



Briefing for Senate and House Staff: Sexual Violence on Campus

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2014 Campus Accountability and Safety Act Initial Reaction:

Our initial reaction to the proposed legislation is very positive. We believe the bill moves us forward on several fronts, clarifies issues, and continues forward progress on our mission of ending sexual violence.

Top 5 High Points In the Bill:

1. Campus Climate Surveys: Strongly support. Assessing campus climate is costly and beyond the research capability of some institutions. Putting the creation and administration of the survey in the hands of the Department of Education will ease the burden on institutions and allow for uniform application of the survey and easy comparability of results.

This year, every SUNY state-operated campus conducted or is going to conduct a climate assessment through a variety of methods, including surveys, open fora, information sessions, and roundtable discussions with relevant groups, including survivors of sexual assault. One concern is, how will institutions ensure a useful sample and good response rate? A suggested solution to this issue is tie the survey to the FAFSA and provide a financial incentive to those who fill out the survey.

2. Amnesty policy: Strongly support. SUNY's best practice is to include an amnesty provision to encourage reporting not only in cases of sexual violence, but also in cases where students are seeking medical assistance for themselves or others when drugs or alcohol are involved.

3. Title IX Coordinator as a designated Campus Security Authority: Strongly support. SUNY has consistently advised that the TIXC is a C.S.A. in that they have significant responsibility for student and campus activities. This should be the same at all colleges. We would go further. The term C.S.A. is misleading and leads to underreporting and confusion. It would be easier to understand and better for a campus to say "if you get a paycheck from the institution, and you learn of a crime, report it to campus police." Such a provision would exclude employees with privileges, such as pastoral and professional counselors.

4. Uniform enforcement of campus disciplinary proceedings: Strongly support. Separate processes are inherently unequal. SUNY campuses apply the same student code of conduct, including the campus disciplinary procedures, to all students. All colleges should as well.

5. Victim-centered approach: Strongly support. The bill includes important language that is consistent with VAWA, giving control to the victim to decide whether to go to law enforcement, and, if the victim wishes, the institution will cooperate with local law enforcement.

Top Questions, Concerns, & Clarifications:

1. Requirement to print paper ASRs: The Department of Education has accepted the practice of printing paper copies of the Annual Security Report on demand and posting it on the institution's website. By writing "and on the website" instead of "or on the website" (emphasis added), the bill may require institutions to print Annual Security Reports. A quick fix would be to change the language to "or on the website" and even encourage additional publication.

2. Reporting Disciplinary Numbers: This is a departure from Clery Act crime reporting because on its face it does not seem to have anything to do with Clery geography. While we support transparency and are proud of SUNY's record in this area, a concern is that these numbers will purport to tell a complete story but will, by their nature, not. There are many reasons that reports do not lead to adjudication, including (1) unknown accused, (2) victim chooses not to move forward, (3) accused isn't a member of the college community, or (4) accused withdraws pending hearing. SUNY is a leader and model for best practices in these instances, taking the following approaches in those instances:

1. Providing information about available resources to support victim in all cases, including when the accused is unknown;
2. weighing a victim's confidentiality request against victim and community safety, as required by Title IX guidance;
3. providing information about potential adjudication avenues, such as the criminal process or coordination with other institutions; and
4. adhering a transcript notation to the accused individual's records noting the withdrawal was pending disciplinary action.

3. Consulting with local, state and national organizations for policy development: As written, each institution would be required to consult with local, state, and national organizations. Practically, state and national organizations do not have the bandwidth to meet with every institution, just so they can comply. A solution is to ask one or more large institutions and national organizations to come up with model language to be adopted by other institutions.

4. Raising fines: While raising fines is not itself a bad idea, allowing the Department to use the funds for further administration and enforcement may result in a bounty mindset. If the goal is to help institutions create safe environments, fine money should be designated for compliance training, grants for training, and funding assistance for key staff (including victim advocates and confidential advisors).

5. Confidential advisor cannot be student: We support the notion that a confidential advisor should not be an undergraduate student. The plain language of the Bill, however, would prohibit a confidential advisor from registering for a Doctoral program in counseling. With a potential fine of one percent of the annual budget, institutions will forbid counselors from taking any classes, even appropriate ones (perhaps even continuing education), lest the Department of Education claim that as a student, the campus has violated the law. The language should be changed to clarify the definition of student.

6. Changing the Statute of Limitations to 180 days after graduation or separation: Many students take six or more years to graduate. Some Doctoral or professional students could rack up a decade or more. The Bill language would not prohibit a student from re-affiliating years after an event and restarting the clock. We support the motivation to give survivors more time to come forward, but an open-ended time frame could lead to documents destroyed pursuant to records management scheduled, witnesses who graduate, retire, or pass away, and faded memories. A reasonable time certain can accomplish this goal.