



Legislative Update



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NACCOP Federal Relations Strategic Goals



- Federal Government Outreach and Collaboration
- Collaborative Engagement with Peer Associations & Professional Organizations
- Advance NACCOP's Legislative Interests
- Provide Legislative Specific Education & Training

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Hot Topics



- Congressional & Association Outreach
- Title IX Proposed Regulations
- Current Political Landscape
- HEA Reauthorization
- Proposed Legislation



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Recent Association Activity



- American Council on Education (ACE)
- National Student Affairs Professionals in Higher Education (NASPA)
- International Association of Campus Law Enforcement Administrators (IACLEA)
- American Association of State Colleges and Universities (AASCU)

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Federal Relations Activity



- | | |
|---|--|
| ■ HELP Committee <ul style="list-style-type: none">□ Sens Alexander & Murray | ■ ED CACD <ul style="list-style-type: none">□ Jim Moore, Senior Advisor |
| ■ House Committee on Education and Labor <ul style="list-style-type: none">□ Rep. Robert "Bobby" Scott | ■ Legislative Update Webinars <ul style="list-style-type: none">□ Semiannual |
| ■ Bipartisan Task Force to End Sexual Violence | ■ Legislative Newsletters <ul style="list-style-type: none">□ At least semiannual |
| ■ ED Notice and Comment Period for Title IX Proposed Regs <ul style="list-style-type: none">□ Member Feedback□ NACCOP submission | ■ Federal Relations NACCOP Committee <ul style="list-style-type: none">□ 40 Committee Members□ At least one Meeting/Semester□ Thinktank for NACCOP Leadership Team |

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Bipartisan Task Force to End Sexual Violence



- House Task Force – (bipartisan membership)
- Task Force conducting hearings on topics not tied to existing committees
 - Allows members more freedom to work on specific sexual violence issues
- Endorsing CASA and HALT legislation
- NACCOP attended roundtables/hearings
- NACCOP Engaged in Campus Sexual Assault Conversations
 - Roundtables or Hearings Likely

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Current Political Landscape



- New Administration and Congress:
 - Don't seem interested in gutting Clery Act
 - Want reasonable changes to reduce cost, confusion and burden to IHEs
 - Focused on HEA Reauthorization –(within this congress)
 - Clear concerns with Title IX – due process and evidentiary standard
 - Oversight and Enforcement:
 - ED OCR – 305 Active, 258 Private, 248 Multiple, 244 Public, and 197 Unresolved
 - ED CACD - Since January 1, 2016 - 35 institutions have been referred for fines exceeding \$6 million

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Current Legislative Landscape



- Reauthorization of the Higher Education Act (HEA)
 - House Committee on Education and the Workforce
 - PROSPER Act (dead on arrival)
 - Aim Higher Act
 - HEA Hearings
 - Senate Committee on Health, Education, Labor & Pensions (HELP)
 - HEA Hearing – Campus Sexual Assault
- Title IX Proposed Regulations
 - Open Comment Period – January 30, 2019
 - Final Regs/Guidance – Fall 2019 or longer?

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Senate HELP Committee Hearing



Reauthorizing HEA – “Addressing Campus Sexual Assault and Ensuring Student Safety and Rights”

- Senator Alexander (Committee Chair)
 - Supports proposed Title IX regulations
 - Due Process – cross-examination – challenges credibility
 - Location of sexual harassment
 - Definition of sexual harassment
 - Does not want to add unnecessary burden or expense to IHEs

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Senate HELP Committee Hearing



Reauthorizing HEA – “Addressing Campus Sexual Assault and Ensuring Student Safety and Rights”

- Senator Murray (Committee Ranking Member)
 - Wants comprehensive overhaul of HEA – discrimination, harassment, assault, bullying, and hazing
 - Criticized proposed Title IX regulations – not protecting students and not supporting victims
 - Wants HEA to reverse ED’s regulations
 - Cross examination = re-victimization
 - IHEs not qualified to be court rooms

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HE Association General Responses



- IHEs need flexibility based on their unique differences – diverse campuses
- ED proposed regulations are overly constraining
- Colleges are not courts – guidance is misguided – especially relating to cross-examination
- Don’t create confusing federal requirements that conflict with State laws
- Restricting an IHE’s ability to respond and address harassment – reoccurrence, retaliation, broader community issues

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High Level Issues/ Concerns



- Application of Guidance Expands Original Intent of the Law
- Reduces Administrative Capacity to Maintain Compliance
 - Short “Stay-Away” Trips and Repeated Use of Location
- Antihazing and Antiharassment Proposed Legislation Concerns
 - Operationalizing Definitions and New Policy Statements/Statistics
- Inefficiencies in Technical Support and Assistance
- Educating about the challenges faced by Practitioners
- Proposed Legislation

