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Legal Implications of Student-Based Relationships in Higher Education

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Legal Implications of Student-Based Relationships in Higher Education

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Parameters of Law in Higher Education (CNS 670)
Western Kentucky University
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Introduction

Many business entities have faced no liability in regards to customer-based crimes. However, colleges and universities are faced with the constant concern of liability in regards to “customer-based relationships” (its students). One would assume that the student themselves may be held liable for any personal damages they cause, but depending on the actions taken by the college or university, the university as a whole and its officials may be faced with tort liability. With this being said, university officials must be ever cognizant of the expectations of compliance within state and federal mandates. The Federal and State governments do grant immunity from liability when procedures are properly followed; however, the law does state that misunderstandings and absence of knowledge of protocol do not fall under the immunity from liability. With these standards for immunity, it is important that all university officials and employees be aware of compliance guidelines for various facets of student-based relationships in order to prevent liability.

Romantic-based Relationships

A Romantic relationship is often defined legally by the state rather than the national government. For example, Michigan defines a romantic relationship as “frequent, intimate associations primarily characterized by the expectation of affectional involvement. This...does not include a casual relationship or an ordinary fraternization between two individuals in a business or social context.” Violence in romantic relationships may often be defined as one or more of the following: stalking, dating violence, domestic violence, sexual misconduct, and sexual harassment. It is imperative for College and University officials to be knowledgeable not only on the definitions and implications of these relationships, but it is also imperative to be knowledgeable of the liability associated with such actions.

Stalking

Legal Definition

According to the Kentucky Revised Statutes, stalking is defined as “engaging in an intentional course of conduct which: 1) is directed at a specific person or persons; 2) seriously alarms, annoys, intimidates, or harasses the person or persons, and; 3) which serves no legitimate purpose.”

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1 Assault or assault and battery Act, MCL §750.81(6) (1931).
2 Definitions for KRS 508.130 to 508.150. KRS § 508.130 (2009).
History and Statistics

Stalking in regards to the law is a fairly new defined crime. California was the first state to define and criminalize stalking in 1990. This was in response to numerous high-profile stalking cases that occurred in the 1980s. Within the following three years, all fifty states had defined stalking as a crime. With the constant development of technology, a new stalking-based crime has started to be present in teens and college students: cyber stalking. Cyber stalking refers to the use of technology in order to exert the views or opinion of one party onto another party that finds these views and/or opinions offensive, hurtful or damaging. Although stalking is a fairly new crime, 13% of college-aged women reported being stalked at least once during a 12-month period, and according to the same poll, male and female victimization of stalking is equally likely to occur on college campuses. It may also be expected that people between the ages of 18 and 24 are the most likely to be stalked.

Applicable Laws

Although it may be assumed that University’s cannot be held responsible for the independent actions of the students, according to the California Supreme Court, universities do owe a duty of care to all students. This duty of care may involve the university “[attempting to] control the conduct of another person and/or warn of such conduct in order to avoid foreseeable harm.”

Stalking on College and University Campuses

Since stalking has become such a huge epidemic on many college campuses, colleges and universities have made it a point to define and/or prohibit stalking through their student code of conduct. Western Kentucky University defines stalking under the Harassment section of the Student Code of Conduct. “Any physical behavioral or verbal abuse of a person…such conduct includes, but is not limited to stalking, cyber stalking, cyber bullying/harassment, and retaliation as a result of complaints or alleged misconduct.”

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University Liability and Best Practices

Through Tarasoff, Universities have a duty of care for its students, and liability exists when a university violates its duty of care.\(^9\) In order to be held liable for damages spawned from a stalking case, university employees and/or officials must have been knowledgeable about the incident and no action taken. Also, universities may be held liable if they do not have policies in place prohibiting stalking and a proper grievance system for students to file a complaint of stalking. With stalking becoming a more frequent crime especially for people between the ages of 18 and 24, colleges and universities need to do the following in order prevent liability for incidents that occur on college campuses:

- Properly train university employees on stalking and the procedures for reporting stalking
- Ensure that stalking is outlined and prohibiting within the guiding documents of the college or university (i.e. Student Code of Conduct)
- Create and publish a well-defined, accessible, and clear grievance procedure for students
- Educate students about stalking and the legal implications of such behavior.

