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June 21, 2022

Welcome

Welcome to the first edition of *The Academic Advisor*. Although this is a new publication, our firm has been serving clients, including schools, colleges and universities, and other education providers, for nearly 150 years.

We understand from experience that the work our education clients do each day is mission-driven, fast-paced, and dynamic. Our Education Practice Group is composed of attorneys with diverse experiences serving educational institutions and local government. Some of the roles in which our members have served include university president, general counsel, associate vice president for administration, Title IX coordinator, adjunct professor, trustee, board chairperson, and elected county school board president.

We also know your time is valuable. In a brief, reader-friendly style, *The Academic Advisor* explains the legal significance of newsworthy topics and how they impact the work you do. In the event of significant legal updates, we will share Education News Alerts. To help you navigate shifts in the educational landscape, to support your risk management and mitigation efforts, and to provide an opportunity for virtual and in-person discussion, we also will host Education Law Webinars and Forums on topics of interest.

If there are subjects you would like to hear about in the coming months, please [let us know](#). Additionally, if others within or outside your organization would benefit from receiving our news and event emails, please [let us know](#) or feel free to forward this message with the registration link. For additional information about our education attorneys and the services we provide, please see our [Education Practice Group](#) page.

We understand that summer is a busy time for our education clients as they prepare for the year ahead. If our Education Practice Group can assist you, please let us know.

We look forward to engaging with you through this platform, virtually, and in-person in the coming months.

[Erin Jones Adams](#), Counsel, Co-Chair of the [Education Practice Group](#), and Co-Editor of *The Academic Advisor*

and

Universities Share Lessons Learned from Ransomware Attacks

"According to a recent Sophos poll of IT professionals, 44 percent of educational institutions suffered ransomware attacks in 2020, and 58 percent of those hit said the attackers successfully encrypted their data."

Why this is important: Despite patching, back-ups, and testing, educational institutions remain ripe targets for ransomware attacks. Adding flame to the fire, *Ed Tech* reports that recovery costs in the education sector are nearly 50 percent higher than other industries with an average \$2.7M price tag. Tools like PYSAs, a form of malware that exfiltrates data and encrypts users' critical files, have been increasingly used by cyber criminals to target higher education, K-12 schools, and seminaries in order to elicit ransom payments, according to the FBI. On college campuses, siloed operations and lack of communication with IT can be a contributing factor.

At institutions like California State University and Michigan State University, strategies for fending off and responding to ransomware attacks were enhanced through first-hand experience with hacker infiltrations. In the wake of such attacks, preventive measures employed and recommended by these institutions have included: (1) user education, (2) ongoing communication between IT and campus members, (3) use of multi-factor authentication, (4) network segmentation into tiers, (5) enhanced vulnerability testing of internet-facing systems, (6) establishing relationships with threat intelligence agencies, and (7) use of endpoint/extended detection and response tools.

Additional mitigation strategies recommended by the FBI include, among other things: (1) backing up critical data with air gap and password protection offline, (2) avoiding lags between the release of operating system updates/patches, software, and firmware and its installation on campus networks/devices, (3) disabling hyperlinks in received emails, and (4) disabling unused remote access/RDP ports and monitoring remote access/RDP logs. NIST, the National Institute of Standards and Technology (part of the U.S. Department of Commerce), encourages organizations to create an incident recovery plan that includes defined roles for company leadership, strategies on decision-making, and critical contacts for responding to a ransomware attack.

With cyber criminals' focus on the education sector, schools should act now to defend against future attacks and to develop their response plans. --- [Erin Jones Adams](#)

The Unintended Consequences of a Title IX Rule Delay

"Further delaying a proposed rule means former Education Secretary Betsy DeVos' rule will stay in effect longer."

Why this is important: Title IX regulations promulgated in 2020 under Former Secretary of Education Betsy DeVos and the Trump administration narrowed the definition of what constitutes sexual harassment and required schools to implement strict hearing procedures. While proponents of the 2020 regulations believed they would afford the parties, particularly the respondent to a complaint, due process, many argued that the rule discouraged victims from coming forward—chiefly because the formality of the investigation and adjudication process could lengthen the time period for resolution of the complaint, and involved procedures such as a live hearing and cross-examination of the complainant. (A federal court subsequently struck down the requirement that persons submit to cross-examination in order for decision-makers to consider their evidence.) The reported conduct also might not meet the new definition of sexual harassment for purposes of establishing Title IX jurisdiction, thereby preventing the school from moving forward with the complaint unless it could be addressed under another school policy.

