

October 15, 2024

Bricker Graydon

Webinar

Are you ready for the CAMPUS Act?

Disclaimers

Bricker Graydon

We can't help ourselves. We're Lawyers.

- We are not giving you legal advice
- Consult with legal counsel regarding specific situations
- There will be more guidance from ODHE – so stay tuned.

2

Agenda

Bricker Graydon

CAMPUS Act Issues

- Introductions
- What are the CAMPUS Act requirements? And when are they effective?
- What should we be alert to as public schools and private schools?
- What definitions are applicable and how can they create tension with existing requirements?

3

Campus Accountability and Modernization to Protect University Students (CAMPUS) Act

- **Effective Date:** October 24, 2024
- **CAMPUS Act** creates sections 3320.05 to 3320.08 of the Ohio Revised Code
- The CAMPUS Act was passed as part of Sub. SB 94.
 - The original bill was HB 606 (the text in this House Bill is different than SB 94).
 - https://search-prod.lis.state.oh.us/api/v2/general_assembly_135/legislation/sb94/05_EN/pdf/

NOTE: There are different requirements for **state institutions of higher education and private for-profit colleges** and **private nonprofit institutions of higher education**. We will call those out.

Key Requirements: Publish Policy

Policy on harassment and intimidation (You have these in various forms)

- Requires **state institutions of higher education and private for-profit colleges** to adopt and enforce a policy on **racial, religious, and ethnic** harassment and intimidation.
- Requires **private nonprofit institutions of higher education** to adopt and enforce a policy on **racial and ethnic** harassment and intimidation. **[Religious harassment and intimidation not required]**
- Requires that each institution's policy include related:
 - Training for administrators, faculty, and staff
 - complaint procedures (including anonymous reporting),

Key Requirements: Training for Faculty and Staff

Incident Response Training.
state institutions of higher education and private for-profit colleges and **private nonprofit institutions of higher education**

- Requires:**
- training for **all institution administration, faculty, and staff;**
 - includes **information on how to respond to hate incidents or incidents of harassment** that occur during a class or "event held at the institution at the time the incident occurs."
 - This training may be provided online

- Open question(s):**
- How often does the training need to happen? Annual? At new employee orientation?

Practice Tip: Include session in orientations and professional development spaces that make sense (Faculty Orientation; Student Affairs Training; Student Organization Orientation for Advisors)

Key Requirements: Required Procedures (State/For-profit)



Procedural Requirements for accepting and investigating complaints. **state institutions of higher education and private for-profit colleges**

Requires:

- Procedures for accepting and investigating student complaints and allegations of **racial, religious, or ethnic** harassment or intimidation against any student, staff, or faculty member. The procedures shall include:
- (a) An option to **submit complaints and report threats anonymously**;
 - (b) **Potential disciplinary actions** that may be taken after an investigation is conducted;
 - (c) At the conclusion of an investigation, **any mandatory communications**, regardless of whether disciplinary action is taken. These communications may include educational information on the institution's policy against racial, religious, and ethnic harassment and intimidation.

Open question(s):

- (1) "mandatory communications" are not defined; however, communication requirements may exist for cases that also constitute Clery crimes or have Title IX-related conduct.
- NOTE: Consider mapping out complaints that could trigger multiple policy requirements and create guide for compliance with existing policies and procedures.

Key Requirements: Required Procedures (Private Non-profit)



Procedural Requirements for accepting and investigating complaints (note: no religious harassment or intimidation policy requirements). **private nonprofit institutions of higher education**

Requires:

- Procedures for accepting and investigating student complaints and allegations of **racial or ethnic** harassment or intimidation against any student, staff, or faculty member. The procedure shall include:
- (1) An option to **submit complaints and report threats anonymously**;
 - (2) **Potential disciplinary actions** that may be taken after an investigation is conducted;
 - (3) At the conclusion of an investigation, **any mandatory communications**, regardless of whether disciplinary action is taken. These communications may include educational information on the institution's policy against **racial and ethnic** harassment and intimidation.

Open question(s):

- (1) Same as State/For-profit (prior slide)
 - (2) Private, non-profit schools must comply with Title VII (cover religion as protected category in employment), unless they qualify for as a religious corporation, association, educational institution, or society are specifically excluded from Title VII's prohibition against religious discrimination in hiring (42 U.S.C. § 2000e-1(a)).
- BUT NOTE:** 3320.06(D). In the event of a conflict between any provision of this section (R.C. § 3320.06) and the United States Constitution, any **other provision of federal law applicable to nonprofit institutions of higher education**, or Article I, Sections 3 and 11 of the Ohio Constitution, the other provision of law controls.

Key Requirements: Protecting students through law enforcement collaboration



Collaboration with local law enforcement. **state institutions of higher education and private for-profit colleges** and **private nonprofit institutions of higher education**

Requires/HFs to ensure:

to the extent possible and as needed, its campus security and police department, if the institution has one, collaborate with **local law enforcement, the state highway patrol, and student communities** to provide security functions consistent with institutional policies for institutionally sanctioned student organizations that face threats of terror attacks or hate crimes.

Practice considerations:

- (1) Do you have an institutional policy for providing "security functions" for "institutionally sanctioned student organizations"?
- (2) Threats of "terror attacks" is not defined; do you emergency response protocols that provide guidance?

Key Requirements: Policy definitions - Harassment



CAMPUS Act Definition: based on Ohio Rev. Code Ann. § 3345.0211

"Harassment" means unwelcome conduct that is so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the individual's education program or activity.

U.S. Department of Education's Office for Civil Rights (OCR) definition July 2024:

OCR determines that a "hostile environment exists when harassing conduct is both subjectively and objectively offensive, and so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity."

