



The State University
of New York

Office of General Counsel

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July 13, 2016

Hon. Lamar Alexander
Chairman, Health, Education, Labor and Pensions (HELP) Committee
U.S. Senate Washington, D.C. 20510

Hon. Patty Murray
Ranking Member, Health, Education, Labor and Pensions (HELP) Committee
U.S. Senate Washington, D.C. 20510

Re: Campus Safety: Improving Prevention and Response Efforts

Dear Chairman Alexander, Ranking Member Murray, and Members of the Committee:

On behalf of The State University of New York (SUNY), I thank the Committee for convening this important hearing on Campus Safety: Improving Prevention and Response Efforts. SUNY is the nation's largest comprehensive public university system, with nearly half a million students at 64 campuses, including community colleges, technology colleges, comprehensive colleges, and doctoral degree-granting universities. Indeed, SUNY is a microcosm of the national higher education sector. As such, this testimony stems from the system's extensive experience in creating policies that both fit the needs of diverse institutions and support system-wide objectives.

As an Associate Counsel in the Office of General Counsel for the SUNY system, I view campus safety issues through the laws that govern institutions of higher education, which are primarily the Higher Education Act (including the Clery Act), Title IX, and state and local laws that apply to campuses. We play a central role in interpreting what the law means for students, faculty and staff, on the 64 campuses within the SUNY system.

While this hearing will focus on campus safety, I will concentrate my comments on the prevention of and response to violence on college campuses, a field that has been my professional focus and is essential for campus safety. SUNY has an unwavering commitment to its students and has undertaken strong measures to protect their safety. We strongly support the Senate's efforts to make student safety a national priority, as we have done in New York State. We were proud to work with New York's governor and legislature to develop the nation's most comprehensive state law addressing interpersonal violence on campus.

Reducing and Preventing Bullying and Hazing: Bullying and hazing have significant negative impacts on our students. SUNY has worked hard on training, policies, and methods to cut down on bullying and hazing and to quickly respond when it does occur. On SUNY campuses, we train

To Learn
To Search
To Serve



our student groups, deal seriously with those who engage in hazing and bullying, and treat multiple violations with the utmost gravity. But as with prevention and response to sexual and interpersonal violence, colleges need this education and cultural change to begin earlier. Ideas and ideals are ingrained in children long before they start taking college admissions tours. A casual glance at television shows, news media, and social media shows bullying and defamation proceeding at a breathless pace. Institutions can best address bullying if Congress requires educational changes that occur earlier in students' lives.

SUNY has engaged campus leadership at different levels to address bullying and hazing. SUNY has a number of "role-alike" groups where Title IX Coordinators, various student affairs professionals, and many others from the same position within a campus will meet to cross-train and develop best practices. Many of these meetings have focused on bullying and hazing, the need to respond appropriately to protect victims and witnesses while seriously addressing allegations. Where we can, we have engaged New York State and national partners (for instance, conducting a training with the F.B.I. and U.S. Marshalls) to learn and implement best practices.

