

MODERNIZING CAMPUS ACCOUNTABILITY: HOW ILLINOIS STATE POLICY CAN INFORM AN UPDATE TO THE CLERY ACT’S FEDERAL SEXUAL ASSAULT REPORTING FRAMEWORK

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INTRODUCTION

Since its inception, the Department of Education (“the Department” or “ED”) has strived to uphold the value that the American public places on education and provide federal-level civil rights protections for students.¹ In

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1. ANDREA BAIRD, ET AL., *The Evolution of the Federal Role in Education: From Policy to the*

1979, the Carter Administration urged Congress to elevate the Department to a cabinet-level agency to strengthen the federal commitment to equal educational opportunities.² Congress endeavored to both supplement and complement state and local efforts to improve the quality of education through federally-funded research and the dissemination of information.³ The Department has continued to serve those purposes, educating and nurturing the next generation of “over 50 million students attending 98,000 public schools and 32,000 private schools” at all levels of education.⁴ Although in 2025 the second Trump Administration expressed intent to abolish the Department, as a congressionally-established agency, ED will continue to fulfill its statutory obligations unless and until Congress takes steps to officially dismantle it.⁵

The Department’s modern-day functions have traditionally included establishing policies relating to federal financial aid and monitoring the distribution of funds, collecting and researching data on America’s school systems and disseminating that information to the public, enforcing federal statutes, and prohibiting discrimination in programs that receive federal funding.⁶ However, the Department’s existence over the years has presented controversy surrounding the role of the federal government in the traditionally state-led field of education.⁷ Education has been described as “a local responsibility, a state function, and a national concern,” and debates surrounding the Department reflect the public’s general appeal to decentralized, local control over education, specifically because education is not an enumerated federal power prescribed by the Constitution.⁸ Nonetheless, in creating the

Creation of the Department of Education, in 1 U.S. COMM’N ON CIV. RTS., EQUAL EDUCATIONAL OPPORTUNITY PROJECT SERIES, 10 (1996) [hereinafter *Evolution of Federal Education*]. The Department was created to centralize the federal government’s increasing role in education, which emerged during the Kennedy and Johnson administrations following the passing of legislation such as the Civil Rights Act and the Education Amendments Act. *Id.* at 13, 17.

2. *Id.* at 19. After Congressional debates about whether to create a Department of Education at all, President Carter signed the Department of Education Organization Act on October 17, 1979. *Id.*

3. *Id.* at 18, 25.

4. *Federal Role in Education*, U.S. DEP’T OF EDUC., <https://www.ed.gov/about/ed-overview/federal-role-in-education> [<https://perma.cc/4YAH-FCM5>] (last updated June 17, 2025).

5. *See infra* Part I.A.

6. *Evolution of Federal Education*, *supra* note 1, at 26. While the Department’s purposes have traditionally been steady, they have not been a priority in the second Trump Administration and are likely to continue to shift as a result. *See infra* Part II.A.

7. *See* JAMES RAPP, EDUCATION LAW § 3.01(1), LEXIS (database updated October 2025).

8. *Id.* § 3.01(3)(a); *see Unpacking the U.S. Department of Education: What Does it Actually Do?*, HARVARD EDCAST (Feb. 6, 2025) <https://www.gse.harvard.edu/ideas/edcast/25/02/unpacking-us-department-education-what-does-it-actually-do> [<https://perma.cc/HW7Y-GX>]

Department, Congress expressly provided that it should not increase the federal government's authority over education or diminish the states' responsibilities; rather, federal authority should complement state policy, deferring to state leadership and supplementing state efforts to financially fund higher education for students.⁹ But in practice, "state and federal policy work in parallel but rarely in partnership," and have not been "particularly coordinated or collaborative."¹⁰ Specifically, in the area of transparency and accountability, the Department has lacked organization and communication on shared strategies and goals, which has led to state and federal education policies that operate in "potentially conflicting or duplicative manners."¹¹

At the end of the twentieth century, one area that lacked sufficient policies was higher education campus safety. The story of Jeanne Clery, a college student at Lehigh University, inspired a host of legislation governing safety and security on college campuses beginning in the late 1980s, particularly at the federal level.¹² Jeanne was a freshman student and gifted tennis athlete completing her first year at Lehigh when someone, suspected to be another college student, brutally raped and murdered her in her dorm room in April 1986.¹³ Jeanne's murderer was able to access her room through multiple doors that had been propped open in the building.¹⁴ Following her tragic death, Jeanne's parents decried the lack of safety standards and communication about crimes occurring on college campuses on a national level, and their efforts ultimately inspired laws requiring transparency about campus crime statistics and policies.¹⁵

2J] ("[T]he American education system is famously and uniquely decentralized with control over the day-to-day operation of schools in the hands of roughly 14,000 locally elected or appointed school boards.").

