reauthorization Act of 2013, which included the Campus SaVE Act. Meanwhile, on a somewhat different front, the federal government has been enlarging its view of what constitutes sex discrimination in educational programs, as prohibited by Title IX, Education Amendments of 1972. Guidance issued by the Department of Education in 2001 focusing on sex harassment was followed up, a decade later, by a significant guidance document in the form of a Dear Colleague Letter (DCL) dealing extensively with institutional policies and procedures for handling instances of sexual violence, defined in the 2011 DCL as a subset of sex harassment.

This history shows a convergence of regulatory action by the federal government to press institutions of higher education to devote more resources to preventing and dealing with various kinds of sexual abuse suffered by members of the campus community. Campus SaVE represents a regulatory emphasis on some specific categories of that abuse - dating and domestic violence and stalking. There has also been a significant increase recently in the Department of

Education's enforcement activity. The Department is now much more active conducting compliance audits under both the Clery Act and Title IX and investigating institutions against whom complaints of noncompliance have been made.

UAH has made a number of changes in its policies within the past year in response to these legislative and regulatory directives. This process will continue in 2013 when Campus SaVE Act provisions become effective. The objective will be, of course, to comply with the law and, in a larger sense, to promote a campus environment that is safe for all members of the University community.