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Title IX Evolution

- 2001: Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties (Title IX)
- 2010: Dear Colleague Letter: Harassment and Bullying
- 2011: ~~Guidance on Addressing Sexual Harassment/Sexual Violence~~
- 2014: ~~Questions and Answers about Title IX and Sexual Violence~~
- 2015: Guidance on Schools to Designate a Title IX Coordinator
- 2016: ~~Guidance on Rights of Transgender Students~~
- 2017: Dear Colleague Letter and Q&A on Campus Sexual Misconduct (rescinded 2011, 2014, 2016)
- **2018: DRAFT REGULATIONS (Public Notice and Comment ended January 30, 2019)**
- **2019: September???**

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NACCOP and Title IX

September '17: Candice Jackson Meeting

October '17: OCR Listening Session

December '18: FR Committee Planning

January '19: NACCOP Response to NPRM

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Common Themes of Concern

- Creates adversarial process for adjudication
 - Prescriptive adjudication process
 - Cross Examination
- Conflates criminal process with administrative one
 - Constitutional due process
- Narrower definition of sexual harassment
- Conflicts with Title VII and employee processes
- RE and CSA conflicts
- Narrower scope of response
 - Enforcement authority
 - Limits IHES' response and ED's oversight

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Proposed Legislation



- PROSPER Act – December '17
- REACH Act – June '17
- End All Hazing Act - June '19
- Tyler Clementi Act '15
- Aim Higher Act – July '18
- Campus Accountability and Safety Act – April '19
- Hold Accountable and Lend Transparency Act – July '18
- Title IX Protection Act – October '17
- Survivor Outreach and Support Campus Act – May '19
- Safe Student Study Abroad Act – May '19

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House Committee on Education and Labor



Rep. Virginia Foxx – (R-NC)
Former Committee Chairperson

(PROSPER Act)

Legislation Never Left Committee

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How Could Prosper Influence HEA Reauthorization?



- Antihazing Legislation
 - Policy and Statistical Disclosures
- Campus Sexual Assault Due Process
 - Advanced Notice in Writing
 - Potential for Cross-Examination
 - Focus on Respondent Rights
 - Deference to Local Law Enforcement (LLE) Reporting and Criminal Investigations
 - Encourage IHEs to enter into MOUs with LLE
 - No Prohibition on Delaying Sexual Assault Investigation at the Request of LLE or Prosecutor

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Report and Educate About Campus Hazing Act of 2017 (H.R. 2926)



- Reintroduced in the House by Rep. Marcia L. Fudge (D-Ohio) and Rep. David P. Joyce (R-Ohio) in June of 2019.
- Originally introduced in June 2017
- Over 50 Bipartisan co-sponsors
- To require institutions of higher education to disclose hazing incidents, develop antihazing policies and deliver antihazing awareness education

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REACH of 2017 (H.R. 2926)



- Would require the number of hazing incidents reported to CSAs or LLE to be included in the ASR.
- Would provide a definition of hazing for IHEs to operate from
- Would require IHEs to establish and conduct hazing awareness and educational programming

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End All Hazing Act of 2019 (H.R. 3267)



- Introduced in the House by Rep. Marcia L. Fudge (D-Ohio) in June of 2019
- 15 Cosponsors (12D & 3R)
- To require IHEs to disclose hazing-related misconduct.

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End All Hazing Act of 2019



- Applies to conduct of:
 - Individuals and
 - Organizations
- Defines hazing:
 - Intentional, Knowing, or Reckless Act
 - Connected to Membership
 - Contributes to Injury, Mental Harm or Degradation

- Requires antihazing policies, awareness & prevention
- Requires mandatory reporting to LE within 72-hrs (serious bodily injury)
- Requires ongoing disclosures of reported hazing incidents
 - Includes both law and policy violations
 - Disclosure of Incident, Charges, Investigation & Adjudication

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Tyler Clementi Higher Education Anti-Harassment Act of 2015 (S.954)



- Reintroduced by Sen. Patty Murray (D-WA)
- 21 cosponsors

- To prevent harassment at institutions of higher education

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Aim Higher Act (HR 6543)



- Rep. Bobby Scott (D-VA)
- Introduced in July 2018
- 86 Cosponsors (All Democrat)

To Amend and Strengthen the Higher Education Act

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Aim Higher Act



Section 4095 - Clery Act Amendments

- Requires disclosure of reported Hazing and Harassment incidents.
- Defines Hazing as:
 - Intentional, knowing or reckless act
 - Committed in connection with initiation or affiliation
 - Contributes to substantial risk of physical injury or harm

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Aim Higher Act



■ Defines Harassment as:

- Conduct that is sufficiently severe, persistent or pervasive that it limits student access or creates a hostile or abusive environment.
- Can be undertaken in whole or in part through electronic means - cyberbullying
- Based on student's actual or perceived:
 - Race, gender, religion, national origin, sexual orientation, gender identity, ethnicity, or disability.