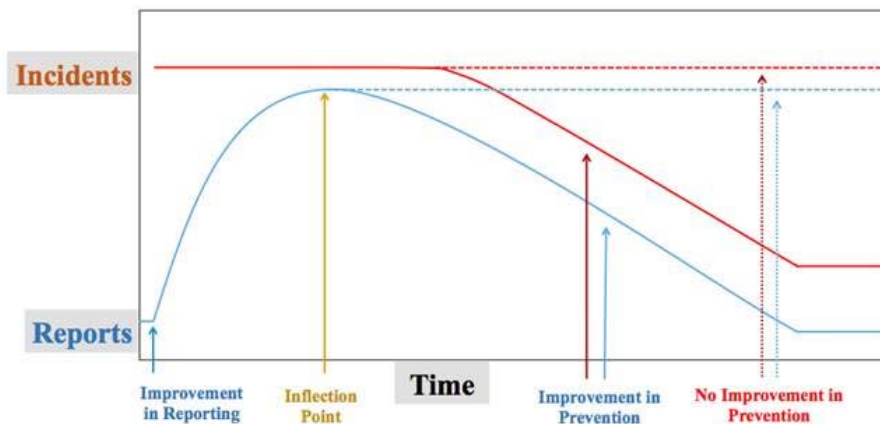
As a high percentage of bullying occurs through digital and social media, Congress should look at the role of the Communications Decency Act in providing immunity to providers for content that they do not create (a good idea) while not requiring them to temporarily take down and review harmful content when they receive a notification (a bad idea). Some victims of online and social media bullying can afford expensive attorneys and investigators to act against their bullies; most cannot. The cost of bullying is all but free; the cost of fighting back is prohibitive. Congress may wish to consider a system similar to the notice and takedown provisions of the Digital Millennium Copyright Act, allowing a victim to notify a website about defamatory material, then have that material temporarily removed and analyzed to ensure that it is defamatory and not protected speech, and either kept off or returned to the site. Some companies are, by necessity, already reviewing comments or prohibiting anonymous commenting. Congress can require or promote consistency in a way that balances speech with preventing brutal bullying and defamation online.

The Clery Act, which turned a quarter century late last year, has traditionally aimed at reporting, and in recent years responding to, certain crimes that occur in certain designated geographic locations. Congress changed that focus in 2013 adding the new requirements to count and classify gender-based violent crimes, and focus on prevention, training, and education, long a hallmark of our own programming. Although we had devoted resources and time to prevention in the past, the legislative shift has given SUNY access to partnerships and new ideas as colleges and community organizations devote more resources and attention to prevention. SUNY takes the issues of harassment and discrimination, including sexual violence, extremely seriously. We believe that this focus has allowed SUNY to emerge as a leader, providing resources to students. We partner with national, state, and local organizations, as well as colleges and universities across the country, to advance our mission of ending violence on campus.

Title IX and its implementing regulations prohibit discrimination based on sex. Alongside other civil rights law, this has been read to include gender-based violence and peer harassment based on race, color, sex, national origin, or disability. Several of these behaviors are common forms of

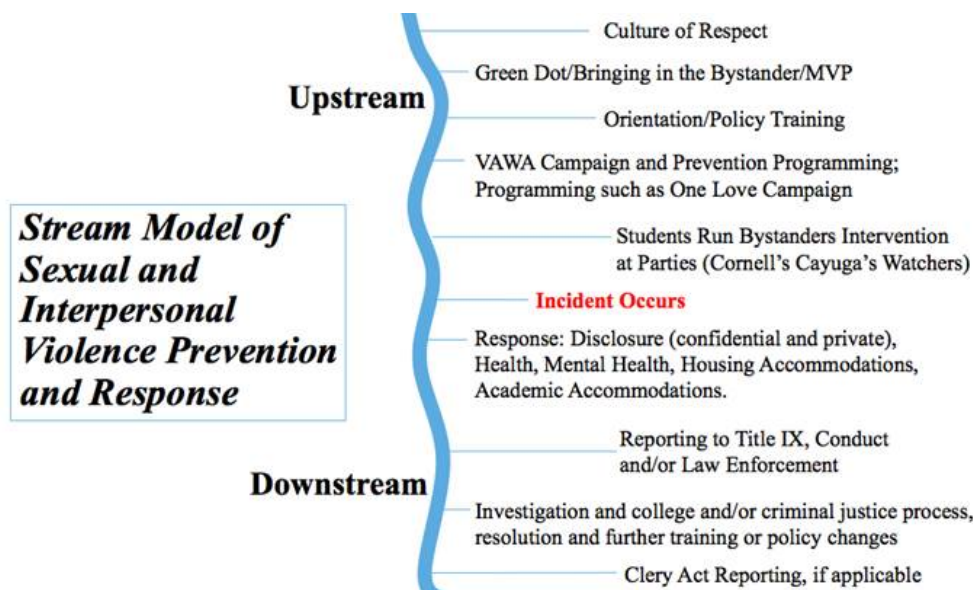
bullying or hazing. The Department of Education (ED) Office for Civil Rights has issued guidance to colleges and universities to provide clarity around the law, and ensure it is enforced properly, guiding campuses to limit the effects of violence and prevent its recurrence. In other words, at least traditionally, both the Clery Act and Title IX guidance looked backwards: respond to violence, count it, report it. There were some minor calls for training, but both laws were primarily reactive, not proactive, to violence.

