



Dear IOA members,

On July 20, 2016 you received an electronic Special Bulletin from the IOA Board explaining the action by IOA with respect to the U.S. Department of Education (ED) "[Handbook for Campus Safety and Security Reporting 2016 Edition](#)," released in June 2016 (Handbook). As explained earlier, the Higher Education Act requires all post-secondary institutions in the U.S. that are participating in Title IV student financial assistance programs to disclose campus statistics on crime and security. The Handbook was prepared by the ED to serve as a guide for academic institutions to help them comply with the Clery Act. Particularly relevant here is a provision in the Handbook that discusses the functions included in the term, "Campus Security Authorities" (CSAs), to identify those people or offices subject to reporting requirements under the Clery Act.

This section of the Handbook makes it clear that ED believes that the analysis of who is a CSA should be based on an analysis of the function involved: "To determine specifically which individuals or organizations are campus security authorities for your institution, consider the **function** of that individual or office." (Emphasis in the original.) Despite the articulated standard of a functional analysis, however, the Handbook lists "an ombudsperson (including student ombudspersons)" as an example of individuals "who generally meet the criteria for being campus security authorities."

In July 2016, IOA sent a [letter to the ED](#) explaining that an ombudsman practicing to IOA [Standards of Practice and Code of Ethics](#) should not properly be considered a CSA. This letter makes it clear why IOA believes that to be the case. Nonetheless, in August 2016, IOA received a [reply from ED](#) explaining that it is standing by the language in its Handbook regarding ombudspersons and explaining its reasoning. We have since mobilized our subject matter experts, both legal and non-legal, and assessed what the ED's letter means to our members.

The IOA Board continues to believe that a blanket inclusion of "ombudspersons" in the listing of persons who "generally meet the criteria for being campus security authorities" is not supported either by the definitions in the Clery Act or the implementing regulations. Neither of these has changed. The only recent change is the guidance set forth in the Handbook; and IOA believes that it is contrary to the Clery Act itself, the related federal regulations, and the functional analysis test standard recognized by the ED itself. As articulated in the April 1, 2016, [memorandum from the law firm of](#)

[WilmerHale](#) for the IOA, WilmerHale concluded that an ombuds who complies with the IOA Code of Ethics and Standards of Practice “*Is Presumptively Not a Campus Security Authority Under the Clery Act.*” Citing to regulations promulgated under the Clery Act, Wilmer Hale summarized its reasoning:

*CSAs include: (1) a campus police or security department; (2) any other individual responsible for campus security, such as an individual who is responsible for monitoring entrance into institutional property; (3) any individual or organization specified in an institution’s statement of campus security policy as an individual or organization to which students and employees should report criminal offenses; and (4) an official of an institution who has significant responsibility for student and campus activities, such as student housing, student discipline, and campus judicial proceedings.*

*Under normal conditions, ombuds do not play any of the roles enumerated above. First, ombuds are not part of any police or campus security department and are not otherwise responsible for campus security. Second, colleges and universities generally do not designate them as individuals to whom criminal offenses should be reported—and certainly have no obligation to do so. Third, an ombuds is not “an official of an institution who has significant responsibility for student and campus activities.” Indeed, for Clery Act purposes an ombuds is not even “an official of an institution,” which ED defines as “any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.” Rather, ombuds are independent and offer assistance to campus community members upon request only, do not act as campus administrators (e.g., Dean of Students, Director of Athletics, Residential Life Coordinator, etc.), do not offer or replace any formal channels of grievance or dispute resolution, and cannot adjudicate any dispute or disciplinary matter.*

The WilmerHale analysis is also consistent with the analysis on this issue by Chuck Howard in his book, *The Organizational Ombudsman* (pages 384-388).

Having considered the response of the ED in August to IOA’s letter in July in light of the language of the Clery Act itself, the regulations, the functional test articulated by the ED and the opinions of counsel presented above, the IOA Board remains firm in its position that those ombuds offices that are created consistent with and operate in accordance with the IOA Standards of Practice and Code of Ethics are not properly within the scope of “campus security authorities” under the Clery Act. Of course, those programs that are not compliant with the IOA Standards of Practice and Code of Ethics run the risk that, based on a functional analysis, they might legitimately be considered a CSA under the Clery Act.

Accordingly, we urge all of you to reexamine the documentation concerning your program and your operations to make sure that you are in compliance with these standards so that you can defend any functional analysis of your office. Also, you should feel free to share the authorities referenced above with those in your institution with whom you may be discussing this issue. Meanwhile, please be assured that IOA leadership is exploring a number of options to continue to address the issue, including

the possibility of meeting with officials from the ED and possible legislative or other action.

Once again, I will keep the membership abreast of any developments.

Reese Ramos, CO-OP®  
IOA Board President  
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