

Higher Education Act of 1965, §485(f) (20 U.S.C. 1092(f)), the "Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act," as amended by §304(a) of S. 47, the "Violence Against Women Reauthorization Act of 2013"

Incorporates final statutory language signed into law by
The President of the United States of America on March 7, 2013

Section 1. Short title

This Act may be cited as the "Tyler Clementi Higher Education Anti-Harrasment Act of 2017"

Section 2

§ 485.—Institutional and financial assistance information for students. (20 U.S.C. 1092)

(f) DISCLOSURE OF CAMPUS SECURITY AND HARRASSMENT POLICY AND CAMPUS CRIME STATISTICS.—(1) Each eligible institution participating in any program under this title, other than a foreign institution of higher education, shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

(B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(C) A statement of current policies concerning campus law enforcement, including—

(i) the law enforcement authority of campus security personnel;

(ii) the working relationship of campus security personnel with State and local law enforcement agencies, including whether the institution has agreements with such agencies, such as written memoranda of understanding, for the investigation of alleged criminal offenses; and

(iii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate law enforcement agencies, when the victim of such crime elects or is unable to make such a report.

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(E) A description of programs designed to inform students and employees about the prevention of crimes.

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available—

(i) of the following criminal offenses reported to campus security authorities or local police agencies:

(I) murder;

(II) sex offenses, forcible or nonforcible;

(III) robbery;

(IV) aggravated assault;

(V) burglary;

(VI) motor vehicle theft;

(VII) manslaughter;

(VIII) arson

(IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

(ii) of the crimes described in subclauses (I) through (VIII) of clause (i), of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of other crimes involving bodily injury to any person, in which the victim is intentionally selected because of the actual or perceived race, gender, religion, national origin, sexual orientation, gender identity, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice; and

(iii) of domestic violence, dating violence, and stalking incidents that were reported to campus security authorities or local police agencies.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

(H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under section 120 of this Act.

(I) A statement advising the campus community where law enforcement agency information provided by a State under section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(j)), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.

(J) A statement of current campus policies regarding immediate emergency response and evacuation procedures, including the use of electronic and cellular communication (if appropriate), which policies shall include procedures to—

(i) immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on the campus, as defined in paragraph (6), unless issuing a notification will compromise efforts to contain the emergency;

(ii) publicize emergency response and evacuation procedures on an annual basis in a manner designed to reach students and staff; and

(iii) test emergency response and evacuation procedures on an annual basis.

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this title, other than a foreign institution of higher education, shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely, that withholds the names of victims as confidential, and that will aid in the prevention of similar occurrences.

(4)(A) Each institution participating in any program under this title, other than a foreign institution of higher education, that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including—

(i) the nature, date, time, and general location of each crime; and

(ii) the disposition of the complaint, if known.

(B)(i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this title, other than a foreign institution of higher education, shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall—

(A) review such statistics and report to the authorizing committees on campus crime statistics by September 1, 2000;

(B) make copies of the statistics submitted to the Secretary available to the public; and

(C) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6)(A) In this subsection:

(i) The terms "dating violence", "domestic violence", and "stalking" have the meaning given such terms in section 4002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)).

(ii) The term "campus" means—

(I) any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(II) property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(iii) The term commercial mobile service has the meaning given the term in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)).

(iv) The term electronic communication means any transfer of signs, signals, writing, images, sounds, or data of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.

(v) The term electronic messaging services has the meaning given the term in section 102 of the Communications Assistance for Law Enforcement Act (47 U.S.C. 1001).

(vi) The term harassment means conduct, including acts of verbal, nonverbal, or physical aggression, intimidation, or hostility (including conduct that is undertaken in whole or in part, through the use of electronic messaging services, commercial mobile services, electronic communications, or other technology) that—

(I) is sufficiently severe, persistent, or pervasive so as to limit a student's ability to participate in or benefit from a program or activity at an institution of higher education, or to create a hostile or abusive educational environment at an institution of higher education; and

(II) is based on a student's actual or perceived—

(aa) race;

(bb) color;

(cc) national origin;

(dd) sex;

(ee) disability;

(ff) sexual orientation;

(gg) gender identity; or

(hh) religion.

(vii) The term "noncampus building or property" means—

(I) any building or property owned or controlled by a student organization recognized by the institution; and

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(II) any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iviii) The term "public property" means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.

(ixv) The term "sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

(7) The statistics described in clauses (i) and (ii) of paragraph (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act. For the offenses of domestic violence, dating violence, and stalking, such statistics shall be compiled in accordance with the definitions used in section 40002(a) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)). Such statistics shall not identify victims of crimes or persons accused of crimes.

(8)(A) Each institution of higher education participating in any program under this title and title IV of the Economic Opportunity Act of 1964, other than a foreign institution of higher education, shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding—

(i) such institution's programs to prevent domestic violence, dating violence, sexual assault, and stalking; and

(ii) the procedures that such institution will follow once an incident of domestic violence, dating violence, sexual assault, or stalking has been reported, including a statement of the standard of evidence that will be used during any institutional conduct proceeding arising from such a report.

