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New Sexual Misconduct Reporting Requirements for Pennsylvania Higher Education Institutions

By Corey S. D. Norcross and Tara M. Walsh

On June 28, 2019, Gov. Tom Wolf signed into law two new initiatives designed to combat sexual harassment and sexual violence on college and university campuses. The initiatives, which amend the Pennsylvania Public School Code of 1949, aim to encourage students to report incidents of sexual harassment and sexual violence. They are slated to take effect in June 2020.

1) Protection from Disciplinary Action Related to Drug or Alcohol Use Revealed in Report

The first initiative requires that all postsecondary institutions adopt a policy that ensures that any person reporting an incident of sexual harassment or sexual violence will not be sanctioned for drug or alcohol use disclosed in the report. This protection must be part of the institution's "clear, understandable written policy on sexual harassment and sexual violence that informs victims of their rights under federal and state law, including the Crime Victims Bill of Rights." The initiative does not, however, address criminal penalties for any disclosed drinking or drug use.

This initiative further states that the Pennsylvania Department of Education will develop a model policy, which postsecondary institutions may adopt. However, schools are advised against placing total reliance upon the model policy, as there is no guarantee it also complies with federal regulations and guidance.

2) Online Reporting Systems

The second initiative requires postsecondary institutions to provide an online system that both students and employees can use to report incidents of sexual harassment and sexual violence. The online system must accept anonymous reports and the institution "may not fail or refuse to investigate an anonymous report because it is anonymous."

The online reporting system must provide those who are making the reports with (1) information regarding who will receive and have access to the filed report, (2) how information gathered through the online reporting system will be used and (3) contact information for on- and off-campus organizations serving victims of sexual harassment and sexual violence.

Postsecondary institutions are also required to develop safeguards to protect individuals making the reports as well as the information being reported. Specifically, the institution must limit access to the data collected, created or maintained to the individual reporting the incident and to any employees with explicit authorization from the institution.

Indeed, an employee’s ability to access the reported information must be limited through the use of “role-based access that corresponds to the official duties or training level of the individual and the institutional authorization that grants access for that purpose.” The institution must also maintain a “data audit trail” when information related to a report of sexual harassment or sexual violence is shared outside of the institution.

Gov. Wolf’s new legislation is being touted as the first significant state effort in recent history to combat sexual harassment and sexual violence on college and university campuses. And while Pennsylvania claims to be the first, from what we have observed over the last 24 months, it won’t be the last. Pennsylvania postsecondary institutions will want to watch closely for further developments in this area, as the Governor has indicated that the new initiatives “create a path for more legislative progress in the future.” ■



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