9. See RAPP, *supra* note 7, § 3.01(3)(a) (discussing local control over and organization of educational districts); NAT'L CONF. OF STATE LEGISLATURES, THE STATE-FEDERAL RELATIONSHIP IN HIGHER EDUCATION 1–3 (2024) [hereinafter THE STATE-FEDERAL RELATIONSHIP].

10. THE STATE-FEDERAL RELATIONSHIP, *supra* note 9, at 1.

11. *Id.* at 3.

12. See *Clery Center's Policy History*, CLERY CTR., <https://www.clerycenter.org/policy-history> [<https://perma.cc/JB6D-GSMH>] (last visited Dec. 23, 2025); *Clery Act Information & Statistics*, LEHIGH UNIV.: CAMPUS SAFETY DIV., <https://campussafety.lehigh.edu/police/clery-act-information-statistics> [<https://perma.cc/KN7W-8PYQ>] (last visited Aug. 18, 2025).

13. *Remembering Jeanne: How a Lehigh Student's Tragic Death in 1986 Made an Enduring Impact on Campus Safety*, LEHIGH UNIV.: LIBR. & TECH. SERVS. (Apr. 23, 2024), <https://lts.lehigh.edu/news/remembering-jeanne-how-lehigh-students-tragic-death-1986-made-enduring-impact-campus-safety> [<https://perma.cc/QY9Z-998M>] [hereinafter *Remembering Jeanne*].

14. See *Clery Act Information & Statistics*, *supra* note 12.

15. See *Remembering Jeanne*, *supra* note 13; *About: What Happened to Jeanne Clery was a Tragedy.*,

The College and University Security Act, a 1988 Pennsylvania law, became the basis for federal law regarding U.S. campus safety.¹⁶ Under the state law, higher education institutions were required to report their crime statistics from the most recent three years, along with descriptions of safety policies, and “publish and distribute” this report to all students and employees on an annual basis.¹⁷ In 1990, President George H.W. Bush signed the federal Crime Awareness and Campus Security Act, which was renamed in 1998 to the Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act and is most commonly known as the Clery Act.¹⁸ Today, the Clery Act is the touchstone federal consumer protection law for campus safety and security, requiring colleges and universities to report and record safety statistics and disseminate information to prospective and current students.¹⁹

The original Clery Act required disclosure of crime statistics and campus policies for murder, rape, aggravated assault, burglary, and motor vehicle theft.²⁰ Subsequently, Congress has amended the Act several times.²¹ Notably, in 2013, President Barack Obama signed into law the Violence Against Women Reauthorization Act (VAWA), which amended the Clery Act to require institutions to report crimes related to sexual assault and dating

<https://www.clerycenter.org/about> [<https://perma.cc/9FDM-VTML>] (last visited Dec. 24, 2025).

16. *Clery Center’s Policy & History*, *supra* note 12; College and University Security Information Act, 1988 Pa. Laws 448 (repealed 2004).

17. 1988 Pa. Laws 449–50. While the original College and University Security Act was repealed in 2004 by the Uniform Crime Reporting Act, its components still exist under Pennsylvania state law and remain almost identical to the federal Clery Act requirements. 18 PA. STAT. AND CONS. STAT. § 20.303 (West 2025).

18. *Clery Act Information & Statistics*, *supra* note 12; *Clery Center’s Policy History*, *supra* note 12. The 1998 amendment also included a requirement to report hate crimes, added geographic requirements, defined the definition of “campus,” and added a public crime log, in addition to renaming the law after Jeanne Clery. See *United States Code Covering the Clery Act*, LINCOLN UNIV. MO., https://www.lincolnu.edu/_files/clery-act-history-by-year.pdf [<https://perma.cc/4CRW-K39J>] (last visited Dec. 24, 2025); *Remembering Jeanne*, *supra* note 13. The law was renamed again in 2024 to the “Jeanne Clery Campus Safety Act.” See Stop Campus Hazing Act, Pub. L. No. 118-173, 138 Stat. 2601 § 4 (2024).