Shifting From Response to Prevention: Truth be told, SUNY does not want to be a leader in developing programs, processes, and trainings to *respond* to violence; rather, we look to the day when our dedicated professionals have no violence to respond to. That, quite simply, is our goal. As colleges progressively do a better job of notifying students how to report violence, reports will increase, flooding the offices assigned and requiring additional resources.¹ If we are ever to reduce reports, it will have to be through reducing violence by shifting to a regime of prevention training. That, in turn, will require additional resources and emphasis on the issue from the top down. Without such resources, reports will stay high even as violence stays high. The graph below exemplifies this curve:



To bend that curve, colleges must continually look “upstream,” as shown in the graphic below. Good work *after* the incident occurs is not enough. We must strive to take “water” out of the “stream” in the form of fewer incidents that necessitate responses.

¹ Joseph Storch, *Sexual Violence: Responding to Reports Is Not Enough*, INSIDE HIGHER ED, <https://www.insidehighered.com/views/2016/03/14/colleges-must-not-only-respond-reports-sexual-violence-also-prevent-it-essay> (Mar. 14, 2016).



In 2015, SUNY continued its partnership with the New York State Department of Health, working together to provide each SUNY campus with a choice of *Green Dot* or *Bringing in the Bystander/Know Your Power* training at no cost to the SUNY attendees. Hundreds were trained in one program or both. In addition, SUNY has a strong relationship with the One Love Foundation, with thousands of administrators, faculty, and students trained using their dating violence prevention curriculum. Students have been moved by the program and it has caused them to question how they would help a friend in a violent relationship. The SUNY Athletic Conference (SUNYAC) decided to take a leadership role in dating violence prevention, and SUNYAC student-athletes have undergone several trainings and engaged in programming on their campuses. In April 2017, the student-athletes will lead a conference-wide single day event that will raise awareness of dating violence amongst tens of thousands of students.

New York Education Law 129-B: In October 2014, New York State Governor Andrew M. Cuomo met with the SUNY Board of Trustees about sexual assault on campus, and the Board passed a resolution that would “establish a comprehensive, system-wide, uniform set of sexual assault prevention and response practices at SUNY campuses, which can be a model for colleges and universities across the State and the nation.”² SUNY Chancellor Nancy L. Zimpher, a leader on this issue, convened a working group³ comprised of campus presidents, counsel, student life leadership, Title IX coordinators, University police and public safety representatives, students, faculty, and nationally recognized external experts to take five-dozen very good policies and develop a single cutting-edge set of policies. In fewer than 60 days, the group ably fulfilled its mandate, and as of December 1, 2014, those policies began to roll out on campus. Governor Cuomo soon took SUNY’s policies to the next level, proposing them as state law. After extensive, valuable input from victim advocates, students, private and public colleges, and other

² <http://www.suny.edu/about/leadership/board-of-trustees/meetings/webcastdocs/Sexual%20Assault%20Response%20and%20Prevention%20REVISED-Merged.pdf>.

³ <http://system.suny.edu/sexual-violence-prevention-workgroup/>.

experts, the bills passed nearly unanimously, and Education Law §129-B⁴ was enacted. This practice and the resulting law, can be a model for colleges and universities, and key stakeholders to come together and improve campus safety prevention and response on broader issues.