Dating and Domestic Violence

Legal Definitions

The legal definitions of dating and domestic violence fall within the responsibilities of the individual states or commonwealths. The Commonwealth of Kentucky designates the differences between dating and domestic violence clearly. Domestic violence is defined as “physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, sexual abuse, or assault between family members or members of an unmarried couple.”\(^10\) Kentucky further defines a family member as “a spouse, former spouse, grandparent, parent, child, stepchild or any other person living in the same household.”\(^11\) A “member of an unmarried couple” is defined as a member of an unmarried couple who share a child or who are living together or have formerly lived together.”\(^12\)

Dating violence, according to the Commonwealth of Kentucky, is defined as “abuse or violence between partners or former partners involving battering, purposely or knowingly causing reasonable apprehension or bodily injury, emotional abuse, or repeated

\(^{9}\) Tarasoff v. Regents. (1976).
\(^{10}\) Definitions for KRS 403.715 to 403.785. KRS § 403.720 (2010).
\(^{11}\) Definitions for KRS 403.715 to 403.785.
\(^{12}\) Definitions for KRS 403.715 to 403.785.
telephonic, electronic or other forms of communication—anonymously or directly-made with the intent to harass, intimidate, terrify or threaten.”

**History and Statistics**

Domestic violence spawns from the paradigm that wives belong to or are subservient to their husbands. In 1800 BC Rome, the Roman Code of Paterfamilias read, “you may with impunity put [your wife] to death without trial, but…she may not presume to lay a finger on you, nor does the law allow it.” In the eighteenth century, English common law came into effect, and the “law of thumb” permitted husbands to correct their wives actions through the use of “whips or rattans no bigger than his thumb.” In the United States, chastisement of wives by husbands was permitted until 1871. In Fulgham v. State of Alabama, the Supreme Court ruled that the “law of love superseded the law of force, thus outlawing domestic brutality.” With the progression of the twentieth and twenty-first centuries, states have become more responsive to domestic and dating violence by creating laws prohibiting such actions. Statistically dating violence is a huge epidemic especially for college-aged students. 21% of college students reported having experienced dating violence by a current partner, and 32% experienced dating violence by a previous partner. Also one in three college students reported having physically assaulted a dating partner within the previous 12 months.

**Applicable Laws**

Similar to stalking, domestic violence and dating violence fall within the duty of care as outlined in Tarasoff v. Regents. Dating and domestic incidents must be reported in the Annual Security report as outlined within the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). For more information regarding the Clery Act, see page 22.

**Dating and Domestic Violence on College and University Campuses**

With 32% of college students being the victim dating or domestic violence in a previous relationship and 33% of college students being the perpetrator of dating or domestic violence, colleges and universities must act in order to prevent the growth and encourage the decline of domestic and dating violence incidents occurring on and around its campus.

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13 Definitions for KRS 403.715 to 403.785.
16 Fulgham v. The State of Alabama, 46 ALA 143 (1871).
18 Dating and Domestic Violence (2014).
Many colleges and universities have outlined the sanctions for being found responsible for domestic or dating violence through its Student Code of Conduct. Western Kentucky University has outlined dating and domestic violence through its Discrimination and Harassment Policy enacted in April of 2013. This policy also outlines the grievance procedure for students who witness or are victims of domestic or dating violence.

**University Liability and Best Practices**

Through Tarasoff, Universities have a duty of care for its students, and liability exists when a university violates its duty of care. In order to be held liable for damages spawned from a dating or domestic violence case, university employees and/or officials must have been knowledgeable about the incident and no action taken. Also, universities may be held liable if they do not have policies in place prohibiting dating and domestic violence and a proper grievance system for students to file a complaint of stalking. With dating and domestic violence being such a prevalent issue in college-aged students, colleges and universities need to do the following in order prevent liability for incidents that occur on college campuses:

- Properly train university employees on stalking and the procedures for reporting dating and domestic violence
- Ensure that dating and domestic violence is outlined and prohibiting within the guiding documents of the college or university (i.e. Student Code of Conduct)
- Create and publish a well-defined, accessible, and clear grievance procedure for students
- Educate students about dating and domestic violence and the legal implications of such behavior.

