The Government’s Continued Focus on Curbing Sexual Assault Violence - Heightened Compliance Standards and Additional Guidance for 2014

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In the last year, the White House, Congress, and federal regulators have sharpened their focus on the efforts made by colleges and universities to respond to reports of sexual assault. Increased scrutiny of institutional compliance has led to amendments to the Clery Act expanding the types of "crimes" that must be reported on an Annual Security Report to include complaints of, among other things, domestic violence, dating violence, and stalking offenses (the “Campus SaVE Act”). It has also led to greater enforcement of Title IX compliance, unprecedented and broad government Title IX investigations initially triggered by alleged Clery violations, congressional efforts to streamline and enhance the accountability of higher education crime and safety prevention, and the creation of a "White House Task Force to Protect Students From Sexual Assault."

While final regulations implementing the Campus SaVE Act are expected to be issued on or before November 1, 2014, the Department of Education’s Office of Civil Rights ("OCR") and the White House have wasted no time in developing resources for colleges and universities to address complaints of sexual misconduct.

The government’s recent focus is arguably in response to the documented increase in reports of sexual harassment or assault by college students and concerns about institutional compliance. By some statistics, one in five female college students reports being a victim of sexual assault. According to OCR, the number of complaints of sexual assault in 2013 and 2014 exceeded the number of similar complaints it received in the preceding four years combined. One study suggested that 63 percent of schools were not fully compliant with the reporting requirements of the Clery Act.

Regardless of the reason for the government’s sharpened focus, the current reality for Higher Ed includes increased government scrutiny of an increased number of reports of sexual harassment, assault, or violence under multiple federal statutes with investigative or reporting requirements - all in the context of a perception by the government that a substantial number of institutions are not fully compliant with federal requirements.

Enter the most recent guidance from both the newly formed White House Task Force to Protect Students From Sexual Assault and OCR. Earlier this week, the Task Force issued its First Report, entitled "Not Alone."

The Report makes several recommendations for colleges and universities to address sexual violence. Some of the key recommendations include:

- Conducting campus “climate surveys” to determine whether students, faculty, and staff are sensitive to various types of sex-based harassment and are familiar with reporting procedures and campus outreach, education, and prevention efforts. The Task Force has released a, toolkit to conduct such a survey and has requested that colleges and universities conduct (voluntarily) the survey next year (preferably in the Winter or Spring, as opposed to when students first arrive on campus). Legislative or administrative efforts to make the survey mandatory in 2016 will likely follow.

- Providing up-to-date sexual assault prevention and awareness programs. The Task Force has included in its report recent guidance from the Centers for Disease Control and Prevention (“CDC”) on steps colleges can take to prevent sexual assault on campus. A summary can be found here. It has also incorporated key strategies for colleges and universities to effectively provide victim services. Further efforts by the government to develop effective prevention programs will continue into 2015.
Identifying trained, confidential victim advocates that can provide a victim of sexual assault with immediate and ongoing support, and creating institutional policies that clearly define who, when, and how information about an alleged sexual assault will be shared within and outside the campus community. As part of this recommendation, the Task Force released sample reporting and confidentiality protocols and recommended that colleges and universities use these protocols as a guide to develop a policy that fits their institutional needs.

Revising sexual misconduct policies with an emphasis on coordination among stakeholders and training. As part of this recommendation, the Task Force released a checklist for a comprehensive sexual misconduct policy.

Revising adjudicative procedures that will "encourage reporting and bolster trust in the process," but still maintain the accused's due process rights, such as the "single investigator" model.

The Task Force also has focused on internal governmental effectiveness by demanding more transparency and information-sharing from those agencies tasked with Title IX and Clery compliance. As part of these efforts, the Task Force has created a website (NotAlone.gov) making compliance information more accessible to all stakeholders. Earlier this week OCR issued further guidance on Title IX compliance and revised its enforcement procedures to reduce delays in enforcement and ensure interim relief for victims.

There is much to digest from these recommendations and regulatory guidance and it appears that additional enforcement measures and regulatory guidelines are in the works. While these new recommendations are, at this stage, just that - recommendations, they and recent regulatory changes demonstrate several percolating themes that colleges and universities would be well served to consider and address:

- **Coordination among investigation, security, reporting, and advocacy functions.** While institutional compliance with Title IX and Clery can be assigned to different stakeholders, the need to coordinate efforts and share information is becoming more critical with increased scrutiny from OCR and expanded regulatory guidelines. OCR will expect efforts to address sexual violence to be coordinated and effective campus-wide. Colleges and universities would be well served to confirm seamless coordination now (reflected in policy and practice) so that, should OCR come knocking, stakeholders are not surprised by what they learn from their colleagues and the campus' concerted effort to address sexual violence is already in motion.

- **Transparency, at least where it results in greater safety for students.** OCR expects that colleges and universities will make their policies, procedures, and resources accessible to students, faculty, and staff so that sexual violence is immediately addressed and remediated. Well-intentioned policies and resources have little utility if the campus community is unaware of how and where to report acts of sexual violence, how complaints are handled within an institution, and what resources are available when a complaint is made. Transparency in this respect can foster a campus culture of intolerance for sexual violence and an avenue to shine the light on such conduct whenever it arises.

- **Sufficient Campus Resources.** As mentioned above, regulators are looking at campus resources (both on and off campus) that address sexual misconduct from the initial report, through the investigation, and ultimately through final adjudication. Colleges and universities need to determine whether sufficient resources are being allocated to address incidents of sexual misconduct to ensure that reporting procedures are accessible and the institution's response to reports is both adequate and timely. What is clear from the above recommendations is that sufficient resources -- and the right resources -- are needed to implement well-drafted policies effectively.
If you have additional questions about this Note, please do not hesitate to contact the authors or any member of Waller.

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