

H I G H E R E D U C A T I O N

## A L E R T

JANUARY  
2014US DEPARTMENT OF EDUCATION LEVIES MORE  
FINES FOR CLERY ACT VIOLATIONS*By Pedro A. Ramos and Rebecca Lacher*

President Obama recently called attention to the issue of sexual violence on college campuses, stating that “more needs to be done to ensure safe, secure environments for students” and that “we must strengthen and address compliance issues.” The newly established White House Task Force to Protect Students from Sexual Assault will develop a coordinated Federal response to campus rape and sexual assault, working with the Department of Education and Department of Justice (DOJ) to enforce the Federal laws aimed at making campuses safer.

The President’s announcement follows a record year for Clery Act enforcement activity. The Department of Education (Department) issued more fines in 2013 — in both number and total amount — than in any other year since the Clery Act was passed. With continued media attention on sexual assaults on campus, the President’s and the Department’s focus on enforcement efforts, and the Campus SaVE Act’s additional compliance requirements, universities should expect more and higher fines in 2014.

In the first 22 years of enforcement, the Department issued no more than three fines in a single year; in 2013 the Department imposed a record high *eight* fines, ranging from \$82,500 to \$280,000 and totaling \$1,455,000. That figure approaches the cumulative total of \$1,650,000 for all fines issued in the previous 22 years of the Act’s existence.

Among the additional signs pointing to more substantial efforts on the part of the Department:

- the significant increase in the number of Department-initiated compliance reviews;
- efforts to pursue enforcement of its assessed fines, including fighting two appeals and winning reinstatement in rulings by the Secretary of Education, Arne Duncan; and
- in 2012, raising the fine per violation from \$27,500 to \$35,000.

**The Clery Act**

The Clery Act requires colleges and universities participating in federal financial aid programs to maintain and disclose campus crime statistics and security information. The Department is tasked with enforcing the Clery Act and conducts compliance reviews. These reviews are initiated when a complaint is received, a media event raises certain concerns, the school’s independent audit identifies serious non-compliance, or through a review selection process. Nearly half of the program reviews conducted through 2010 were issued in response to complaints filed by Security On Campus, a precursor to what is now the [Clery Center](#). By contrast, in 2011 and 2012, more than 70 percent of the Department’s determinations were the result of its review selection process, with no complaint filed.

The Department issues a Final Program Review Determination (Determination) at the completion of its review. The Determination will state either that no further action is necessary or that the Determination has been referred to the appeals division for possible administrative action that may include fines. If the Department decides to fine a school — which it has for all but six instances in which an institution was referred — that fine is assessed by a separate letter that follows as soon as one month and as late as 36 months after the Determination.

**Enforcement Activity at the Department of Education**

Reviews, Determinations and fines by the Department are trending higher. From the first Determination in 1997 through 2008, the Department issued 25 Determinations with no more than four Determinations issued per year. Of the 25 schools, 10 were referred for possible fines (40 percent), and six schools had fines assessed against them (60 percent of those referred). A flurry of activity followed. Between 2009 and 2012, 34 Determinations were issued — more than in the prior 12 years. Of these Determinations, the Department referred 15 schools for possible fines (44 percent), 13 (87 percent) of which have been fined since.

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Recent trends and information gathered by Schnader suggest that the not-yet-published Department data for 2013 will likely show that the number of Determinations and fines increased again in 2013 and that 2014 commenced with an increased number of reviews in the pipeline. The 2012 Determinations were based on reviews conducted as early as 2008 and the record high number of fines assessed in 2013 were based on Determinations issued as early as 2010. The Department verified that it received 76 complaints of sexual violence between October of 2008 and September of 2013 and that it was investigating 26 cases as of November 19, 2013 (21 complaints and five compliance reviews). If the Department's activity is consistent with the past four years, these pending complaints and ongoing investigations will result in an even higher number of Determinations and a corresponding rise in the number of institutions fined than ever before.

In addition to increased enforcement efforts, new requirements under the Campus SaVE Act will become effective in March 2014. The Act requires educational programming on prevention and awareness in addition to new reporting categories of domestic violence, dating violence, sexual assault, and stalking. The Department will hold rulemaking sessions in January, February and March of this year to assist its preparation of regulations addressing the changes to the campus safety and security reporting requirements.

### **The Department of Justice Gets Involved**

The DOJ has joined the effort for increased enforcement and provided resources to assist colleges and universities with compliance. Mary Lou Leary, then Acting Assistant Attorney General for the Office of Justice Programs (OJP) stated in October of 2012 that the Office has "raised the profile of campus crime victims and made student safety a top priority of our system of higher education." In addition, when commenting on the 20th anniversary of the Clery Act in 2010, Ms. Leary's predecessor, Laurie Robinson, stated, "it's not enough that colleges and universities meet their obligations for reporting under the Clery Act. They also need to make sure help is available when a crime does occur."

In September of 2013, the DOJ announced that universities will have help from a \$2.3 million grant to create the

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National Center for Campus Public Safety. The Center will serve as a centralized resource for colleges and universities, develop comprehensive responses and strategies, and promote innovative practices specific to campus public safety efforts.

### **Continued Institutional Vigilance**

Colleges and universities want to keep their students and employees safe from sexual assaults and other crimes. They also want to meet compliance requirements and avoid the negative media attention that accompanies complaints and Department findings. Institutions will want to closely follow the Department's upcoming rulemaking sessions and the activities of the Task Force on Government Regulation of Higher Education as it considers the cost of compliance. In the interim, institutions of higher education should proactively strengthen policies and procedures and ensure delivery of effective education and training to ward off potential violations from a significantly more active DOE. ♦

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