**Sexual Misconduct, Harassment, and Exploitation**

**Legal Definitions**

Similar to dating and domestic violence, the responsibility of defining sexual based crimes falls upon the responsibilities of the independent states and commonwealths. The Commonwealth of Kentucky defines sexual assault as “subjecting another person to sexual contact by forcible compulsion or subjecting another person to sexual contact who is incapable of consent because he or she is physically helpless, is less than twelve (12) years old, or is mentally incapacitated.”

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19 Dating and Domestic Violence (2014).  
21 Sexual Abuse in the First Degree, KRS § 510.110 (2008).
History and Statistics

As discussed regarding domestic violence, rape and sexual assault spawn from the belief that women were the property of their fathers and/or husbands. Similarly at the turn of the twentieth century, laws were enacted to outlaw rape and sexual assault; however, until recently, the definition of rape was very direct and limited. In regards to colleges and universities, at least 1 in 4 college women will be the victim of sexual assault during her academic career. There are 35.3 incidents of sexual assault per 1000 female students on a campus as recorded over a 6.91 month period.

Applicable Laws

In 1972, the United States Office of Civil Rights enacted Title IX of the Civil Rights Act. Title IX states “No person in the United States shall, on the basis of gender, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” In response to Title IX, the Violence Against Women Act (VAWA) was enacted in 1994. The VAWA act’s purposes were to improve the criminal justice response to violent acts against women and ensure that victims and their families had access to services and resources they need in order to rebuild their lives. However, with the progressive nature of LGBT rights, VAWA did not provide resources for LGBT victims of sexual assault. In 2013, Congress passed the new VAWA act with provisions for victims identifying within the LGBT community. In addition to the VAWA act, in 2013 congress enacted the Campus Sexual Violence Elimination Act (Campus SaVE Act) as an addendum to the Clery Act (see page 22 for more information regarding the Clery Act). The Campus SaVE act requires colleges and universities, both public and private, who receive federal funding to increase transparency about the scope of sexual violence on campus, guarantee victims enhanced rights, provide standards in institutional conduct proceedings, and provide campus community wide prevention educational programs.

Sexual Offenses on College and University Campuses

In recent events, sexual misconduct, harassment, and exploitation have become points of interest and attention by the federal government and subsequently universities and colleges. Since the federal government has yet to define sexual misconduct, harassment, and exploitation, colleges and universities have released statements on these offenses, thus defining the terms through these statements. In 2013, Western Kentucky University

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released a policy on harassment, and through this policy, they defined sexual misconduct, harassment, and exploitation. Sexual Misconduct is defined as “actual or attempted sexual contact with another person without the person’s consent. This may included any of the following: intentional and unwelcome touching, coercing, or an attempt to coerce; involvement in any sexual contact when the victim is unable to consent; forcing another individual to touch a person’s intimate parts (genital area, groin, inner thigh, buttocks, or breasts); and/or sexual intercourse without consent, including acts commonly referred to as rape.” Sexual harassment involves “unwelcome sexual advances, requests for sexual favors, or other verbal or physical behavior of a sexual nature where tolerance of or participation in the offensive conduct explicitly or implicitly becomes a condition of employment or participation in a university course, program, or activity; the conduct is sufficiently severe, pervasive, or persistent as to interfere with an individual’s work, academic or program participation, or living on campus; and/or the conduct creates an environment that a reasonable person would consider intimidating, hostile, or offensive.” Sexual exploitation occurs “when a person takes non-consensual or abusive advantages of another for anyone’s advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the receding sexual misconduct offenses.”

University Liability and Best Practices

Through VAWA, Campus SaVE, and Title IX, the federal government has outlined the necessary requirements in order to fall within compliance and to avoid liability. A basic checklist for compliance involves the following:

- Publish and disseminate a notice of nondiscrimination with a designated Title IX coordinator
- Conduct an investigation through the school in addition to filing a criminal complaint with safety officials
- Use the preponderance of evidence standard
- Provide a decision within a reasonable time frame (full resolution within 60 days)
- Provide a written notice of outcomes to all parties
- Train officials and staff on how to identify and respond to sexual misconduct incidents
- Properly report via the Clery Act
- Provide educational and prevention programs to all students.