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Aim Higher Act



Statement of Policy regarding Harassment:

- Prohibiting Harassment:
 - Within an IHEs Clery geography
 - Through use of electronic mail issued by the IHE or through communication networks owned or controlled by the IHE
 - During an activity sponsored by the IHE or carried out with the use of resources provided by the IHE
- Description of programs to combat Harassment
- Procedures students should follow if harassment occurs
- Procedures the IHE will follow when receiving a Harassment report

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Aim Higher Act



Policy must address:

- Procedure for timely IHE action in harassment cases
- Possible sanctions to be imposed following disciplinary procedures
- Notification of existing counselling, mental health or student services for victims or perpetrators of harassment
- Identification of designated employee or office of the IHE who will receive and track harassment reports

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Aim Higher Act



Online Survey Tool for Campus Safety:

- Standardized online survey tool provided by ED:
 - Asses student experiences related to Domestic violence, Dating Violence, Sexual Assault & Stalking
 - Administer biennially
 - ED to assess biennially and issue report of findings

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Aim Higher Act



Survey Questions:

- Designed to determine incidence and prevalence
- Designed to determine student knowledge of IHE policies and procedures
- Designed to determine if victims reported
 - To whom and what response the victim received
- Whether victims were informed of or referred to resources
- Contextual questions related to incidents
- Designed to determine whether victim reported to LE and why the victim chose to report or not report

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CASA Gaining Attention



- Recently reintroduced in both the House and Senate – April 2019
- Endorsed by the Bipartisan Task Force to End Sexual Violence – June 2018

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Campus Accountability and Safety Act



- Requires IHE to develop a new campus security policy that includes the following:
 1. Sexual Assault Response Coordinators
 2. Information on the Institution's Website
 3. Online Reporting
 4. Amnesty Policy
 5. Training Requirements
 6. Uniform Student Disciplinary Proceedings for Sexual Violence
 7. Expansion of CSA's – (Title IX Responsible Employees)
 8. Written notice of institutional disciplinary process
 9. Written notice of disciplinary determination
 10. MOU between IHE & LLE
 11. Increase in fine amount

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CASA Concerns



- Sexual Assault Response Coordinators
- New and Increased Fines
- Campus Training Requirements
- New ASR Statistics and Statements
- Climate Survey
- MOU with Local Law Enforcement – forcing an agreement won't improve relationships

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HALT Campus Sexual Violence Act 2018 (H.R. 3381)



- Originally Introduced by Rep. Jackie Speier (D-CA) in 2015
- Reintroduced By Rep. Speier in 2019
- To amend the Higher Education Act of 1965 to increase transparency and reporting on campus sexual violence, and for other purposes.

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HALT Campus Sexual Violence Act



- Public Sharing of ED Enforcement Efforts:
 - List of institutions under investigation for Title IX and Clery violations.
 - The sanctions or findings issued for each investigative outcome.
 - Copies of program reviews and resolution agreements under Title IX.
 - Program reviews and resolution agreements under the Clery Act.

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HALT Campus Sexual Violence Act



- Creation of a task force called, "Campus Sexual Violence Task Force" to:
 - Provide information about sexual violence prevention, investigations and responses;
 - Provide recommendations for establishing sexual assault prevention and response teams;
 - Develop recommendations for IHE on providing survivor resources;
 - Consider additional Title IX and Clery enforcement options.

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HALT Campus Sexual Violence Act

- Clery Act/Title IX Enforcement:
 - Authorizes ED to impose a civil penalty to institutions found in violation of Title IX. Penalties/fines to be commensurate with gravity of violations.
 - Increases Clery Act fines to 100K/violation.
 - Increases individuals ability to sue for violations of Clery Act.
 - Authorizes additional 5M/year to hire, train, and retain employees dedicated to the investigation and enforcement of Title IX.
 - Authorizes additional 5M/year to hire, train, and retain employees dedicated to the investigation and enforcement of the Clery Act.

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Title IX Protection Act (HR 4030)



Rep. Jackie Speier (D-CA)

Introduced in October 2017

41 Cosponsors (All Democrats)

To require IHEs to comply with specific standards when responding to campus sexual harassment and violence

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Title IX Protection Act

- Disseminate notice of nondiscrimination.
- Designate at least one employee to coordinate Title IX efforts.
- Adopt and publish grievance procedures
- Grievance procedures must provide for prompt and equitable resolution
- Grievance procedures may include voluntary informal mechanisms for resolving some types of sexual harassment complaints.

