



State University of New York

RECEIVED

JAN 5 1993

OFFICE OF ACADEMIC  
PROGRAMS AND SERVICES

## Memorandum to Presidents

Date: December 30, 1992 Vol. 92 No. 7

From: Office of University Counsel and  
Vice Chancellor for Legal Affairs

Subject: New Requirements under Selected Provisions  
of the Higher Education Amendments of 1992

To: Presidents, State-operated Campuses  
Presidents, Community Colleges

The recently enacted Higher Education Amendments of 1992, P.L. 102-325 ("Act" or "Amendments"), make sweeping changes to the financial assistance provisions under Title IV of the Higher Education Act of 1965, adding new requirements on institutions of higher education which participate in Federal student aid programs. The Act also amends other Federal laws affecting institutions of higher education. The University's Office for Financial Services sent details of the specific Title IV changes to your Directors of Financial Aid on September 15, 1992. It is the purpose of this Memorandum to apprise you of some of the other major changes made by the Act.

Since the U.S. Department of Education ("Department") indicated that it was preparing a "Dear Colleague" letter, we were awaiting such guidance before advising you of these other provisions. Unfortunately, the "Dear Colleague" letter issued this past October, for the most part, simply reiterates the Act.

### Refund Policy

Under the Amendments, institutions of higher education must have in place a "fair and equitable" refund policy which requires the institution to "refund unearned tuition, fees, room and board and other charges to a student" who receives Federal financial assistance. In addition, the institution must provide "pro-rata" refunds of all these institutional charges to a student who attends the institution for the first time and who withdraws from classes any time prior to sixty percent of the enrollment period or nine weeks into a fifteen-week semester. Institutions must credit refunds to outstanding loan balances and awards under Federal student assistance programs before returning any funds to the student.

Instituting this new refund policy will be a departure from current Board of Trustees' regulations governing student refunds, which does not allow refunds beyond the fourth week of classes in a semester. (Item 057.1 of the Administrative Procedures Manual; 8 NYCRR §302.2). We plan to present to the Board in January a proposal to amend the regulations for the State-operated campuses to provide "pro-rata" refunds to student recipients of Federal financial assistance attending a SUNY campus for the first time. The Offices of Finance and Business and Student Affairs and Special Programs will shortly provide you with greater details about the new requirements for the treatment of refunds at the State-operated campuses.

### Campus Security Act

In the Memorandum to Presidents, Vol. 91, No. 3, dated August 2, 1991, you were advised of the passage of the Campus Security Act, which requires institutions to collect statistics on specific campus crimes, including rape, and to gather information on their own security policies for dissemination this past September in an annual security report to current and prospective students and employees. The 1992 Act amends this law by requiring campuses to include in their reports statistics not only of rape but also of all sex offenses, forcible or non-forcible. Campuses must also develop a policy that includes programs aimed at preventing sex offenses and procedures to be followed once a sex offense has occurred.

The Act outlines a schedule of effective dates, requiring that information on forcible and nonforcible sex offenses be collected as of August 1992 and included in the September 1993 annual report of the campus. The Department advises in its "Dear Colleague" letter that campuses are to follow the definitions of forcible and nonforcible sex offenses found in the Federal Bureau of Investigation's Uniform Crime Reporting System, amended by the Hate Crime Statistics Act. These definitions are attached for your reference.

In view of the University's current policies on personal safety discussed in the Memorandum to Presidents, Vol. 90, No. 15, dated December 21, 1990, we suggest that campus personal safety committees review the requirements the new law imposes as part of their continuing assessment of personal safety policies and procedures on campus.

### The Family Educational Rights and Privacy Act

The Act amends the Family Educational Rights and Privacy Act ("FERPA" or "Buckley Amendment") to exempt from the definition of "education records" records that are "maintained by a

law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement." Prior to this amendment, criminal information about a student could not be released without the written permission of the student because, in most instances, such information was considered part of the student's education record and FERPA generally prohibited release of such records except under limited circumstances.