27 “Western Kentucky University’s Discrimination and Harassment Policy.” (2013).
29 Lake, Peter (October 2014). The Four Corners of Title IX. Lecture conducted from Western Kentucky University, Bowling Green, KY.
Mandatory Reporters and Confidential Sources

In regards to reports of sexual misconduct, there are two types of university officials: confidential sources and mandatory reporters. Confidential sources are defined as “professional licensed health care providers, mental health counselors and pastoral counselors.” Mandated reporters are not permitted to report any information without a victim’s permission except in rare cases. “According to OCR’s 2001 Guidance, a responsible employee includes any employee: (1) who has the authority to take action to redress sexual violence; (2) who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX Coordinator or other appropriate school designee; or (3) whom a student could reasonably believe has this authority or duty.” According to these definitions, colleges and universities should ensure that all employees know which category they fall under in order to prevent liability in the case of misreporting sexual misconduct cases. Emphasis should also be placed on student employees, as many students hold roles that fall under these guidelines (i.e. Resident Assistants).

Non-Romantic Relationships

Students interact with each other in a variety of ways and form relationships with one another that are not always considered romantic relationships. These non-romantic relationships form in the classroom, the residence halls, and student organizations. Non-romantic student relationships do have legal implications that often surface from incidents of hazing, harassment, and physical violence. It is imperative to understand the nature of these issues as well as the liability surrounding them in order to avoid legal ramifications.

Hazing

Legal Definitions

In the state of Kentucky, KRS 164.375 states that hazing is “any action or situation which recklessly or intentionally endangers mental or physical health or involves the forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization.” All public institutions in the state of Kentucky utilize this definition verbatim. Similar wording can be found in the hazing policies in other states.

30 Lake, Peter (October 2014).
32 Hazing Definition from KRS 164.375 (1986)
History and Statistics

A Cornell study reported “36 percent of respondents engaged in at least one activity that the university would define as hazing… (only) 12.4 percent of respondents reported that they had been hazed”. While the Cornell study surveyed a random sample of undergraduate students other studies have focused on hazing in specific sub-populations of the college community. An Alfred University study showed that “three in five athletes were unacceptably initiated”. These unacceptable initiation behaviors included but were not limited to pranks calls, destruction of property, dangerous consumption of alcohol, and whipping. Research shows that hazing activities are pervasive on college campuses. These activities affect a variety of different student groups in a variety of different ways and cannot be ignored.

Applicable Laws

KRS 164.375 defines hazing within the state of Kentucky, outlines the procedures that must be in place, and mandates the inclusion of anti-hazing policies at public institutions in the state of Kentucky:

[All public institutions must] within ninety (90) days of July 15, 1986, adopt statements of campus policy which prohibit any action or situation which recklessly or intentionally endangers mental or physical health or involves the forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization. Such policy statements shall govern the conduct of students, faculty and other staff as well as visitors and other licensees and invitees on such campuses and property. The penalties for violations of such policy statements shall be clearly set forth therein and shall include provisions for the ejection of a violator from such campus and property, in the case of a student or faculty violator his suspension, expulsion or other appropriate disciplinary action and, in the case of an organization which authorizes such conduct, rescission of permission for that organization to operate on campus property. Such penalties shall be in addition to any penalty pursuant to the penal law or any other chapter to which a violator or organization may be subject. A copy of such policy statements which prohibit reckless or intentional endangerment to health or forced consumption of liquor or drugs for the purpose of initiation into or affiliation with any organization shall be given to all students enrolled in said college and shall be deemed to be part of the bylaws of all organizations operating on said campus.  

Hazing on College and University Campuses

Hazing is an issue on college campuses and it will continue to be an issue that administrators and students face into the future. “Research suggests hazing will be hard to eliminate because it meets many positive psychological needs, such as bonding between new and old members, and negative needs like dominance for those who need to feel powerful.”

Campuses must implement policies, procedures, and educational actions to prevent hazing within their student organizations. Schools elect to complete this task in different ways involving different stakeholders based on the university culture.

At Western Kentucky University, the Greek Affairs Office takes an active role in hazing prevention with this anti-hazing statement:

> Any action or situation with or without consent that recklessly, intentionally or unintentionally endangers the mental or physical health or safety of a student, or creates risk or injury, or causes discomfort, embarrassment, harassment or ridicule, or that willfully destroys or removes public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in a chapter or colony of any sorority or fraternity.