Prevention and Response Webinar Series: SUNY co-produces a webinar series⁵ with the New York State Department of Health, New York State Office for the Prevention of Domestic Violence, the New York State Coalition Against Sexual Assault, and the New York State Coalition Against Domestic Violence to provide training in prevention and response. Webinars are open to colleges, community partners, and government agencies. Topics include explaining Title IX to beginners, cultivating a peer-educator program, efficiently educating members of Greek letter organizations, developing different types of campus-wide violence-prevention campaigns, de-mystifying the sexual assault forensic exam, addressing sexual and interpersonal violence in study-abroad settings, reaching out to nightlife establishments to partner in violence prevention, a conversation with *Missoula* author Jon Krakauer, and many more. Webinars are offered completely free of cost and can create a strong sense of community for students by helping raise awareness and educating students.

Sworn Law Enforcement and Local Law Enforcement Memoranda of Understanding: SUNY campuses have Title IX coordinators, professionals responsible for Clery Act compliance and training, and trained counselors. State-operated colleges have sworn law enforcement: University Police officers who train alongside local law enforcement but also have at least 60 college credits prior to starting their role. University Police are knowledgeable and recognized in their field, trained in community policing and trauma-informed response. SUNY campuses maintain MOUs with local law enforcement regarding response to crimes of violence and other matters. SUNY has a strong relationship with the New York State Police, and we routinely partner on initiatives to promote safety on campus and in the community.

Training: In recent years, SUNY conducted hundreds of general and specialized trainings for campus personnel in complying with the Higher Education Act (including the Clery Act as amended by VAWA), Title IX, and New York Education Law 129-B, and in going beyond these laws to best serve students. Some live trainings have drawn hundreds of participants. Audience members have included University and campus leadership, administrators, faculty, and students.

In the months after Congress reauthorized the Violence Against Women Act amending the Clery Act, SUNY worked diligently to advise negotiated rule makers on relevant issues, and to develop guidance and training for SUNY professionals and others in higher education (including several national live trainings and webinars). ED issued its proposed regulations on June 19, 2014. On June 26 and July 9, SUNY conducted two live trainings for over 250 SUNY professionals on how to comply with the law and regulations (even though the regulations were not to take effect until the next summer). The training team wrote a 93-page guidance document⁶ in the one week before the first training and, following the trainings, SUNY made the guidance free and public; it was shared by several national higher education groups and has since been accessed over 30,000

⁴ <https://www.ny.gov/programs/enough-enough-combating-sexual-assault-college-campuses>.

⁵ <http://system.suny.edu/sexual-violence-prevention-workgroup/training/webinars/>.

⁶ <http://system.suny.edu/media/suny/content-assets/documents/generalcounsel/SUNY-VAWA-Guidance-2014.pdf>.

times. SUNY is partnering with the City University of New York and with State agencies and community organizations to develop cutting-edge prevention resources and trainings. We would like to make them available to the higher education and larger communities, in order to maximize the impact on campus safety. In the years to come, with the support of Congress, we could do even more to reduce violence before it occurs.

Amendments to the Clery Act: SUNY works diligently to comply with the Clery Act and related obligations. We have been privileged to work with members and staff in the House and Senate—from both parties—on amendments to the law that will allow colleges to comply more efficiently. While some minor changes can ease compliance, below are several major changes Congress could enact to make compliance more effectual, permitting institutions to devote time saved to prevention education:

- **Clarify Clery geography:** ED has given conflicting guidance regarding how and where to count crimes when students study abroad. This has led to confusion and high compliance cost. In their most recent guidance,⁷ ED writes that if a college rents hotel rooms for one night, they do not count for Clery, unless two different groups use that same hotel for one different night each in one year; two nights would count, but only if there are certain agreements in place, and only for the days the college has “control,” and colleges would only count crimes in the students’ rooms, hallways, and public areas. A student killed in a non-student hotel room would not be reportable, a non-student killed in the hotel pool would be reportable. A heinous triple homicide occurring three days before students arrive would not be reportable, nor would the same crime occurring on the sidewalk just outside the hotel. And even if colleges are able to organize and count all covered trips taken by study abroad, academic programs, athletics, and certain student organizations, ED would have the college combine those statistics with certain crimes occurring at certain off-campus student organization houses (mostly Greek letter organizations) that have little or nothing to do with these trips. This leads to confusion and very costly compliance, while there is no evidence that it makes students safer.
- **Clarify Local Law Enforcement Letters for Study Abroad:** ED requires that colleges write to local law enforcement for every jurisdiction that includes Clery geography. This means that for the hundreds (even thousands) of hotels, classrooms and other sites that must be included in Clery geography under ED’s June 2016 interpretation, institutions must write detailed letters to local law enforcement asking them to report certain crimes using United States Uniform Crime Reporting definitions, in certain pinpoint locations and only for certain days. Unfortunately, this has simply become an exercise in futility, as international police agencies rarely respond with useful numbers. ED audits against what letters are sent, and a college could run afoul by not having sent a specific letter (even if no answer would ever be received). Institutions are spending significant time and resources developing and mailing letters that bear no fruit. Further, sending letters asking about sexual assault and dating violence to certain localities puts our students in *more* danger. To date, ED has declined to allow for an exception where college professionals have a good faith belief that such letters will endanger our students.

⁷ <https://www2.ed.gov/admins/lead/safety/handbook.pdf>.

- **Policy Statements:** ED insists that the Annual Security Report include full policy statements and (with a single exception) does not allow colleges to link to the relevant policies. That leads to longer reports which are less likely to be read. Congress could offer flexibility to educate students efficiently, including links to relevant documents.
- **Campus Security Authorities and Responsible Employees:** ED's Federal Student Aid office has defined "Campus Security Authority" in a manner that differs significantly from ED's Office for Civil Rights definition of "Responsible Employee."⁸ Institutions scramble to determine what employees meet the definition of one, the other, or both. Further, the language used in both terms is confusing. SUNY has suggested combining both concepts into a single new term called "Mandatory Reporter" and defining that term broadly. As a matter of policy and in practice, we want *more* reports of crime to come forward, and Mandatory Reporter is a term that has a clear meaning and societal understanding. Except for those with legal privilege or confidentiality restrictions (including medical, mental health, legal, or religious professionals), all compensated employees should be mandatory reporters who must, as soon as reasonably practicable, report all crimes covered by the law to the appropriate office or offices as determined by the institution. Reporting to the Title IX Coordinator would meet this requirement. This will result in more crimes being brought forward (and higher but more accurate numbers reported), more consistency in reporting, and the ability of institutions to offer a blanket training to employees, rather than spending significant time identifying and narrowly training certain employees as Campus Security Authorities, others as Responsible Employees, and still others as both.
- **Reduce double counting of crimes:** ED has earnestly tried to ensure that all crimes are reported and do not fall through the cracks. Over time, it has modified its use of the Uniform Crime Reporting hierarchy rule, such that certain incidents are double or triple counted or more. The undersigned has identified an example of a single incident that would be counted close to three dozen times for Clery Act purposes. Over-counting crimes provides students with no more of an honest report than under-counting of crimes. SUNY therefore has suggested that crimes be reported once in the most appropriate category, and that colleges retain documentation for their decisions.
- **Modernize missing student reporting:** ED, while trying in good faith to develop a method to comply with this 2008 addition, created a complex and confusing regime for reporting missing on-campus students (the ED 2016 Handbook devotes seven pages and more than 2,000 words to complying with its current system). SUNY suggests a return to the plain Congressional intent. The requirement can simply read: "if a student is reported missing for 24 hours, within the next 18 hours, the college must contact local law enforcement, the student's emergency contact, and the student's parents, if under 18." This will accomplish the important goals (which we firmly support) without adding unhelpful bureaucratic requirements.

⁸ <http://system.suny.edu/media/suny/content-assets/documents/compliance/Crime-and-Incident-Reporting-Guidelines-for-CSAs-and-Responsible-Employees-FINAL.pdf>.

