



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

AUG 2 - 2016

Mr. Mauricio Ramos
President
International Ombudsman Association
One Parkview Plaza, Suite 800
Oakbrook Terrace, IL 60181

Dear Mr. Ramos:

Thank you for your letter to Secretary of Education John B. King, Jr. about the concerns expressed by some in the ombudsman community regarding the classification of ombudspersons as Campus Safety Authorities (CSAs) under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act (the Clery Act) in §485(f) of the Higher Education Act of 1965, as amended. Your letter has been forwarded to the Office of Postsecondary Education, and I am pleased to respond.

We understand that some members of your community may be concerned by the CSA classification. The Department must point out that while ombudspersons were recently added to a partial list of school officials that may fall under the CSA definition, nothing about the applicable CSA standard has changed. The long-standing CSA criterion has been in place for many years, and it has always covered most ombudspersons. The Department simply added certain additional categories of institutional officials to the list that appears in the 2016 edition of the Department's *Handbook for Campus Safety and Security Reporting* to provide additional guidance to schools.

The Clery Act and the Department's regulations clearly state that an official with significant responsibilities for student and campus activities is a CSA. Given the important work that ombuds professionals do on campus, it is very important that they are appropriately connected to each institution's efforts to keep campus community members safe and free from serious ongoing threats to their health and well-being. While we are persuaded that the obligations placed on ombudspersons as CSAs do not conflict with their professional standards, specifically in regard to confidentiality, I want to assure you that the Department carefully considered many of the issues that you raised during the rulemaking process and the development of our recent guidance and will keep the privacy interests of all concerned as one of our most important objectives going forward.

For ombudspersons on campus, their classification as CSAs will affect them primarily in two ways:

1. As a CSA, if an ombudsperson receives a report of a crime that may be a Clery crime that occurred on Clery Geography, he or she must report the crime to the school official responsible for preparing the institution's crime statistics; and

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

2. If the reported crime may pose an ongoing threat to students and employees, he or she must report the crime to the official responsible for making the decision to issue a timely warning.

In the first case, while the ombudsperson is required to report the crime to the school official responsible for preparing the institution's crime statistics, he or she is not required to disclose the identity of the victim or the individual reporting the crime while doing so. We believe that this strikes the proper balance between ensuring that the institution reports accurate crime statistics and protecting confidentiality.

In the second situation, when a reported Clery crime may represent an ongoing threat to the campus community and where a timely warning may prevent similar crimes from occurring, an ombudsperson does have an obligation as a CSA to report the crime to the official responsible for making the decision to issue a timely warning. This is a matter of public safety. However, there are two important facts here that may allay some concerns:

1. Schools are not required to issue a timely warning every time a Clery-reportable crime is reported. Warnings are only required where the available information would indicate to a reasonable person or group that the crime poses an ongoing threat to the campus community. In such cases, the warning must be issued as part of a coordinated response in an effort to prevent similar crimes from occurring; and
2. Data from our enforcement cases shows that victims and witnesses tend to report incidents to ombudspersons later in the process and that in many cases, such delays may reduce or even eliminate the need for a timely warning.

The Clery Act also prohibits the inclusion of personally-identifying information in a timely warning, and more broadly, the Department encourages institutions and CSAs to protect confidentiality to the maximum extent possible when issuing a timely warning. As we stated in the preamble to the final regulations for the Clery Act that we issued on October 20, 2014:

...institutions must not disclose the names and personally identifying information of victims when issuing a timely warning. However, in some cases to provide an effective timely warning, an institution may need to provide information from which an individual might deduce the identity of the victim. For example, an institution may need to disclose in the timely warning that the crime occurred in a part of a building where only a few individuals have offices, potentially making it possible for members of the campus community to identify a victim. Similarly, a perpetrator may have displayed a pattern of targeting victims of a certain ethnicity at an institution with very few members of that ethnicity in its community, potentially making it possible for members of the campus community to identify the victim(s). Institutions must examine incidents requiring timely warnings on a case-by-case basis to ensure that they have minimized the risk of releasing personally identifying information, while also balancing the safety of the campus community.

I hope this information addresses your concerns. If you have any subsequent questions regarding the Clery Act, please contact Ashley Higgins at: Ashley.Higgins@ed.gov.

Sincerely,

A handwritten signature in black ink that reads "Gail McLarnon". The signature is written in a cursive style with a large initial "G" and a long, sweeping underline.

Gail McLarnon

Senior Director

Policy Development, Analysis & Accreditation Service