This anti-hazing statement is separate and distinctive from the hazing policy at Western Kentucky University, which is more inclusive of all student organizations:

> Western Kentucky University defines hazing as any action, physical abuse or creation of a situation which recklessly or intentionally endangers the mental or physical health of a participant by any person. A participant is defined as a university student, or any pledge. A person is defined as a university student, member, alumnus, affiliate alumnus, guest of any campus organization, or other individuals.

Along with these anti-hazing statements and policies, schools often include educational prevention components as part of their hazing prevention plan. These educational components often include seminars for students participating in Greek Life, professional development opportunities for the advisors of student organizations, or conduct officer training to adjudicate hazing cases.

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University Liability and Best Practices

University liability for hazing incidents occurs when there is no anti-hazing policy dictating that students engaged in hazing will be in violation of the student code of conduct. Statutes vary from state to state, but in the state of Kentucky public universities are required by KRS 164.375 to have anti-hazing policies that include the specific language listed in the statute. KRS 164.375 also requires each institution to have outlined sanctions and procedures for handling hazing cases.

University liability also exists when a university has prior knowledge of hazing activity and does not act in accordance with policy. In Morrison v. Kappa Alpha Psi Fraternity\textsuperscript{39} Kappa Alpha Psi had previous hazing allegations that were reported to the university. A student was beaten during pledging activities and sustained injuries.

The Court found that the university’s prior knowledge of hazing activity and the potential dangers of hazing justified the creation of a special relationship, which thus imposed a duty on the university to monitor the chapter’s behavior and to prevent further hazing incidents.\textsuperscript{40}

With these two liability issues in mind, best practices are outlined below:

- Create and implement an anti-hazing policy following the state statutes that apply to the university.
- Create and implement a reporting procedure for hazing allegations. This process can include anonymous reporting and can be unique to each university.
- Create and implement an investigation procedure. This process could be run through the judicial affairs office or it could be separate with allegations investigated by an appointed board. Procedural decisions can be unique to each university but must follow state statutes.
- Create and implement sanctions for students and organizations found responsible for hazing.
- Educate students, faculty, staff, and student organizations on hazing, the policies and procedures outlined above, and how to prevent hazing within their student organizations.

Harassment

Legal Definitions

\textsuperscript{39} Morrison v. Kappa Alpha Psi Fraternity 783 So. 2d 1105 (1999)
\textsuperscript{40} Morrison v. Kappa Alpha Psi Fraternity 783 So. 2d 1105 (1999)
According to Kentucky state law, “A person is guilty of harassment when [they] intimidate, harass, annoy, or alarm another person”.\textsuperscript{41} Harassment can include physical actions or verbal statements as defined in the law. See Applicable Laws on Page 16.

**First Amendment Rights vs. Harassment**

Colleges have long been known as the marketplace of ideas, a place where people may come freely to discuss their thoughts and to learn through open discussion. The concept of free speech is fundamental belief from the constitution “Congress shall make no law…abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble”.\textsuperscript{42} In Tinker v. Des Moines free speech at educational institutions was protected, “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”\textsuperscript{43} This idea was further supported in Healy v. James, “The College, acting here as the instrumentality of the State, may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent.”\textsuperscript{44} Free speech is such an important part of the educational process and the courts consistently protect it. This is not to say that students are free to participate in harassing behavior under the protection of free speech. There is a distinction between the two.

To consider speech to be harassment, the complainant must be able to prove two things:

1. Complainant must be damaged by the statements
2. Complainant must have been limited/excluded from University resources or opportunities by the statements made by respondent.

Free speech that is merely offensive of distasteful is not harassment unless these two categories are met because of the speech that occurred.

**Applicable Laws**

Harassment laws are defined by individual states and vary slightly. The harassment law in the state of Kentucky can be reviewed below:

A person is guilty of harassment when, with intent to intimidate, harass, annoy, or alarm another person, he or she:

\textsuperscript{41} Harassment Law, KRS 525.070: Harassment
\textsuperscript{42} From the First Amendment to the Constitution, ratified December 15, 1791
\textsuperscript{43} From Tinker v. Des Moines, 1969
\textsuperscript{44} Healy v. James, 408 U.S. 169 (1972)
- Strikes, shoves, kicks, or otherwise subjects him to physical contact;
- Attempts or threatens to strike, shove, kick, or otherwise subject the person to physical contact;
- In a public place, makes an offensively coarse utterance, gesture, or display, or addresses abusive language to any person present;
- Follows a person in or about a public place or places;
- Engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose; or
- Being enrolled as a student in a local school district, and while on school premises, on school-sponsored transportation, or at a school-sponsored event:
  - Damages or commits a theft of the property of another student;
  - Substantially disrupts the operation of the school; or
  - Creates a hostile environment by means of any gestures, written communications, oral statements, or physical acts that a reasonable person under the circumstances should know would cause another student to suffer fear of physical harm, intimidation, humiliation, or embarrassment.\(^{45}\)

**Harassment on College and University Campuses**

Each institution of higher education is allowed to create their own definitions of harassment and policies to prohibit harassment between students. These policies vary between institutions, some being very straightforward with others being lengthy and specific. Rider University defines harassment as “Any action that may reasonably be expected to a) threaten, coerce, or intimidate an individual or a class of individuals or b) substantially interfere with an individual’s work or education experience.”\(^{46}\) This definition borrows language from many state laws and includes the condition that the harassment must interfere with a person’s experience. Other institutions create their policies to be more detailed with less room for interpretation. Western Kentucky University’s harassment definition is one of these comprehensive definitions and is detailed below:

Any physical, behavioral, or verbal abuse of a person based upon gender, race, color, ethnic origin, national origin, creed, religion, political belief, sexual orientation, marital status, age, uniform service, veteran status, or physical or mental disability, where:

- Tolerance of or participation in the offensive conduct explicitly or implicitly becomes a condition of employment or participation in a university course, program or activity, or
- The conduct is sufficiently severe, pervasive, or persistent to interfere with an individual’s work, academic, or program participation, or:

\(^{45}\) Harassment Law, KRS 525.070: Harassment

The conduct creates an environment that a reasonable person would consider intimidating, hostile, or offensive. University harassment policies are often listed separately from sexual harassment policies and are inextricably linked to campus anti-discrimination policies or statements.

**University Liability and Best Practices**

Universities must tread lightly with matters of harassment and would be wise to consider free speech rights when addressing harassment issues. University liability exists when harassment allegations are not investigated and steps are not taken to ensure the safety of a student and/or their ability to continue to participate in the educational process unhindered. Universities can also face liability issues when free speech is revoked without proof of harassment. In Sweezy v. New Hampshire, we see the courts upholding a student’s right to free speech. “Teachers and students must always remain free to inquire, to study, and to evaluate, to gain new maturity, and understanding; otherwise our civilization will stagnate and die.”

With these two liability issues in mind, best practices are outlined below:

- Create and implement an anti-harassment policy informed by state law.
- Create and implement a reporting procedure for harassment allegations. This process can include anonymous reporting and can be unique to each university.
- Create and implement an investigation procedure. Procedural decisions can be unique to each university but must follow state statutes.
- Create and implement sanctions for students found responsible for harassment.
- Explore options for protecting students who are experiencing harassment. This can include changing a student’s class schedule, relocating a student from a residence hall, enforcing a no-contact order, etc.
- Educate students, faculty, and staff on harassment, the policies and procedures outlined above.
- Educate students, faculty, and staff on free speech rights and how to enforce harassment policies without impinging on freedom of speech.

**Physical Violence and Unruly Conduct**

**Legal Definitions**

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For the purpose of this guidebook, physical violence will be discussed in terms of assault. Assault is defined by each state individually and laws can vary state to state. In the state of Kentucky there are specific laws outlining first degree, second degree, and third degree assault. The basic definition of assault is to “intentionally causing a serious physical injury”.

History and Statistics

The Clery Act was implemented in 1998 (see page 22 for more information on the Clery Act) and requires the reporting of certain crimes that occur on or near college campuses. Through the Clery Act there is available data to show how many violent crimes are occurring on college campuses and the nature of those crimes. In 2010, 53.2% of the Clery Act reported crimes were aggravated assaults. It is also documented that of those aggravated assaults reported, 60% occurred on campus.