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Title IX Protection Act



- Mediation and informal resolution are options.
- Notify the complainant of the right to end the informal process at any time.
- Require a school to address sexual harassment, including sexual violence, about which a responsible school employee knew or should have known.
- School should take action to:
 - Eliminate
 - Prevent
 - Address

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Title IX Protection Act



- Require schools to process all complaints regardless of where the conduct occurred.
- Mandates preponderance as the evidentiary standard.
- Require equal access to witnesses and evidence.
- Require similar and timely access to all information.

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Title IX Protection Act



- Not require schools to permit parties to have lawyers at any stage of the grievance proceeding.
- Require schools to not all parties to cross-examine each other.
- Allows parties to submit questions to a trained third party.
- Requires consent form complainant before initiating an investigation.
- Require grievance procedures specific clear timeframes.

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ALERT Act



- The Accountability of Leaders in Education to Report Title IX Investigations Act
 - Introduced in March of 2018 by Senators Gary Peters, D-MI, Debbie Stabenow, D-MI, and John Cornyn, R-TX
 - Identical Bill in the House
 - Reintroduced April 2019 by Rep. Elissa Slotkin (D-MI)

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ALERT Act



- Requires IHE Presidents and Boards to Certify they Followed Title IX Guidelines as it relates to Sex Based Crime and Harassment Investigations and Adjudications
 - Legislation in direct response to the Nassar and Sandusky Scandals at MSU and PSU

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ALERT Act



- Comprehensive Review includes:
 - Material findings of fact
 - Basis for conclusions about whether a covered employee violated a policy
 - The disposition of any complaints – including any sanctions

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Survivor Outreach and Support (SOS) Campus Act of 2015 (S. 1801)



- Originally Introduced in 2015 by Sen. Barbara Boxer (D-CA)
- Reintroduced by Sen. Tim Kaine (D-Va) in May of 2019
- 4 co-sponsors

- To amend the Higher Education Act of 1965 to require IHEs to have an independent advocate for campus sexual assault prevention and response.

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SOS Campus Act of 2015

- Requires institutions to designate an experienced independent advocate for campus sexual assault prevention and response.
- Requires the advocate to:
 - Report to someone at IHE other than those investigating and adjudicating complaints.
 - Submit annual report related to how resources provided to advocate were used.
 - Represent interests of students without regard to whether they conflict with interests of IHE.

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SOS Campus Act of 2015

- Directs advocates to:
 - Ensure that sexual assault victims are able to receive, at their election, specified information and services;
 - Guide sexual assault victims through;
 - Reporting, counseling, administrative, medical and health, academic accommodations, or legal processes of the institution or local law enforcement;
 - Information related to victim's rights and referrals to additional support services;
 - Information related to legal services and resources.
 - Attend adjudication proceedings as an advocate;
 - Maintain the privacy and confidentiality of victims.

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Safe Student Study Abroad Act (S. 1572)



- Introduced by Sen. Rob Portman (R-OH)
- Introduced in HELP Committee on May 21, 2019
- Related Bill Introduced in the House in November of 2017

- To require additional reporting on crime and harm that occurs during student participation in programs of study abroad.

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Safe Student Study Abroad Act

- IHEs Shall Develop and Distribute:

- A statement that the institution has adopted and implemented a program to protect students participating in a program of study abroad approved for credit by the institution from crime and harm while participating in such program of study abroad that

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Safe Student Study Abroad Act

- A biennial review by the institution of the programs of study abroad approved for credit by the institution
 - Effectiveness at Protecting Students
 - Accidents, Illnesses, and Deaths Occurring during Study Abroad
 - Sexual Assaults against Program Participants During Program Participation
 - Incidents Resulting in Police Involvement

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Safe Student Study Abroad Act



- Disclosure of Study Abroad Crime Statistics
 - Clery Geography and Beyond
- Requires Open Disclosures
 - Pre-Trip Orientation Sessions
 - Travel Warnings and Alerts
 - Post-Trip Orientation Sessions – Exit Interview

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Questions?



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WHAT LEGISLATIVE ISSUES ARE YOU MOST INTERESTED IN?



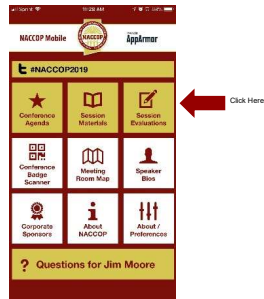
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Remember to Evaluate This Session!



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