(B) The policy described in subparagraph (A) shall address the following areas:

(i) Education programs to promote the awareness of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking, which shall include—

(I) primary prevention and awareness programs for all incoming students and new employees, which shall include—

(aa) a statement that the institution of higher education prohibits the offenses of domestic violence, dating violence, sexual assault, and stalking;

(bb) the definition of domestic violence, dating violence, sexual assault, and stalking in the applicable jurisdiction;

(cc) the definition of consent, in reference to sexual activity, in the applicable jurisdiction;

(dd) safe and positive options for bystander intervention that may be carried out by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person other than such individual;

(ee) information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks; and

(ff) the information described in clauses (ii) through (vii); and

(II) ongoing prevention and awareness campaigns for students and faculty, including information described in items (aa) through (ff) of subclause (I).

(ii) Possible sanctions or protective measures that such institution may impose following a final determination of an institutional disciplinary procedure regarding rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking.

(iii) Procedures victims should follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about—

(I) the importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order;

(II) to whom the alleged offense should be reported;

(III) options regarding law enforcement and campus authorities, including notification of the victim's option to—

(aa) notify proper law enforcement authorities, including on-campus and local police;

(bb) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and

(cc) decline to notify such authorities; and

(III) where applicable, the rights of victims and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court.

(iv) Procedures for institutional disciplinary action in cases of alleged domestic violence, dating violence, sexual assault, or stalking, which shall include a clear statement that—

(I) such proceedings shall—

(aa) provide a prompt, fair, and impartial investigation and resolution; and

(bb) be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

(II) the accuser and the accused are entitled to the same opportunities to have others present during an institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice; and

(III) both the accuser and the accused shall be simultaneously informed, in writing, of—

(aa) the outcome of any institutional disciplinary proceeding that arises from an allegation of domestic violence, dating violence, sexual assault, or stalking;

(bb) the institution's procedures for the accused and the victim to appeal the results of the institutional disciplinary proceeding;

(cc) of any change to the results that occurs prior to the time that such results become final; and

(dd) when such results become final.

(v) Information about how the institution will protect the confidentiality of victims, including how publicly-available recordkeeping will be accomplished without the inclusion of identifying information about the victim, to the extent permissible by law.

(vi) Written notification of students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, and other services available for victims both on-campus and in the community.

(vii) Written notification of victims about options for, and available assistance in, changing academic, living, transportation, and working situations, if so requested by the victim and if such accommodations are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.

(C) A student or employee who reports to an institution of higher education that the student or employee has been a victim of domestic violence, dating violence, sexual assault, or stalking, whether the offense occurred on or off campus, shall be provided with a written explanation of the student or employee's rights and options, as described in clauses (ii) through (vii) of subparagraph (B).

(9) (A) Each institution of higher education participating in any program under this title, other than a foreign institution of higher education, shall develop and distribute as part of the report described in paragraph (1)—

(i) a statement of policy regarding harassment, which shall include—

(l) a prohibition of harassment of enrolled students by other students, faculty, and staff—

(aa) on campus;

(bb) in noncampus buildings or on noncampus property;

(cc) on public property;

(dd) in dormitories or other residential facilities for students on campus;

(ee) through the use of electronic mail addresses issued by the institution of higher education;

(ff) through the use of computers and communication networks, including any telecommunications service, owned, operated, or contracted for use by the institution of higher education or its agents; or

(gg) during an activity sponsored by the institution of higher education or carried out with the use of resources provided by the institution of higher education;

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(II) a description of the institution's programs to combat harassment, which shall be aimed at the prevention of harassment;

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(III) a description of the procedures that a student should follow if an incident of harassment occurs; and

(IV) a description of the procedures that the institution will follow once an incident of harassment has been reported; and

(ii) a detailed description of each occasion in which a pattern of harassment occurs based on one or more of the characteristics described in paragraph (6)(A)(vi)(II) and the actions taken by the institution of higher education.

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(B) The statement of policy described in subparagraph (A)(i) shall address the following areas:

(i) Procedures for timely institutional action in cases of alleged harassment, which procedures shall include a clear statement that the accuser and the accused shall be informed of the outcome of any disciplinary proceedings in response to an allegation of harassment.

(ii) Possible sanctions to be imposed following the final determination of an institutional disciplinary procedure regarding harassment.

(iii) Notification of existing counseling, mental health, or student services for victims or perpetrators of harassment, both on campus and in the community.

(iv) Identification of a designated employee or office at the institution that will be responsible for receiving and tracking each report of harassment by a student, faculty, or staff member.

~~(109)~~ The Secretary, in consultation with the Attorney General of the United States, shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

~~(119)~~ Nothing in this section shall be construed to require the reporting or disclosure of privileged information.

~~(124)~~ The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

~~(132)~~ For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur—

(A) on campus;

(B) in or on a noncampus building or property;

(C) on public property; and

(D) in dormitories or other residential facilities for students on campus.

