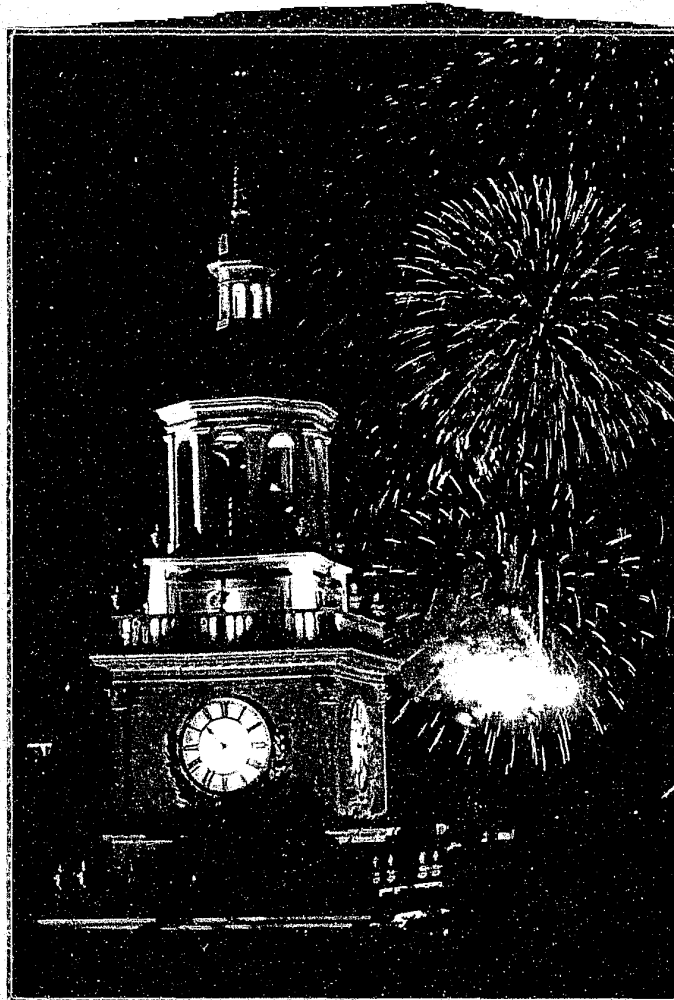


# ENFORCEMENT OF THE

TO THE

*Memorial*





# IACLEA

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## On The Cover

Fireworks light the evening sky behind Independence Hall in Philadelphia, host city for IACLEA's 37th Annual Conference. Please join your colleagues for what promises to be our biggest and best conference. *Photography courtesy of the Philadelphia Convention and Visitors Bureau.*

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## U.S. Department of Education Responds to Campus Security and Privacy Act Questions

The Final Regulations for the Crime Awareness and Campus Security Act of 1990 were published in the *Federal Register* on April 29, 1994. As noted in *CLEJ* (July/August and September/October 1994), the Final Regulations raised some new questions regarding the interpretation of reporting standards and appeared to contain some technical errors. The Final Regulations for the amendments to the Family Educational Rights and Privacy Act which pertain to campus law enforcement unit records were published in the *Federal Register* on January 17, 1995 (see *CLEJ*, March/April 1995). Although more concise and less controversial than the Campus Security Act regulations, the FERPA rules have also raised some questions of interpretation.

On April 4, 1995, the joint meeting of IACLEA Regions 3 and 5 held in Charlotte, North Carolina included a session dealing with the recent regulations. The meeting featured a live one-hour conference call during which Paula Husselmann and Ellen Campbell of the U.S. Department of Education fielded questions. In response to requests which had been made via the Region 3 Newsletter and the IACLEA-L e-mail list, several individuals had submitted questions in advance. The conference call allowed for immediate follow-up and gave those in attendance the opportunity to ask about other items of concern. While a conference call does not take the place of a Dear Colleague Letter or other formal communication from the Depart-

ment of Education, the responses to the questions which were raised were nonetheless illustrative of the current interpretation of the regulations. In those instances where further clarification seems to be needed, requests of a more formal nature will be drafted and the answers received will be communicated in a future issue of *CLEJ*.