19. See *Clery Center’s Policy History*, *supra* note 12; *Clery Act Information & Statistics*, *supra* note 12.

20. Crime Awareness and Campus Security Act of 1990, 20 U.S.C. § 1092(f) (1990).

21. See *Clery Center’s Policy History*, *supra* note 12. In 1992, an amendment broadened sexual assault reporting and policy statement requirements, and in 1998, an amendment renamed the act after Jeanne Clery. *Id.* In 2000, an amendment added notice for obtaining sex offender registration, and in 2008, an amendment required timely emergency notifications. See also *United States Code Covering the Clery Act*, *supra* note 18.

violence.²² In 2014, ED then issued a rule to implement the VAWA changes.²³ The 2014 Rule remains the most recent federal regulation from the Department surrounding crime reporting for colleges and universities.²⁴ However, Congress most recently passed the 2024 Stop Campus Hazing Act, which amended the Clery Act to add “hazing” as a reportable crime.²⁵ The Amendment officially took effect in June 2025.²⁶

The Clery Act has played a crucial role in higher education institutions’ transparency and dedication to campus safety issues, specifically regarding sexual assaults.²⁷ But ED has not issued regulations regarding the Clery Act requirements in over a decade, calling to light the need for improvements and clarification to reflect a changing society and alleviate administrative burdens.²⁸ Furthermore, Clery Act enforcement relies on a fully-functioning ED, not on one that faces the uncertainty seen in 2025. The Trump Administration has expressed intent to effectively dissolve the Department and return its main functions to the states.²⁹ While the Department persists under its statutory authority, the significant reduction in its workforce will increasingly affect its ability to execute programs as usual.³⁰ However, Congress delegates substantial discretionary authority to the Executive Branch to

22. See *United States Code Covering the Clery Act*, *supra* note 18; Violence Against Women Act (VAWA), Final Regulations, 79 Fed. Reg. 62,752, 62,752 (Oct. 20, 2014).

23. VAWA, Final Regulations, 79 Fed. Reg. at 62,753. While the regulations became effective in July 2015, the first Clery Act reports mandated by these regulations were published in October 2014. *Id.* at 62,752–53.

24. *Id.*; see *United States Code Covering the Clery Act*, *supra* note 18.

25. Stop Campus Hazing Act, Pub. L. No. 118-173 § 2(a)(1), 138 Stat. 2597 (2024). For reporting purposes under this Act, hazing means “any intentional, knowing, or reckless act committed by a person . . . against another person . . . regardless of the willingness of such other person . . . to participate” that is committed during an initiation or maintenance of membership in a student organization and causes risk of physical or psychological injury. *Id.* § 2(a)(4). Enumerated examples include coercing one into consuming food, liquid, alcohol, or drugs; coercing one into performing sexual acts; and beating or striking. *Id.* The Act also notably renamed the Clery Act to “the Jeanne Clery Campus Safety Act.” *Id.* § 4.

26. See *id.* § 2(c)(1) (stating that the amendments would take effect on the date six months after the Act’s enactment, which was December 23, 2024); *Clery Center’s Policy History*, *supra* note 12.

27. DENNIS G. GREGORY, MICHAEL M. DEBOWES, WILLIAM L. NUCKOLS & KIM E. BULLINGTON, *The Clery Act: An Evolving Focus*, in *CAMPUS CRIME: LEGAL, SOCIAL, AND POLICY PERSPECTIVES* 41 (Charles C. Thomas, 4th ed. 2022).

28. *United States Code Covering the Clery Act*, *supra* note 18.

29. See Exec. Order No. 14,242, 90 Fed. Reg. 13,679 (Mar. 20, 2025); *Frequently Asked Questions: Who Enforces the Clery Act? How do I File a Complaint?* [hereinafter *Clery FAQs*], <https://www.clerycenter.org/faq> [<https://perma.cc/5TPW-YWGC>] (last visited Dec. 24, 2025); *infra* Part I.A. (expanding on the Clery Compliance Group’s enforcement duties).

30. See *infra* notes 64–70 and accompanying text.

ensure that its officers “faithfully execute laws according to the intent of Congress.”³¹ Therefore, regardless of the Department’s uncertain future, the Executive Branch must continue to ensure that its regulations are consistent with congressional statutes such as the Clery Act.

This comment examines why now is the time for the Department to initiate rulemaking for the Clery Act reporting requirements and harmonize federal law with existing state efforts. Part I discusses the current requirements of the Clery Act and how the Department enforces them.³² Part I then compares the Clery Act requirements to Illinois law, which presents a sexual assault reporting policy that is more specific and straightforward than its federal counterpart.³³ Part II explains agency rulemaking authority associated with the Department, and alternatively, briefly presents Congress’s lawmaking authority to amend existing legislation.³⁴ Part 0 advocates for the Department to use its rulemaking authority to provide much-needed updates and clarifications to the Clery Act federal regulations in order to reflect Illinois’s approach because of its transparency, accuracy, and efficiency.³⁵ Part 0 will also briefly advocate for the same outcome through congressional action and discuss potential areas for future research.³⁶

I. BACKGROUND

The Department of Education holds the crucial responsibility of establishing programs that serve over 50 million students and ensuring the highest quality of education across the country.³⁷ ED is led by the Secretary of Education (the Secretary), whom the President appoints with the advice and consent of the Senate pursuant to Article II of the Constitution.³⁸ ED currently houses seventeen offices, each with specialized sub-offices, to serve specific areas of responsibility, ensure education issues receive proper federal treatment, and advance the Department’s overall missions.³⁹ The Office of Federal Student Aid (FSA), which reports to the Under Secretary of

31. U.S. CONST. art. II, § 3; BRASS, CLINTON T. ET AL, CONG. RSCH. SERV., RL30240, CONGRESSIONAL OVERSIGHT MANUAL 5 (2022).

