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Preparing for the Stepped Up CLERY ACT Enforcement

By: David R. Keller

The United States Department of Education (DOE), after years of inactivity, has made it a priority to increase enforcement efforts under the CLERY Act. As a result, the DOE is conducting audits of CLERY Act compliance on a regular basis. This is a good time to revisit CLERY Act compliance and assure that your college has proper procedures in place and documents available to bring an audit to a successful outcome.

There are essentially three requirements of the CLERY Act. First, that a college notify the campus community of its current policies regarding reporting criminal actions or emergencies on campus, security of and access to campus facilities, and campus law enforcement. Second, colleges are required to have certain records and reports. Crimes must be reported to campus security authorities, reports from other law enforcement agencies must be obtained, and for colleges with campus police or security, a daily crime log must be maintained which must include non-CLERY Act crimes. Third, information must be provided to the campus. This includes timely warning of a crime that may threaten students or employees, access to the crime log, an annual security report regarding designated CLERY Act crimes, and information about obtaining data on registered sex offenders.

A college must also designate "Campus Security Authorities" ("CSA"), who are officials of an institution who have significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings. Each CSA is a mandated reporter of crimes and should be trained on CLERY Act compliance.

In order to be prepared for an audit, the College should have a list of all CSAs for CLERY Act purposes. Other relevant documents will include handbooks which contain institutional policies, any publications relating to the CLERY Act and information on how they are distributed, public safety operating procedures, all records of recorded crimes, both CLERY and non-CLERY, maps and lists of buildings and land for which reporting is required, and the most recent campus security reports.

It is imperative that a college enter an audit understanding the geographic area for which it must report crimes, and the crime statistics it must collect, including statistics from other law enforcement agencies. Emergency response

and evacuation procedures must be in place. The daily crime logs and annual security reports must be accurate and up to date and must address procedures to report crimes or emergencies and policies and procedures for issuing timely warnings to the campus population. Any audit will also include an examination of drug or alcohol abuse education programs and programs offered by the college regarding sexual assaults and prevention of sexual offenses, including procedures to follow when a sex offense occurs.

We strongly suggest that each college create checklists of
required documents and procedures to meet complex CLERY Act requirements, and identify and train campus security authorities to meet their obligations. It has become apparent that the days of DOE indifference to CLERY Act compliance are over.

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Intellectual Property Rights and Ownership

By: Joseph R. Falcon, III

Intellectual property, like real property, has monetary value, and an educational institution should not be immune from realizing the value of intellectual property they currently having or may acquire in the future. In fact, by appropriately managing intellectual property rights, the institution may create opportunities to grow, protect, and exploit these rights for commercial value. For educational institutions, intellectual property may even assist in funding research and/or foster innovation through patent protection. For instance, an educational institution that owns patent protected inventions has the right to exclude others from making, using or selling the invention throughout the United States for life of the patent, giving that institution an advantage over competitors and providing potential revenue for future research through technology transfer. To realize the full value of its intellectual property, the institution must own it. Unfortunately, defining ownership is never easy, especially under an employee-employer relationship.

In the United States, the inventor is generally the applicant and owner of the invention. Under certain circumstances, an employer may lay claim to the invention created by the employee. If an employee is hired to invent and the employer can demonstrate such duties were clearly spelled out for the employee in writing, the employer may claim ownership of the invention through assignment, as long as the employer can demonstrate the invention was created within the scope of the employee's employment. However, inventions are not always created within a defined scope of employment. It has been found that the mere existence of an employer-employee relationship does not of itself entitle the employer to an assignment of any inventions, even if that employee devises the invention during their employment. There are situations where the employee may perceive that his/her actions in creating the invention were outside the scope of his/her employment, and the employee wants to retain ownership in the invention. Hence, there is no meeting of the minds between the employee and employer to who owns the intellectual property.

Certain business policies and conduct ensure that ownership of intellectual property is properly acquired by the institution. Employment agreements and assignment provisions effectively transfer patent rights to the employer. Through these agreements, or through clear and concise policies (i.e. employee handbooks), it may be required that the employee assign his or her intellectual property rights to the institution. In certain cases, the employee may be required to keep all proprietary information confidential. In another circumstance, the employee may be required to disclose all creative ideas made during employment. However, some institutions fail to require disclosure or even

educate their employees about intellectual property. Even worse, some do not even establish contractual relationships with their employees or even inform them on company policies affecting the same. As a result, the aforementioned situation occurs, and the employee believes they are the rightful owner to the invention that are to be assigned to the employer.

There are certain situations where ownership questions occur and the employer may only be left with licensing rights to the invention. Even in the absence of an express agreement to assign, the employment contract may not preclude the employer as a matter of law from asserting a claim to the employee's invention. Even in situations where the employee owns the invention and a resulting patent, the employer may have a "shop right" to the invention, where the employer will have a license to use the invention without paying the employee any additional compensation as royalties. As an implied license, shop rights allow the employer and its employees to use the patented invention. However, this is a limited right and restricted to a specific use of the invention.

In many circumstances, it is not satisfactory that the employer merely retain a shop right. Rather, the employer will want to avert uncertain ownership and preserve the rights in intellectual property developed by the employee under the scope of their employment. In order to clear any uncertainty of ownership, the employer should require employees to sign a written agreement with assignment provisions that clearly define ownership, or at minimum, provide the employee with employment handbooks having assignment provisions, in order to avert unintentional ownership issues. Even with a contract in place, the employer should clearly point out and explain its intellectual property policies to its employees.

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Employment Corner Deferred Action Application Process Implemented by DHS

By: Silas M. Ruiz-Steele

August 15, 2012 marked the beginning of the United States Department of Homeland Security's "deferred action" program. This program provides temporary relief from deportation, known as deferred action, to undocumented immigrants who were brought to the United States as children.
The program, which operates as a form of prosecutorial discretion, offers young people who are in the United States with no legal immigration status the opportunity to avoid deportation and to gain employment for an initial period of two years. The program is now available to individuals who:

(1) were under the age of 31 as of June 15, 2012;
(2) came to the United States before reaching their 16th birthday;
(3) have continuously resided in the United States since June 15, 2007;
(4) were physically present in the United States on June 15, 2012;
(5) entered the United States without official inspection before June 15, 2012, or had no lawful immigration status as of June 15, 2012;
(6) are currently in school, have graduated or obtained a certificate of completion from high school, have obtained a general education development (GED) certificate, or are an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; and
(7) have not been convicted of a felony, significant misdemeanor, three or more other misdemeanors, or do not

otherwise pose a threat to national security or public safety.

What Employer's Need to Know about Deferred Action for Childhood Arrivals (DACA)

Under the program guidelines, one of the primary challenges for DACA applicants is that they need to present evidence of their continuous residence and physical presence in the U.S. Eligible DACA applicant may turn to their employers for assistance in their search for documentation to establish these requirements. Such requests may put employers in a difficult situation. If the employer learns that, through a DACA-related request for information, that an employee lacks a valid work authorization, failure to act on that information could, under certain circumstances, expose the employer to potential liability for knowing employment of unauthorized workers. Similarly, an employer should take reasonable follow-up measures when it has constructive notice of an employee's possible lack of work authorization. Constructive knowledge may include situations where an employer fails to complete or improperly completes the Employment Eligibility Verification Form, I-9. Civil and criminal penalties for hiring undocumented individuals can range from $250 up to $10,000 per individual for repeated violations. Our office can advise on the risks and potential consequences an employer must consider to avoid potential employer sanction penalties in face of DACA.

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