New Additions to the Clery Act

- **Double down on prevention:** As stated earlier, SUNY applauds Congress's 2013 shift from response only to response *and* prevention. And at SUNY and in New York, we have gone further. While programming is *offered* to all new and continuing students, we *require* that student leaders and student-athletes complete training. This is not because we believe they are more likely to be victims or offenders; rather, it is because we believe they are most likely to be leaders on campus. By training leaders who can model pro-social behavior, we can efficiently educate an entire campus.
- **Transcript notations:** New York State law requires uniform transcript notations for students found responsible and suspended or expelled after a student conduct process for conduct code violations that are equivalent to Clery Act Primary Crimes. Institutions to which the student transfers are not prohibited from admitting the student, but are on notice of past violations and can request additional documentation under FERPA. While New York colleges provide notations for students transferring out, they do not benefit from notations for students transferring in from out-of-state. A uniform standard will allow colleges to consider admitting students with full knowledge of past transgressions.
- **Amnesty:** SUNY supports adding a plain-language amnesty from drug or alcohol use charges to encourage reporting and reduce the fear of a victim or bystander that *they* will get in trouble, not the person who committed the violence. SUNY's amnesty policy became law in New York and states: "A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to [College/University] officials or law enforcement will not be subject to [College/University's] code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault."

Training Must Begin Before College: SUNY firmly believes that colleges and universities must play a major role in the effort to prevent violence, including bullying, hazing, harassment, and sexual and interpersonal violence, and must respond appropriately to any violence that does occur, but the process cannot succeed if it begins at college orientation. While Title IX applies equally to elementary, secondary, and postsecondary education, the Clery Act as a part of the Higher Education Act does not apply to elementary and secondary schools. This is not to say that the entire reporting regime of the law must be applied to high schools, but requiring prevention education elements earlier will go a long way toward reducing violence on college campuses. Many young people develop their habits and interpersonal norms during high school or even middle school. By the time they arrive at college, some of those (mis)understandings are deeply ingrained and colleges fight an uphill battle to change their minds. Earlier education will prepare them for the additional training at college, and help to lower incidents of violence that occur before the student ever sets foot on a college campus.

Further, the large number of high school students who graduate (or do not graduate) and never attend college do not benefit from the response, reporting, or newer prevention elements of the Clery Act. Their apartment complex will not issue an Annual Security Report, they will not receive Timely Warnings of dangerous crimes, and they will not be taught the elements of

consent and how to prevent sexual and interpersonal violence. These young people are at equal or greater risk of committing or becoming victims of these crimes, but the law does not reach them. While Congress may have difficulty legislating the response and reporting elements of the Clery Act for private landowners, by requiring more, better, and earlier training and education in consent, bystander intervention, and other elements required by VAWA, we will have a fighting chance of keeping all young people safe, whether or not they attend college.

Congress should consider funding for institutions to partner with school districts to develop and implement training that is research based, creative, and consistent across the students' time in middle school, high school, and college. By taking advantage of scale, targeted funding toward such partnerships can significantly reduce incidents of violence in college, before college, and for students who will never attend college.

Conclusion

In 2016–2017, SUNY will conduct a University-wide climate survey on all campuses. It will be the largest such survey conducted anywhere in our nation to date. We will conduct the survey every two years, and thereby gather data that, in coordination with state and national partners, will help us understand what works and what doesn't work in reducing violence, so that we can turn those lessons into more effective training and policy. SUNY Chancellor Zimpher is well known for saying we need *real data* to know what works. This climate survey, in addition to our work with state and national partners on research into effectiveness of different programming, will aid colleges and universities across the nation in addressing violence on campus.

SUNY hears and actively embraces the national call for providing the best tools, resources, and services to protect our students from campus violence and support them in the event that an incident occurs. We must, in short, get down to the business of making our campuses as safe as possible while ensuring more accountability and transparency. In all of the areas described throughout my testimony, we are moving in the right direction, but there is much more work to be done. We are not afraid of taking on tough challenges, but we want to address these issues in ways that are proven to make a real difference in the lives of our students. Thank you for the honor of addressing this Committee.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Joseph Storch', written in a cursive style.

Joseph Storch
Associate Counsel
The State University of New York