32. See *infra* Part I.

33. See *infra* Part I.

34. See *infra* Part II.

35. See *infra* Part III.

36. See *infra* Part III.

37. *Federal Role in Education*, U.S. DEP’T OF EDUC., <https://www.ed.gov/about/ed-overview/federal-role-in-education> [<https://perma.cc/5J8U-PGFQ>] (last visited June 17, 2025).

38. See U.S. CONST. art. II, § 2, cl. 2; JAMES RAPP, *supra* note 7, § 3.01(4)(a)(i).

39. See RAPP, *supra* note 7, § 3.01(4)(a)(i); *ED Offices*, U.S. DEP’T OF EDUC., <https://www.ed.gov/about/ed-offices> [<https://perma.cc/C8CP-7FDP>] (last visited May 7, 2025).

Education (the Under Secretary),⁴⁰ is responsible for enforcing federal legislation and managing all programs under the Higher Education Act (HEA), including the Clery Act.⁴¹ The Clery Act is codified at Section 485(f) of the HEA and applies to all higher education institutions that participate in the HEA Title IV federal financial aid programs.⁴² These programs provide assistance to both individuals pursuing a postsecondary education and institutions themselves to strengthen their quality of education and support of in-need students.⁴³ The Clery Compliance Group, a sub-office within FSA, is tasked with enforcing institutions' compliance with the Clery Act.⁴⁴

A. Federal Sexual Assault Reporting Requirements

The Clery Act mandates three main requirements for higher education institutions that receive federal funding: the preparation and submission of an Annual Security Report (ASR), the issuance of timely emergency warnings of crimes reported to select campus authorities, and the implementation of a crime log maintained by campus authorities and made available to the public for a certain period of time.⁴⁵ This comment will focus solely on the Clery Act's ASR

40. The Office of the Under Secretary reports directly to the Secretary and oversees policies and programs related to postsecondary education and federal student aid. *See Undersecretary*, CTR. FOR PRESIDENTIAL TRANSITION, https://presidentialtransition.org/position_description/undersecretary-2-2/ [<https://perma.cc/GE6G-A5PQJ>] (last visited Dec. 24, 2025); *see also U.S. Department of Education*, FED. DEPOSITORY LIBR. PROGRAM, <https://libguides.fdlp.gov/us-department-of-education/components-of-ed> [<https://perma.cc/7UTT-6Z3F>] (last updated July 14, 2025, 5:07 PM) (presenting a visual aid of the reporting structure of each office within the Department of Education).

41. *Federal Student Aid*, U.S. DEP'T OF EDUC., <https://www.ed.gov/about/ed-offices/fsa> [<https://perma.cc/8ZHJ-HWR5>] (last visited June 27, 2025); *The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (The Clery Act)*, READINESS & EMERGENCY MGMT. FOR SCHS., <https://rems.ed.gov/IHECleryAct.aspx> [<https://perma.cc/4GE4-N86R>] (last updated Mar. 5, 2024). The Higher Education Act (HEA) was enacted in 1965 and authorizes several federal aid programs that provide support to institutions of higher education and students receiving a postsecondary education. JOSELYNN H. FOUNTAIN, CONG. RSCH. SERV., R43351, *THE HIGHER EDUCATION ACT (HEA): A PRIMER 1–2* (2023).

42. *The Jeanne Clery Act*, CLERY CTR., <https://www.clerycenter.org/the-clery-act> [<https://perma.cc/K4HQ-58JP>] (last visited Dec. 24, 2025); READINESS & EMERGENCY MGMT. FOR SCHS., *supra* note 41.

43. JOSELYNN H. FOUNTAIN, *supra* note 41, at 2, 5.

44. *Clery FAQs*, *supra* note 29. It is currently unclear whether the Clery Compliance Group has been affected by the reduction in workforce order in March 2025. *See infra* note 66 (discussing a 50% reduction in the Department's workforce with ongoing uncertain effects).