Ex. of EEOC definition of religious harassment:

"a hostile work environment, in which the employee is subjected to unwelcome, religiously based statements or conduct so severe or pervasive that the employee objectively and subjectively finds the work environment to be hostile or abusive."

Open Questions:

- (1) ORC 3345.0211's definition borrows from the discussion of student-on-student harassment from U.S. Sup. Ct. In Davis v. Monroe County Board of Education (1999); how do we square this with other potentially inconsistent areas of state and federal law?
- (2) Do we incorporate the harassment definition for reporting purposes along with other applicable definitions?

Key Requirements: Creating task force



state institutions of higher education and private for-profit colleges

"create a campus task force on combating antisemitism, Islamophobia, anti-Christian discrimination, and hatred, harassment, bullying, or violence toward others on the basis of their actual religious identity or what is assumed to be their religious identity at the institution."

private nonprofit institutions of higher education

"create a campus task force on combating antisemitism, Islamophobia, anti-Christian discrimination, and hatred, harassment, bullying, or violence toward others."

Key Requirements: Annual Reporting



state institutions of higher education and private for-profit colleges

private nonprofit institutions of higher education

[IHes] must submit an annual report to the chancellor of all harassment and intimidation reports submitted to the federal government consistent with the "Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act," 20 U.S.C. 1092(f).

Practice notes: (1) Will incidents of harassment and intimidation be reported in your ASR? Only if they meet Clery definitions?
(2) ASR is reported on or before October 1 for the prior calendar year. October 1, 2025 ASR deadline will be for January 1 – Dec. 31, 2024.

Quick Review: Clery Crime Statistics and Hate Crimes 

- Clery crimes **within its** Clery geography **that are reported to** campus security authority
- Must be reported and disclosed for the **three most recent years**
- Must be recorded **by location**
- Cannot remove from statistics based on a decision by court, jury, etc.
- Must be recorded **by calendar year** (not academic year)
- Hate crimes must be recorded by category of bias: **Race, Religion, Sexual Orientation, Gender, Gender Identity, Ethnicity, National Origin, Disability.**
- Must make reasonable, good faith effort to obtain statistics, may rely on the information supplied by a local or State police agency



Annual Security Report Categories 

Primary crimes	Arrests and referrals for disciplinary actions for:	VAWA Offenses
1. Murder/Non-Negligent Manslaughter	1. Liquor law violations	1. Domestic Violence
2. Negligent Manslaughter	2. Drug law violations	2. Dating violence
3. Rape	3. Illegal weapons possessions	3. Stalking
4. Fondling		
5. Incest		
6. Statutory Rape	Hate Crimes: All primary crimes PLUS	
7. Robbery	1. Larceny-theft	
8. Aggravated assault	2. Simple Assault	
9. Burglary	3. Intimidation	
10. Motor vehicle theft	4. Destruction/damage/vandalism of property	
11. Arson		

Key Requirements: Policy definitions – Intimidation (Clery) 

state institutions of higher education and private for-profit colleges
private nonprofit institutions of higher education

Intimidation—To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack (CLERY DEFINITION)

Key Requirements: Policy definitions – Intimidation (CAMPUS Act)



state institutions of higher education and private for-profit colleges
private nonprofit institutions of higher education

CAMPUS Act Defn: "Intimidation" means the violation of ethnic intimidation described in [section 2927.12 of the Revised Code](#), R.C. § 3320.05(A)(3).

How does R.C. § 2927.12 define Intimidation?

No person shall violate [section 2903.21](#), [2903.22](#), [2909.06](#), or [2909.07](#), or [division \(A\)\(3\), \(4\), or \(5\) of section 2917.21 of the Revised Code](#), by reason of the race, color, religion, or national origin of another person or group of persons.

2903.21 (Aggravated Menacing) (knowingly cause another to believe offender will cause serious physical harm to person or property)

2903.22 (Menacing) (consider 2903.22(A)(2) – displaying a deadly weapon toward an emergency service responder)

2909.06 (Criminal Damaging)

2909.07 (Criminal Mischief)

2917.21 (A)(3), (4), or (5), (A)(3) – telecommunications harassment + aggravated menacing; (A)(4) – telecommunications harassment and destruction of property; (A)(5) – continued telecommunication harassment after being warned to stop communicating.

Time, place, and manner restrictions -- State Schools



state institutions of higher education

"Each state institution of higher education, as defined in [section 3345.011](#) of the Revised Code, shall publicize on its web site any time, place, or manner restrictions it places on expressive activities, as defined in [section 3345.0211](#) of the Revised Code."

R.C. § 3320.08.

Action Items



- Policy**
 - Identify all policies and statements that define harassment and intimidation
 - Identify all procedures that implicate harassment and intimidation (student code of conduct, faculty handbook, employee handbook, civil rights policies, anti-bullying statements)
 - Update policies as needed
- Training**
 - Develop training sessions for administrators, faculty, and staff as required under CAMPUS Act (consider ODHE training and shared services)
 - Coordinate training sessions with local law enforcement (campus, municipal, sheriff, state, etc.) and "student communities"
- Task Force**
 - Review existing campus committees for potential task force compliance
 - create a campus task force on combating antisemitism, Islamophobia, anti-Christian discrimination, and hatred, harassment, bullying, or violence toward others

Kasey Havekost
✉ khavekost@brickergraydon.com
☎ 216-523-5473
🌐 www.brickergraydon.com

Josh Nolan
✉ jnolan@brickergraydon.com
☎ 216-523-5485
🌐 www.brickergraydon.com

**Bricker
Graydon**