This amendment will allow campuses to release some law enforcement records concerning students, such as arrest records, without the need to obtain student consent. In fact, because the release of these records is no longer restricted under FERPA, they may be required to be released under New York State's Freedom of Information Law. For example, public safety logs and incident reports concerning students and containing only factual information will now generally be accessible.

It is important to note, however, that under the Freedom of Information Law, certain broad categories of law enforcement records are exempted from disclosure. For instance, such records need not be released if disclosure would interfere with an investigation or judicial proceeding, deprive a person of a fair trial or adjudication, reveal a confidential source or confidential information relating to a criminal investigation or identify criminal investigative techniques or procedures. In addition, records need not be released under the Freedom of Information Law if they are specifically exempted from disclosure by other State or Federal laws. For example, prohibited under New York State's Civil Rights Law is the release of any picture or document which identifies the victim of a sex offense (i.e., sexual misconduct, rape, sodomy, sexual abuse or incest) except to individuals charged with investigating or prosecuting the offense or pursuant to a court order or the written consent of the victim.

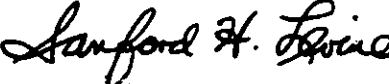
In light of the amendment, and its interplay with the requirements of the Freedom of Information Law, we recommend reviewing campus policies and procedures to ensure that they accurately reflect these requirements.

### Drug-Free Workplace

The Act amends the Drug-Free Workplace Act to exempt Pell Grant recipients from the definition of "grantee." As you are aware, the Drug-Free Workplace Act requires individuals receiving Federal grants to certify that they will not engage in illegal drug-related activity during the period of their grant. (See Memoranda to Presidents, Vol. 89, Nos. 6 and 15, dated April 26 and July 27, 1989, respectively). With this amendment,

campuses are no longer required to obtain drug-free certifications from students receiving Pell Grants.

Additional detail will be forwarded to the campus officers responsible for implementing the requirements imposed by the new Act when regulations or other guidance is issued by the Department of Education.

  
Sanford H. Levine

Attachment  
Copies for Information Only:  
Deans, Statutory Colleges  
President Coll  
Provost Nesheim

UNIFORM CRIME REPORTING HANDBOOK --  
National Incident-Based Reporting System Edition  
(1992)

**19. Sex Offenses, Forcible**

**Definition**—Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.

**A. Forcible Rape**

**Definition**—The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).

This offense includes the forcible rape of both males and females. In cases where several offenders rape one person, report one Forcible Rape. Do not count the number of offenders.

If force was used or threatened, the crime should be classified as Forcible Rape regardless of the age of the victim. If no force or threat of force was used and the victim was under the statutory age of

consent, the crime should be classified as Statutory Rape. The ability of the victim to give consent must be a professional determination by the law enforcement agency. The age of the victim, of course, plays a critical role in this determination. Individuals do not mature mentally at the same rate. Certainly, no 4-year-old is capable of consenting, whereas victims aged 10 or 12 may need to be assessed within the specific circumstances.

**B. Forcible Sodomy**

**Definition**—Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

If a victim is both raped and sodomized in one incident, then both offenses should be reported.

**C. Sexual Assault With An Object**

**Definition**—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

An "object" or "instrument" is anything used by the offender other than the offender's genitalia. Examples are a finger, bottle, handgun, stick, etc.

**D. Forcible Fondling**

**Definition**—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacity.

Forcible fondling includes "indecent liberties" and "child molesting." Because Forcible Fondling

is an element of Forcible Rape, Forcible Sodomy, and Sexual Assault With An Object, it should be reported only if it is the sole forcible sex offense committed against a victim.

permanent, the offense should be classified as Forcible Rape, not Statutory Rape.

## **20. Sex Offenses, Nonforcible**

**Definition—** Unlawful, nonforcible sexual intercourse.

### **A. Incest**

**Definition—** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

### **B. Statutory Rape**

**Definition—** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

If force was used or threatened or the victim was incapable of giving consent because of his/her youth or mental impairment, either temporary or