~~(143)~~ Upon a determination pursuant to section 487(c)(3)(B) that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under section 487(c)(3)(B).

(154)(A) Nothing in this subsection may be construed to—

(i) create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(ii) establish any standard of care.

(B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

(165) The Secretary shall annually report to the authorizing committees regarding compliance with this subsection by institutions of higher education, including an up-to-date report on the Secretary's monitoring of such compliance.

(176)(A) The Secretary shall seek the advice and counsel of the Attorney General of the United States concerning the development, and dissemination to institutions of higher education, of best practices information about campus safety and emergencies.

(B) The Secretary shall seek the advice and counsel of the Attorney General of the United States and the Secretary of Health and Human Services concerning the development, and dissemination to institutions of higher education, of best practices information about preventing and responding to incidents of domestic violence, dating violence, sexual assault, and stalking, including elements of institutional policies that have proven successful based on evidence-based outcome measurements.

(187) No officer, employee, or agent of an institution, participating in any program under this title shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual for exercising their rights or responsibilities under any provision of this subsection.

(198) This subsection may be cited as the "Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act".

Section 304(b) of S. 47 provides as follows:

(b) *Effective Date.* The amendments made by this section shall take effect with respect to the annual security report under section 485(f)(1) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(1)) prepared by an institution of higher education 1 calendar year after the date of enactment of this Act, and each subsequent calendar year.

Section 3. Anti-Harrassment Competitive Grant Program.

(a) Definitions

In this section:

(1) Eligible Entity.

The term eligible entity means—

(A) an institution of higher education, including an institution of higher education in a collaborative partnership with a nonprofit organization; or

(B) a consortium of institutions of higher education located in the same State.

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(2)Harassment.

The term “harassment” has the meaning given the term in section 485(f)(6)(A) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(6)(A)), as amended by section 2 of this Act.

(3)Secretary.

The term Secretary means the Secretary of Education.

(b)Program Authorized.

The Secretary is authorized to award grants, on a competitive basis, to eligible entities to enable eligible entities to carry out the authorized activities described in subsection (d).

(c)Amount of Grant Awards.

The Secretary shall ensure that each grant awarded under this section is of sufficient amount to enable the grantee to meet the purpose of this section.

(d)Authorized Activities.

An eligible entity that receives a grant under this section shall use the funds made available through the grant to address one or more of the types of harassment listed in section 485(f)(6)(A)(vi)(II) of the Higher Education Act of 1965 (20 U.S.C. 1092(f)(6)(A)(vi)(II)), as amended by section 2 of this Act, by initiating, expanding, or improving programs—

(1)to prevent the harassment of students at institutions of higher education;

(2)at institutions of higher education that provide counseling or redress services to students who have suffered such harassment or students who have been accused of subjecting other students to such harassment; or

(3)that educate or train students, faculty, or staff of institutions of higher education about ways to prevent harassment or ways to address such harassment if it occurs.

(e)Application.

To be eligible to receive a grant under this section, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information, as the Secretary may require.

(f)Duration: Renewal.

A grant under this section shall be awarded for a period of not more than 3 years. The Secretary may renew a grant under this section for one additional period of not more than 2 years.

(g)Award Considerations.

In awarding a grant under this section, the Secretary shall select eligible entities that demonstrate the greatest need for a grant and the greatest potential benefit from receipt of a grant.

(h)Report and Evaluation.

(1)Evaluation and Report to the Secretary.

Not later than 6 months after the end of the eligible entity's grant period, the eligible entity shall—

(A)evaluate the effectiveness of the activities carried out with the use of funds awarded pursuant to this section in decreasing harassment and improving tolerance; and

(B)prepare and submit to the Secretary a report on the results of the evaluation conducted by the entity.

(2)Evaluation and Report to Congress.

Not later than 12 months after the date of receipt of the first report submitted pursuant to paragraph (1) and annually thereafter, the Secretary shall provide to Congress a report that includes the following:

(A)The number and types of eligible entities receiving assistance under this section.

(B)The anti-harassment programs being implemented with assistance under this section and the costs of such programs.

(C)Any other information determined by the Secretary to be useful in evaluating the overall effectiveness of the program established under this section in decreasing incidents of harassment at institutions of higher education.

(3)Best Practices Report.

The Secretary shall use the information provided under paragraph (1) to publish a report of evidence-based best practices for combating harassment at institutions of higher education, which shall be based on scientific research that meets nationally recognized standards. The report shall be made available to all institutions of higher education and other interested parties.

(i)Authorization of Appropriations.

There are authorized to be appropriated to carry out this section \$50,000,000 for each of fiscal years 2017 through 2022.

Section 4.Effect on other laws

Nothing in this Act shall be construed to invalidate or limit rights, remedies, procedures, or legal standards available to victims of discrimination under any other Federal law or law of a State or political subdivision of a State, including title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 or 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794, 794a), or the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). The obligations imposed by this Act are in addition to those imposed by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

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