The Biden administration has promised to issue new Title IX regulations this month. Perhaps the Department of Education is targeting June 23, the 50th anniversary of the Title IX law. In the meantime, schools should continue to comply with the 2020 regulations and be prepared for the possibility of impending changes this summer. --- [Megan W. Mullins](#)

Financial Aid Administrators Call for Student Loan System Reforms

"NASFAA helped develop more than two dozen recommendations on components like loan plan design and servicer oversight."

Why this is important: In the ongoing debate about student loan debt, many aspects of the student loan programs administered by the federal government have been both heralded and criticized. Those finding fault with the process have focused on all aspects of student loans from origination to servicing or forgiveness. Recently, the "National Association of Student Financial Aid Administrators, along with a cadre of 21 higher education organizations, developed recommendations to improve the federal loan system." One of the main servicing recommendations of the group is the development of a servicing manual setting forth servicing requirements, instead of the current ad hoc nature of servicing practices. One of the recommendations for repayments is to simplify the system so that repayment options are easier to understand. One of the recommendations for lowering defaults, which hits the most vulnerable students the hardest, is changing the ability of borrowers to enter into income-driven repayment plans before defaults occur. Institutions of higher education should ensure up-to-date knowledge about student loan servicing and repayment guidelines as a way to provide information to current, and potential, students. --- [Angela L. Beblo](#)

Preventing Gun Violence on Campus

"Alarmed by mass shootings in Uvalde and Buffalo, colleges are working to protect their campuses with threat assessment teams, active shooter drills and partnerships with law enforcement."

Why this is important: In the last decade, school shootings have increased at an alarming rate. Recently, the events in Uvalde, Texas and Buffalo, New York have encouraged higher education institutions to revisit and enhance their preventative measures against gun violence. As one such action, the dean of the Rossier School of Education at the University of Southern California has released an eight-point plan, which recommends institutions increase their number of mental health professionals to support individuals with potential risk factors. The plan also advocates for the creation of a national program to train mental health professionals and law enforcement officers to work alongside one another on crisis intervention and threat assessment teams. Meanwhile, Temple University has taken a community-based approach to gun violence prevention by creating a violence reduction task force that includes students, faculty, staff, and community members and providing incentives for nearby landlords to upgrade their security. Other strategies include relationship-building with local FBI field offices, conducting active shooter drills, using behavioral threat assessment teams to monitor and keep track of warning signals, and encouraging campus members to report concerning behavior or social media posts to campus safety officials. In preparation for the new academic year, institutions should review their campus safety and security policies and implement reasonable preventative measures. --- [Kelsie A. Wiltse](#)

Sexual Abuse Prevention Groups Call for Education Department to Investigate Nondisclosure Agreement Use

"A coalition of 37 sexual assault prevention groups and law firms is calling on the U.S. Department of Education to investigate colleges reportedly coercing students into signing agreements that restrict them from discussing misconduct they report under Title IX."

Why this is important: Development of the current Title IX regulations resulted in much discussion regarding schools' use of "gag orders"—restrictions on the parties' ability to discuss Title IX situations—in their Title IX processes. Opponents argued that such restrictions implicate First Amendment free speech issues and prevent parties from speaking with potential witnesses, collecting evidence, and engaging with support resources. Proponents asserted that negating schools' ability to impose such restrictions would chill reporting, subject survivors to stigma and backlash for making a formal complaint, and enable witness tampering.

The U.S. Department of Education settled on 36 CFR § 106.45(b)(5)(ii), which provides that schools shall "[n]ot restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence." Arguing that this provision bootstrapped by a prohibition on retaliation at 36

CFR § 106.71 strikes the appropriate balance, the U.S. Department of Education said that parties, not schools, should decide whom they inform about Title IX allegations in order to receive support, advice, and assistance, and that schools should not determine what information is "confidential."

In response to the Title IX regulations, many schools eliminated or otherwise reframed such restrictions to focus on the prohibition against retaliation. Using Department of Education commentary as a shield, schools further operated under the premise that 36 CFR § 106.45(b)(5)(ii) is limited to discussion of the allegations under investigation and not evidence subject to the parties' inspection and review under 36 CFR § 106.45(b)(5)(vi).