45. Violence Against Women Act, Final Regulations, 79 Fed. Reg. 62,752, 62,783–87 (Oct. 20, 2014).

requirement as it relates to reporting sexual assaults on college campuses.⁴⁶

A school's ASR must report crime statistics for the three most recent calendar years, and the reporting must follow three requirements: (1) the crime falls into one of four broad categories, (2) the crime occurred on or within Clery Geography, and (3) the crime was reported to local police agencies or campus security authorities.⁴⁷ First, sexual assault crimes that schools must report fall into the categories of primary crimes (rape, fondling, incest, and statutory rape) and VAWA crimes (dating violence, domestic violence, and stalking).⁴⁸ Second, the crime must have occurred within Clery Geography, which means "[b]uildings and property that are part of the institution's campus; [t]he institution's noncampus⁴⁹ buildings and property; and [p]ublic property within or immediately adjacent to and accessible from the campus."⁵⁰ Notably, no ASR statistics include assaults that occurred off-campus, such as in private housing or public bars that are not accessible from campus.⁵¹ Lastly, the crime must be reported to either local police or a campus security authority.⁵² Campus security authorities do not include pastoral or professional counselors, who are often confidential resources for students.⁵³

46. The Clery Act also requires schools to create policies and implement preventative programs regarding sexual assaults. *Id.* at 62,785, 62,788.

47. *Id.* at 62,785–86.

48. *Id.* at 62,786. There are four categories total: primary crimes (which also include murder, assault, burglary, and arson); arrests and referrals for disciplinary action connected to liquor, drug, or weapon law violations; hate crimes; and VAWA crimes. *Id.*

49. Noncampus means "[a]ny building or property owned or controlled by a student organization that is officially recognized by the institution; or . . . that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution." *Id.* at 62,784.

50. *Id.* However, in the 2024 annual security report from Loyola University Chicago (LUC), numbers are reported in both "On-Campus Property" and "On-Campus Residence Halls" columns. *Infra* table accompanying note 54. The security report further defines on-campus property to include residence halls, consistent with the Clery Act, which implies that the numbers reported in the "On-Campus Residence Halls" column are simply duplicates. *Infra* note 54, at 55–56.

51. See Violence Against Women Act, Final Regulations, 79 Fed. Reg. 62,752, 62,784 (Oct. 20, 2014).

52. *Id.* at 62,783–84; see also *infra* note 185 (defining "campus security authority").

53. The Clery Act, 79 Fed. Reg. 62,783, 62,783–84. The final VAWA regulations also considered potential conflicts with state mandatory reporting requirements, concluding that "all crimes that occurred on or within an institution's Clery geography that are reported to local police or a campus security authority must be included in the institution's statistics, regardless of whether an institution is subject to mandatory reporting of crimes against children or individuals with certain disabilities. The requirement in § 668.46(c)(2) [recording all reported crimes] is unaffected by § 668.46(b)(4)(iii), which addresses an institution's policies on

The following table is taken from Loyola University Chicago's (LUC's) 2024 annual security report:⁵⁴

Lake Shore Campus—Criminal Offenses

OFFENSE	YEAR	GEOGRAPHIC LOCATION			
		On-Campus Property	On-Campus Student Housing Facilities	Non-Campus Property	Public Property
Murder/Non- Negligent Manslaughter	2021	0	0	0	0
	2022	0	0	0	0
	2023	0	0	0	0
Manslaughter by Negligence	2021	0	0	0	0
	2022	0	0	0	0
	2023	0	0	0	0
Rape	2021	4	4	0	0
	2022	3	3	0	0
	2023	5	4	0	0
Fondling	2021	6	4	0	0
	2022	3	3	0	3
	2023	7	7	0	1
Incest	2021	0	0	0	0
	2022	0	0	0	0
	2023	0	0	0	0
Statutory Rape	2021	0	0	0	0
	2022	0	0	0	0
	2023	0	0	0	0
Robbery	2021	0	0	0	4
	2022	0	0	0	2
	2023	0	0	0	1
Aggravated Assault	2021	0	0	0	1
	2022	0	0	0	0
	2023	0	0	0	1
Burglary	2021	5	0	0	0
	2022	7	0	0	0
	2023	1	0	0	0
Motor Vehicle Theft	2021	2	0	0	3
	2022	2	0	0	10
	2023	1	0	0	12
Arson	2021	0	0	0	0
	2022	0	0	0	0
	2023	0	0	0	0

encouraging others to accurately report crimes.” Violence Against Women Act, Final Regulations, 79 Fed. Reg. 62,752, 62,760 (Oct. 20, 2014).