![Figure 1: Crimes Reported on College and University Campuses](http://www.victimsofcrime.org/docs/ncvrw2013/2013ncvrw_stats_school.pdf)

Applicable Laws

In the state of Kentucky, there are three separate laws describing assault. Assault in the first-degree is the most serious of the assault crimes and can happen in two ways. The first is if a deadly weapon is used in the act of the assault. The second is if the person

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“acts wantonly by ignoring the fact that his conduct will cause a certain result”. 53
Second-degree assault differs from first-degree assault based on the severity of the injury and whether or not a deadly weapon was used. Finally, third-degree assault protects specific parties including peace officers, social workers, volunteer firefighters, and probations officers. Third degree assault does not apply to student-to-student interactions and will not be explored here. The laws for first and second-degree assault are outlined below:

A person is guilty of assault in the first degree when:

- He intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or
- Under circumstances manifesting extreme indifference to the value of human life he wantonly engages in conduct which creates a grave risk of death to another and thereby causes serious physical injury to another person. 54

A person is guilty of assault in the second degree when:

- He intentionally causes serious physical injury to another person; or
- He intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or
- He wantonly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument. 55

Physical Violence and Unruly Conduct on College and University Campuses

Universities can construct their physical violence or unruly conduct policies autonomously from state law and, therefore, they often differ from institution to institution. As an example, here are three different policies addressing physical violence at three public institutions in Kentucky.

- Disorderly, abusive, lewd, or acts that result in physical altercation, fighting and indecent or obscene conduct that cause physical injury or threaten others, or interferes with any individual’s rightful act. This responsibility also applies to events sponsored and supervised by recognized student organizations, on or off campus. 56
- Intentionally or recklessly causing physical or emotional harm to any person, including self, on University property or at University-sponsored activities off

52 KRS 508.010 Assault in the First Degree (1975)
53 KRS 508.020 Assault in the Second Degree (1975)
campus, and includes intentionally or recklessly causing reasonable apprehension of such harm.\textsuperscript{57}

- Endangering or threatening to endanger life, health, safety, or property.\textsuperscript{58}

Some institutions choose to elaborate on specific prohibited behaviors while others prefer to leave room in their policies for interpretation. Most universities will also include as part of their student code of conduct a prohibition against violating any federal, state, or local laws. Western Kentucky University has such a statement:

The commission of acts which constitute a violation of local, state and federal laws. The University will review any conduct reported by members of the University community, law enforcement personnel, or citizens as being in violation of the law. Any student convicted of a criminal offense is subject to university judicial action.\textsuperscript{59}

**University Liability and Best Practices**

- Create and implement a policy to address physical violence and unruly conduct informed by state law.
- Create and implement a reporting procedure for assault allegations. This process can include anonymous reporting and can be unique to each university.
- Create and implement an investigation procedure. Procedural decisions can be unique to each university but must follow state statutes.
- Create and implement sanctions for students found responsible for violating the anti-assault policy.
- Explore options for protecting students who are experience physical violence. This can include changing a student’s class schedule, relocating a student from a residence hall, enforcing a no-contact order, etc.

**Federal Responses and Other Approaches**

**Title IX**

**History**


In 1964, the Civil Rights Act was passed in order to end discrimination based on multiple facets including race, religion, color, sex in regards to employment, and national origin. A non-discrimination based on sex in education and federally funded programs was not implemented until Title IX was enacted in 1972. According to Title IX, “No person in the United States shall, on the basis of gender, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.” Initially many perceived this act as an effort to create equal opportunities for all genders in regards to athletics; however, Title IX involves all aspects of a student’s education and involvement while enrolled at a college or university. In 2011, the Department of Education released their first Dear Colleague Letter (DCL) informing schools that “a single instance of sexual violence is sufficient to qualify as creating a hostile educational environment.” In 2014, another Dear Colleague Letter was released further outlining the requirements for schools to fall within Title IX compliance in regards to addressing and correcting sexual violence acts.