The following is a synopsis of the discussion of the major issues which were raised on April 4:

**Q** - Will there be a Dear Colleague Letter which will clarify some of the confusion which still exists about the Campus Security Act, and how will the technical errors in the Act be addressed?

**A** - Staff are currently working on a technical package which will correct all of the mistakes. I don't know when it will be out, but it will be coming and will become part of the formal record. I am hesitant to project any kind of time line with regulations because the environment in Washington is changing. The technical package should not be a big deal, so it may be out in six months. With respect to the Dear Colleague Letter which was drafted right after the Seattle IACLEA conference, it was not determined to be a high priority piece and it is now unclear when or if it may be published. In regard to critical issues where the Final Regulations are unclear, such as the reporting of statistics, it may be possible to respond to specific points via e-mail and then the responses could be published by

IACLEA. That way the answers would be official and the word could get out to those who need it.

**Q** - That brings up a related question about information dissemination. While campus law enforcement and security administrators were specifically included in the mailing of the Campus Security Act Final Regulations last spring, many of us were unaware of the specifics of the FERPA rules prior to their being reprinted in the current issue of *Campus Law Enforcement Journal*. Is there a way to ensure that future regulations or a Dear Colleague Letters reach us? Could IACLEA provide you with a set of 900 mailing labels?

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### Plan Now for Future IACLEA Conferences

1995	July 9-11 Philadelphia, PA
1996	June 30-July 2 Charleston, SC
1997	June 29-July 1 Indianapolis, IN
1998	June 28-June 30 Toronto, ON Canada

## **Security and Privacy Act Questions**

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**A** - The FERPA rules were published in January and took effect on February 15, so we were planning to do a Dear Colleague Letter addressing the changes and mail it to all postsecondary institutions this month. As was mentioned, we are now unclear about the process which the Department will follow, but this will be a much simpler DCL and we would expect it to come out. We generally address such mailings to Registrars, but mailing to IACLEA members as well should not be a problem.

**Q** - Could you address the range of possible penalties if an institution fails to comply with the regulations, and explain what the inspection or audit process entails?

**A** - The Campus Security Act regulations are treated the same as other regulations governing Title IV programs. Structurally, there are 10 regional offices. Based on a "point" system they do periodic Program Reviews of institutions in the process of which they essentially "look at the books" and determine compliance or non-compliance. The Department also responds to complaints. I just got a letter from a police officer on a campus who wanted to bring to our attention the fact that nothing was being done by the administration at that school. We are going to be following through on that. In terms of the penalties, it is really a judgment call on the part of the program reviewer. The Secretary realizes that to some extent this is a new area for some schools and that it takes time to get things up and running and coordinated. If a school is making a good faith effort and honest mistakes occur, they get what we call "technical assistance" on how to change their pro-

cedures. I am a stickler about seeing that the program reviewers go back and check to see if the school made the changes on the next review, or perhaps sooner. The penalty will depend upon the severity of the lack of compliance, but it can range from a note for the file to a \$25,000 fine or possible termination, suspension, or limitation of participation in Title IV programs. We have had cases where we have limited, suspended or terminated schools for regulatory non-compliance, and we have assessed fines. You will probably want to bring that information back to ensure compliance on the part of other administrators.

**Q** - When it comes to the requirement to report Hate Crimes, does there have to be a specific Hate Crimes statistical section in the campus security report?

**A** - The explanation of how the Hate Crimes Statistics Act applies to the Campus Security Act is one of those areas of the Final Regulations where a technical correction needs to be made. Only Hate Crimes involving the offenses of murder, forcible and non-forcible sex offenses, and aggravated assault need be reported. This can be done with an asterisk and a footnote, it does not require a whole statistical section.

**Q** - This is more of a comment than a question. It has been observed that omitting theft from the list of crimes to be reported was a mistake since it is by far the most frequently occurring Part I crime.

**A** - In some cases we can propose a rule without direct law which requires it. If the Secretary believes it is in the best interest of the program, he can propose it for comment and see what the community thinks. If IACLEA believes that this should be done with regard to the reporting of theft offenses, that suggestion should be submitted in writing and we'll see where it goes from there. Of course, if Congress were to amend

the law we would then have to amend the regulations.