54. LOY. UNIV. CHI., ANNUAL SECURITY REPORT AND FIRE SAFETY REPORT 56–58 (2024) [hereinafter LUC CLERY ASR], <https://www.luc.edu/media/lucedu/campussafety/pdfs/2023-clery-act-annual-security-report-and-fire-safety-report.pdf> [https://perma.cc/6AAC-KWER]. Data from Loyola University Chicago (LUC) was chosen for display because the school has published the most recent statistics available for Clery Act reporting, and because LUC satisfactorily complied with the Illinois state sexual assault reporting in that same year. *See id.*

Lake Shore Campus—VAWA Offenses

OFFENSE	YEAR	GEOGRAPHIC LOCATION			
		On-Campus Property	On-Campus Student Housing Facilities	Non-Campus Property	Public Property
Domestic Violence	2021	4	4	0	1
	2022	0	0	0	0
	2023	9	8	0	1
Dating Violence	2021	0	0	0	0
	2022	1	1	0	0
	2023	0	0	0	0
Stalking	2021	4	1	0	0
	2022	13	7	0	0
	2023	11	8	0	0

Colleges and universities must submit ASRs to the Secretary of the Department of Education every year on October 1.⁵⁵ The Clery Compliance Group then conducts campus security reviews to closely examine schools' compliance with the Clery Act.⁵⁶ ED aims to conduct around 300 general program reviews of around 5,500 institutions of higher education (IHEs or HEIs) each year.⁵⁷ During the 2016–2020 fiscal years, the Department only completed a yearly average of 185 campus security reviews, and a total of 926 program reviews.⁵⁸ However, Clery Act noncompliance ranked among the top findings of those reviews.⁵⁹ Reviews are initiated when the Department receives a complaint, a media event raises concerns, or a school's independent audit identifies noncompliance.⁶⁰ Upon discovery of noncompliance, the

55. JARED P. COLE & ADAM K. EDGERTON, CONG. RSCH. SERV., IF12597, INFOCUS: THE CLERY ACT, AS AMENDED BY THE STOP CAMPUS HAZING ACT (2025); PAUL G. LANNON & JEFFREY J. NOLAN, COLLEGE AND UNIVERSITY LAW MANUAL, ch. 14 (2d ed. 2021).

56. *Clery FAQs*, *supra* note 29; DENNIS E. GREGORY, ET AL., *supra* note 27, at 73.

57. DENNIS E. GREGORY, ET AL., *supra* note 27, at 73; *see* ALEXANDRA HEGJI, CONG. RSCH. SERV., IF12939, INFOCUS: HEA TITLE IV STUDENT AID PROGRAM ENFORCEMENT ACTIONS 1 (2025) (noting a total of roughly 5,400 institutions of higher education [IHEs or HEIs] in fiscal year 2024); ALEXANDRA HEGJI, CONG. RSCH. SERV., R43159, ELIGIBILITY FOR PARTICIPATION IN TITLE IV STUDENT FINANCIAL AID PROGRAMS 1 (2024) (noting a total of roughly 5,900 IHEs in fiscal year 2023).

58. DENNIS E. GREGORY, ET AL., *supra* note 27, at 73.

59. *Id.*; *see* ALEXANDRA HEGJI, CONG. RSCH. SERV., R43159, INSTITUTIONAL ELIGIBILITY FOR PARTICIPATION IN TITLE IV STUDENT FINANCIAL AID PROGRAMS 1 (2023) (noting that 6,063 IHEs had agreements to participate in Title IV funding during fiscal year 2020).

60. *Clery Act Reports*, FED. STUDENT AID, <https://studentaid.gov/data-center/school/clery-act-reports> [<https://perma.cc/WKZ6-UL3U>] (last visited Oct. 6, 2025); *see also* U.S. DEP'T OF EDUC., *infra* note 76 and accompanying text (describing a recent public safety event that initiated a Clery Act noncompliance review). The Department may receive complaints

Secretary must report the institution to relevant Congressional committees, and further, can direct the Department to limit, suspend, or terminate an institution's Title IV HEA programs.⁶¹ The Department rarely imposes sanctions for Clery Act violations; instead, schools may receive civil monetary penalties that the Department decides is an appropriate amount.⁶² Currently, the maximum fine per single violation of the Clery Act is \$71,545.⁶³

Against this backdrop of enforcement authority, the Department now faces significant institutional uncertainty as to its functions and existence.⁶⁴ On February 11, 2025, President Trump issued an executive order calling for agency heads to initiate a reduction in force (RIF) to “eliminat[e] waste, bloat, and insularity” at federal agencies.⁶⁵ Subsequently, on March 11, Secretary Linda McMahon issued a statement that the RIF order would impact nearly 50% of the Department's workforce.⁶⁶ On March 20, President Trump issued another executive order directing the Secretary to “take all necessary steps to facilitate the closure of the Department of Education” and

from members of the public by way of a form that a complainant can email or mail directly to the Department. Anna Bullock, Susan Stone & Kristina Supler, *The Clery Act as a Tool to Promote Campus Safety in Connection with Title IX Proceedings*, JD SUPRA (Nov. 8, 2024), <https://www.jdsupra.com/legalnews/the-clery-act-as-a-tool-to-promote-3635400/> [<https://perma.cc/73ZA-J43M>].