Reigniting the issue this month, sexual assault prevention advocates have encouraged the U.S. Department of Education to investigate colleges for reportedly coercing students to sign agreements that restrict their discussion of reported Title IX misconduct. These advocates argue that schools are conditioning parties' access to accommodations, the Title IX grievance process, and evidence on non-disclosure agreements. Responding colleges assert that their non-disclosure agreements do not prevent discussion of the allegations, but rather protect against the disclosure of education records outside the Title IX disciplinary process. As the Department of Education considers this latest challenge to schools' application of the current Title IX regulations, educational institutions should reexamine any non-disclosure directives in their Title IX practices to avoid similar challenges. --- [Erin Jones Adams](#)

What Changes Could Come for Title IX?

"The main one is that it's likely to include more protections for transgender students by prohibiting discrimination on the basis of sexual orientation and gender identity."

Why this is important: Although we do not yet know what the new Title IX regulations will include, they are expected to provide greater protections for transgender students. In 2016, the transgender community and Title IX were discussed in a "Dear Colleague" letter issued by the Obama administration, which advised that Title IX protections should include gender identity. In 2017, the Trump administration rescinded that guidance, but it was reinstated by the Biden administration last year. While some groups argue this kind of change to the Title IX regulations would prohibit schools from having separate bathrooms and locker rooms on the basis of biological sex and would unfairly advantage transgender women allowed to compete in women's sports, schools should anticipate an express prohibition of discrimination on the basis of sexual orientation and gender identity. --- [Megan W. Mullins](#)

How to Ensure FERPA Compliance in Colleges and Universities

"Complying with the federal privacy act requires diligent monitoring and data security practices."

Why this is important: When people consider privacy issues, most immediately they think about bank accounts and Social Security numbers. However, educational institutions also need to be concerned about protecting data under the Family Educational Rights and Privacy Act ("FERPA"). FERPA governs the disclosure of certain information in education records. These rights belong to parents (and of-age children) for K-12 and to students enrolled in higher education. "The requirements to maintain FERPA compliance mean that colleges and universities must have practices in place to secure student data." That does not just mean having a policy or procedure in place. It also covers ensuring protection of computer databases and storage systems. The information protected by FERPA encompasses significantly more than just personal or private information. Institutions should periodically review all access, policies, procedures, and technical equipment and systems to ensure up-to-date compliance with FERPA. --- [Angela L. Beblo](#)

Restrictions Threaten 'Integrity of Our System of Higher Education,' Groups Say

"PEN America and the American Association of Colleges and Universities released a public statement defending higher ed against efforts by lawmakers to dictate what can and cannot be taught on college campuses."

Why this is important: Legislation aimed at preventing schools from teaching "divisive concepts" has been introduced or passed throughout the country. The ambiguity of this legislation allows a broad interpretation, which targets certain topics related to race and social justice. It also restricts individuals from exercising their freedom of inquiry and expression within the classroom—principles that are inherent to higher education. This type of political involvement threatens educational discourse by undermining the accreditation process and hiring and tenure decisions. In jurisdictions that have adopted this legislation, institutions that fail to comply may jeopardize their accreditation and/or federal funding. Institutions should monitor any changes in the state law that may impact the autonomy of the institution and freedom of expression. --- [Kelsie A. Wiltse](#)

UNH Fraternity, 46 Members Charged with Hazing

"New Hampshire statute allows us to charge the people who organized the hazing, the people who were present for the hazing, and the participants of the hazing."

Why this is important: Participation in Greek life on campus is a rite of passage for hundreds of thousands of college students every year. In the past few years, numerous stories have been reported about hazing and other serious problems facing Greek organizations on campus. Members of fraternities at Georgia College, Penn State, Michigan State, LSU, and more have faced criminal and other charges in the past few years relating to Greek-life activity. This month, a fraternity at the University of New Hampshire was added to the list when 46 members were indicted for a hazing event earlier this year. Higher education institutions are in the unenviable position of balancing safety of all students and students' rights, while also needing to take swift, decisive action when allegations of such a serious nature are made. Most schools, and national fraternity organizations, already take proactive actions to provide counseling and literature regarding no-tolerance policies. Since hazing laws vary by state, institutions should remain aware of any legal changes in state law that may impact the school's process for handling allegations of hazing on campus. --- [Angela L. Beblo](#)



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