**Q** - Well, that relates to what must be the most frequently asked question about the Final Regulations: what is the real definition of "campus security authorities" and how does that affect the crime statistics that have to be reported? There is a lot of ambiguity because the statute used the term "campus security authorities" in association with the phrase "or local police agencies" in two places, when it itemized the crime statistics which had to be reported for a 3-year period and when it addressed the issue of timely notice. In the Final Regulations,

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## Security and Privacy Act Questions

Continued from page 10

the term "campus security authorities" appears only in relation to the timely notice provision. This has resulted in a lot of questions about just who is included in the broader group of "officials" who must supply statistics for the 3-year report.

**A** - This where the regulations truly cause confusion and is an area where I would really like to be able to give you something official for dissemination because it is one of the most important pieces of the draft Dear Colleague Letter. People call frequently asking for clarification about how the Final Regulations differ from the Proposed Regulations in this regard. Essentially, virtually anyone who knows of a crime must report that crime to the institution's representatives for inclusion in the statistics for that year, with no name involved. This was a change which was made at the eleventh hour in response to pressure from the community and was intended to protect the privacy rights of victims while encouraging the reporting of crimes. The campus security authority definition excludes "real" counselors, so that they would not have to send out a timely warning unless the school believes that it is imperative to do so, in which case the institution should not use FERPA as an excuse for keeping the crime covered up. On the other hand, the counselor would have to release the crime statistic for the annual report.

**Q** - That raises some other questions. There are a couple of places in the commentary that was published with the Final Regulations where specific reference is made to the standards that ap-

ply to crime reporting under the UCR system. In fact there is a very clear explanation of the obligation of other administrators who become aware of crime not to try to determine authoritatively on their own that the crime took place, but rather to inform the appropriate law enforcement professionals so that they

could conduct an investigation, isn't that correct?

**A** - That's right.

**Q** - If as the law enforcement professionals on campus all we receive from other individuals is a list of numbers at the end of the year, how can we possibly determine if those are valid numbers or not?

**A** - It isn't the best of systems, that is for sure. How else

can this be handled and still achieve the same intent?

**Q** - The statute specifically incorporated the UCR standards and the commentary preceding the Final Regulations emphasized that it is the law enforcement professionals who are expected to determine that the UCR crime definitions are met, otherwise the case may be classified as unfounded and the statistic not reported. Cases of anonymous reporting raise some serious questions, particularly since many of us have learned from talking with counselors on our own campuses that they don't routinely compare notes among themselves. A victim may talk to several contact persons, none of whom are trained in crime investigation. They may not even inquire as to the location of the incident, so where is the quality control in any statistics which they may provide? How can a proper determination be made if the only thing which is provided to the law enforcement authorities is a set of numbers?

**A** - That is a serious problem, especially if a fundamental requirement under the UCR is that you have a reporting person, victim, complainant, or whatever. Certainly the intent was not to create this kind of problem for schools, and we would welcome IACLEA's help in resolving this. Perhaps it needs to be made clearer that reporting involves a judgment call on the part of the campus police. I have to be careful not to have this become a Dear Colleague Letter which is not a Dear Colleague Letter, but there are obviously some serious problems here. Please lay the issues out in writing and we'll see how we can resolve them. In the interim, it would seem that if you are not able to investigate it then you don't have a crime for reporting purposes.

**Q** - Here is another question which relates specifically to the timely warning issue. What does a counselor do upon being notified of a potentially violent situation? Aren't there emergency exceptions to FERPA that allow counselors to do whatever they have to protect someone if they become aware of a specific threat?

**A** - That is correct. Under FERPA you can disclose information for health and safety reasons. What you are talking about we would consider to be proper disclosure.

**Q** - I think that in most of our discussions we have been assuming that the institution's statement of security policies says that crimes should be reported to the campus police. Would it be correct to say that a campus need say no more than this, and that there is no requirement to identify multiple on-campus reporting sites?

**A** - Yes, that is an institutional decision. It can just be the police.

**Q** - What happens if a campus does choose to identify multiple offices where persons can go to report crimes? If a student is a victim of sexual assault and she decides to report it only to the Dean

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