61. *Clery Act Reports*, *supra* note 60.

62. *Id.*; see *Background Information: Clery Act Reviews*, FED. STUDENT AID, <https://studentaid.gov/sites/default/files/CleryDataCenterv3.pdf> [<https://perma.cc/4KXL-6WPE>] (last visited Oct. 6, 2025). This comment will not specifically address instances of schools' noncompliance or imposed monetary penalties; instead, it will focus on the front-end improvements the Department should make to simplify compliance with sexual assault reporting specifically.

63. *The Clery Act, as Amended by the Stop Campus Hazing Act*, *supra* note 55. The largest Clery Act violation fine to date is \$14 million, incurred by Liberty University in 2024 for “discourage[ing] students from reporting crimes, [] not adequately respond[ing] to incidents of sexual violence, fail[ing] to tell the campus about criminal activities or dangerous situations (such as gas leaks), and [] not maintain[ing] an accurate or complete list of crimes.” Elissa Nadworny, *Liberty University Fined \$14 Million for Federal Crime Reporting Violations*, NPR (Mar. 5, 2024), <https://www.npr.org/2024/03/05/1236019397/liberty-university-clery-act-safety-crime> [<https://perma.cc/URX3-BTX8>]; see *The Clery Act, as Amended by the Stop Campus Hazing Act*, *supra* note 55. Before that, Michigan State University held the record with an incurred penalty of \$4.5 million in 2019. *Id.*

64. See Exec. Order No. 14,210, 90 Fed. Reg. 9,669 (Feb. 11, 2025); Exec. Order No. 14,242, 90 Fed. Reg. 13,679 (Mar. 20, 2025).

65. See Exec. Order No. 14,210, 90 Fed. Reg. 9,669; See Exec. Order No. 14,242, 90 Fed. Reg. 13,679 (noting a student loan debt portfolio of \$1.6 trillion).

66. See *U.S. Department of Education Initiates Reduction in Force*, U.S. DEP'T OF EDUC. (Mar. 11, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-reduction-force> [<https://perma.cc/6CDR-X535>].

to return its main functions to the states.⁶⁷ The President's main concern behind this order was that "the experiment of controlling American education through [f]ederal programs and dollars" has failed and is too expensive.⁶⁸ However, President Trump's order cannot legally dismantle the Department; only Congress has the power to officially abolish the Department.⁶⁹ Nonetheless, the order illuminates the current Administration's attitude towards federal involvement in education.⁷⁰

In *McMahon v. New York*,⁷¹ New York sued to challenge the legality of the President's February RIF order.⁷² On May 22, 2025, the U.S. District Court for the District of Massachusetts enjoined the Department of Education from reducing its workforce and reinstated positions that had been terminated as a result of the March 20 executive order.⁷³ However, on July 14, 2025, the Supreme Court granted the Secretary's application for stay pending the disposition of the appeal.⁷⁴ Thus, as of January 2026, the Department does not need to reinstate employees fired as a result of the RIF order, and the Department will likely continue to see a drastic decrease in staffing.⁷⁵ Overall,

67. Exec. Order No. 14,242, 90 Fed. Reg. 13,679.

68. *Id.* (noting a student loan debt portfolio of \$1.6 trillion).

69. *McMahon v. New York*, 145 S. Ct. 2643 (2025) (on application for stay) (Sotomayor, J., dissenting). No president has attempted to abolish a federal agency with an executive order before, but with cooperation between Congress and the President, agencies have been abolished or had their duties effectively transferred. HENRY B. HOGUE, CONG. RSCH. SERV., R47897, ABOLISHING A FEDERAL AGENCY: THE INTERSTATE COMMERCE COMMISSION 1–2 (2024) (noting that during the 1970s, Congress and then-President Bill Clinton collaborated to issue legislation that greatly diminished the power of the Interstate Commerce Commission, and ultimately abolished the agency altogether by transferring its functions to the Department of Transportation).

70. Diana Nerozzi, *Trump Says He Wants 'Con Job' Education Department Closed 'Immediately'*, N.Y. POST (Feb. 12, 2025), <https://nypost.com/2025/02/12/us-news/trump-says-he-would-like-education-department-closed-immediately-but-needs-buy-in-from-congress-unions/> [<https://perma.cc/PA65-HAK5>] (discussing President Trump's early statements expressing his desire to shut down the Department).