**Application of the Law**

According to Title IX regulations, each school must meet and/or exceed these procedural requirements in order to fall within compliance of Title IX regulations:

1. Disseminate a Notice of Nondiscrimination
2. Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX
3. Adopt and publish grievance procedures providing for the prompt and equitable resolution of students and employee sex discrimination complaints
4. Adopt and publish provisions for an adequate, reliable, and impartial investigation of complaints, including the opportunity for both the complainant and the alleged perpetrator to present witnesses and evidence
5. Designate a prompt and reasonable time frame for the major stages of the investigation (approximately 60 days)
6. Written notice to all parties involved
7. Assurance that the school will take steps to prevent recurrence of any sexual violence and remedy discriminatory effects on the complainant and others

**Common Mistakes**

With the stringent requirements in order to be compliant with Title IX, many colleges and universities have made similar mistakes in coordinating and developing their sexual misconduct response system. Some of the most common mistakes include:

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60 *Title IX of the Civil Rights Act, Pub. L. 920318-86 Stat. 235 (1972).*
1. Not updating policies and procedures to most recent guidance
2. Conflating hostile environment with harassment
3. Not clearly identifying responsible employees
4. Allowing least trained employees to be decision makers
5. Too many levels of appeals and not enough reviews
6. Poor website organization
7. Lack of advocacy and resources for accused students
8. Inappropriately position, or total lack of, a Title IX Coordinator
9. Using only one consultant and/or training entity
10. Forgetting about the importance of educational solutions and prevention

Clery Act

History

In 1986, Jeanne Clery was sexually assaulted and murdered in her residence hall by another student she didn’t know. Her parents believe she and her fellow students, who had left doors propped open, would have been more cautious if they had known about other violent crimes at Lehigh. The Crime Awareness and Campus Security Act of 1990 renamed the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) in 1998, requires higher education institutions to report crime statistics to current and prospective students and employees and the US Department of Education. It further requires higher education institutions to give timely warnings of crimes that represent a threat to the safety of students or employees, and to disclose their campus security policies.

Application of the Law

In order to fall within compliance of the Clery Act, schools must provide the following information and resources to all students, employees, prospective students and the U.S. Department of Education:

- Publish an Annual Security Report by October 1 of each year
- Maintain a Public Crime Log
- Issue Timely Warnings of crimes or potential crimes that pose a threat to the safety of students and employees
- Provide Crime Statistics that occurred in any of the following areas: on campus, in institutional residential facilities, in non-campus buildings, or on public property

Crimes to be Reported

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64 Lake, Peter (2014).
The following crimes must be reported in the Annual Security Report and the published Crime Statistics in compliance with the Clery Act:

- Criminal Homicide
  - Murder and Non-negligent manslaughter
  - Negligent manslaughter
- Sexual Offenses
  - Forcible
  - Non-forcible
- Robbery
- Aggravated Assault
- Burglary
- Arson
- Motor Vehicle Theft
- Arrest and/or Disciplinary Referrals
  - Liquor-Law Violations
  - Drug-Law Violations
  - Illegal Weapons Possession

## Campus Partners Organizations

### Purpose and Overview

Colleges and Universities are complex organizations with many areas of responsibility. It is easy with this complex of a system for communication to be complicated or inhibited by the nature of the institution. Especially when attempting to prevent or manage a student crisis situation communication is key. In the aftermath of tragedies like those that occurred at Virginia Technical University (VTU), many institutions have created Campus Partners Organizations (also known as Behavioral Intervention Teams) or Crisis Management Teams. The nature of these organizations are different, however, they serve the same purpose, which is to appropriately handle students of concern and campus crises.

Campus Partners Organizations focus mainly on preventative measures. These groups bring together university stakeholders who directly interact with students. Campus Partners Organizations work to share information on students of concern. With the VTU incident as an example, students of concern often do not show overt signs that intervention is needed but small interactions with a variety of individuals could point to a student who is in need of intervention. Cho, the student shooter at VTU, had multiple negative encounters with students, faculty, and mental health professionals, none of

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whom shared information with one another. All of that information combined may have lead administrators to intervene with Cho before the VTU tragedy occurred.\textsuperscript{69}

Crisis Management Teams were inspired by tragic school shootings. These groups focus mainly on managing active crises. “Crisis management is the umbrella term that encompasses all activities when an organization prepares for and responds to a significant event.”\textsuperscript{70} Preparedness and response are the focus of these teams and they include different stakeholders than Campus Partners Organizations as outlined below.

**Parties Involved**

**Campus Partners Organizations**

- Vice President for Student Affairs
- Judicial Affairs
- Counseling Center
- Housing and Residence Life
- Student Activities
- University Police
- Title IX Coordinator
- Academic Affairs

**Crisis Management Teams:**

- University Police
- Emergency Medical Personnel
- Local Fire Department
- Public Relations
- Environmental Health and Safety Staff
