



**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
  - Sens Alexander & Murray
- House Committee on Education and Labor
  - Rep. Robert "Bobby" Scott
- Bipartisan Task Force to End Sexual Violence
- ED Notice and Comment Period for Title IX Proposed Regs
  - Member Feedback
  - NACCOP submission
- ED CACD
  - Jim Moore, Senior Advisor
- Legislative Update Webinars
  - Semiannual
- Legislative Newsletters
  - At least semiannual
- Federal Relations NACCOP Committee
  - 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:
  - Sexual Assault Response Coordinators
  - Information on the Institution's Website
  - Online Reporting
  - Amnesty Policy
  - Training Requirements
  - Uniform Student Disciplinary Proceedings for Sexual Violence
  - Expansion of CSA's – (Title IX Responsible Employees)
  - Written notice of institutional disciplinary process
  - Written notice of disciplinary determination
  - MOU between IHE & LLE
  - 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?**

**Bill Lafferty: [blafferty@naccop.org](mailto:blafferty@naccop.org)**

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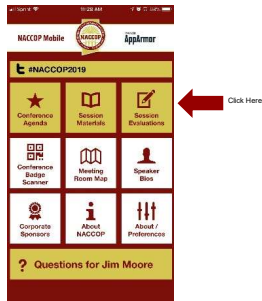
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## Remember to Evaluate This Session!



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