



## CAMPUS COUNSEL

A legal blog written for administrators, HR professionals, in-house counsel, and deans at colleges and universities

### ACE Comments on Proposed “Campus Accountability and Safety Act” (CASA)

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On May 15, 2015, The American Council on Education (ACE) released its comments on S. 590, the Campus Accountability and Safety Act (CASA), introduced by Senator Claire McCaskill in the 114th Congress. While supportive of CASA’s mission to help institutions prevent sexual violence on campus, the comments, co-signed by 13 associations of higher education, raise a number of concerns regarding the bill as it is presently drafted. The comments raise three so-called “broad” concerns and 12 “specific” concerns to the potential legislation.

Among the signors’ broad concerns is CASA’s one-size-fits-all approach. According to ACE, the bill assumes that all college students attend large, four-year residential institutions which, as of the 2011-12 academic year, made up just 14 percent of college undergraduates. The bill does not recognize the variety of institutions covered by the Higher Education Act, as it includes provisions irrelevant to or unworkable for institutions without a residential population and, even more, for institutions without a campus. ACE makes a variety of recommendations to address this concern, including: (1) excluding online institutions and students who take classes exclusively online from the bill’s provisions; (2) providing more opportunity for institutions to partner with one another to meet the bill’s requirements; and (3) reviewing each of the bill’s requirements to ensure that it makes sense in the context of a non-residential student population.

The bill’s enforcement and penalty provisions are also highlighted as a broad concern. CASA authorizes the Secretary of Education to impose fines of up to 1% of an institution’s operating budget per violation for failure to comply with any Title IX requirements or with various requirements set forth under the bill. These fines are completely discretionary, without clear guidelines for federal officials to determine the appropriate level of fines for particular violations. Additionally, the maximum fine, 1% of an institution’s operating budget, can represent a massive amount of money for the nation’s largest universities. ACE notes that, during testimony before the Senate, the Department of Education unambiguously stated that it does not want the authority to impose these fines, as it already has the tools necessary to ensure compliance with laws addressing sexual assault.

The letter's specific concerns are based on the premise that, while many of the core concepts in the bill have merit, the execution of these concepts needs to be improved. The letter addresses the role of confidential advisors, arguing that their sole responsibility should be to support survivors of sexual assault, not sexual assault investigation or the implementation of Clery Act reporting and compliance. The comments also express concern about the Memoranda of Understanding requirement that institutions must have with local police, requirements relating to campus disciplinary processes, and the need to provide clarification to resolve conflicts between the Clery Act and Title IX.

***Client Tip:*** *The significant and varied concerns raised in ACE's letter indicate a lack of support in higher education for the bill as it is currently drafted. However, institutions would be wise to review the proposed legislation and ACE's comments, and continue to monitor this important legislation as it moves through Congress.*