71. *McMahon*, 145 S. Ct. 2643.

72. *Id.*

73. *New York v. McMahon*, 784 F. Supp. 3d 311, 378 (D. Mass. 2025). It is currently unclear how many workers have been eliminated or which offices continue to be affected, but the Civil Rights Division alone has indicated that they have lost about half of their staff since March 2025. See Collin Binkley & Annie Ma, *The Education Department is Being Dismantled. Here's What That Means.*, ASSOC. PRESS NEWS (Nov. 18, 2025), <https://apnews.com/article/trump-education-department-dismantle-close-b0ae8b677a63273a9b06c2b4005dee4d> [<https://perma.cc/MKF6-5LTP>].

74. *McMahon*, 145 S. Ct. 2643.

75. *President Trump's First Year: Education in America*, U.S. DEP'T OF EDUC., <https://www>.

federal operations remain uncertain as these challenges leave the Department's staffing in flux, but the executive branch as a whole must still uphold its responsibility of furthering congressional intent of its statutes.⁷⁶

B. State Sexual Assault Reporting Requirements

While the Clery Act plays the most significant role in regulating schools' transparency and response regarding sexual assaults on college campuses, some states have taken a more stringent approach to addressing sexual assault in their respective higher education institutions.⁷⁷ Currently, twenty-four states (including Pennsylvania, which passed the Clery Act's precursor) have codified requirements for sexual assault reporting and implementation for sexual assault policies into their legislatures.⁷⁸ While states have taken a variety of approaches toward addressing sexual assaults on campuses, one Illinois policy demonstrates an approach that is more comprehensive and detailed than the federal Clery Act requirements.⁷⁹ Illinois, a state with a significant number of higher education institutions, exhibits a simplistic and

ed.gov/about/initiatives/president-trumps-first-year-education-america [https://perma.cc/BD3Z-MXCB] (last updated Dec. 18, 2025); see generally *McMahon*, 145 S. Ct. 2643.

76. CONGRESSIONAL OVERSIGHT MANUAL, *supra* note 31, at 6. In December 2025, the Department announced it would conduct a program review of Brown University in response to a campus shooting on December 13, 2025. *U.S. Department of Education Announces Review of Brown University for Potential Clery Act Violations*, U.S. DEP'T OF EDUC. (Dec. 22, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-announces-review-of-brown-university-potential-clery-act-violations> [https://perma.cc/X2FA-ZJQY]. The Department will review Brown's annual security reports as part of an ongoing investigation into Brown's compliance with Clery's emergency notification procedures and other responses to active shooter scenarios; no updates to this investigation have been published as of January 2026. See *id.*

77. Carlos Jamieson, *State Bills Address Sexual Violence on College Campuses*, EDUC. COMM'N OF THE STATES (Apr. 26, 2023), <https://www.ecs.org/state-bills-address-sexual-violence-on-college-campuses/> [https://perma.cc/B8PV-KFA9].

78. Christine Licata-Hoang, *A State-Level Look at Title IX Policies*, NAT'L ASS'N OF STUDENT PERS. ADM'RS, <https://www.naspa.org/blog/a-state-level-look-at-title-ix-policies> [https://perma.cc/KFT2-TVDX] (last visited Dec. 24, 2025). For example, New York law requires schools to annually report sexual misconduct incidents or risk loss of state funding, and the institution must receive certification of compliance. *Id.* Additionally, Pennsylvania law still closely resembles the federal Clery Act requirements, requiring institutions to report statistics from the past three years. See Uniform Crime Reporting Act of Pennsylvania, 18 PA. STAT. AND CONS. STAT. § 20.303.

79. See *infra* Part III; see also Jamieson, *supra* note 77 (discussing legislation from Connecticut, Louisiana, Minnesota, and Texas).

transparent framework for sexual assault reporting that could inform an update to the federal policy.⁸⁰

Illinois enacted the Preventing Sexual Violence in Higher Education Act (PSVHEA) in 2016, which requires all higher education institutions in Illinois, both public and private, to implement guidelines to prevent and respond to sexual violence on campuses.⁸¹ The PSVHEA requires schools to provide an annual report to the Illinois Department of Human Rights and Illinois Attorney General that is simpler yet more specific than a Clery Act ASR.⁸² First, the report must only account for information regarding “the immediately preceding calendar year,” while the federal regulation requires reporting from the previous three years—presumably to allow a viewer to attempt to notice trends in statistics.⁸³ The institution must also state the number of incidents of sexual violence, domestic violence, dating violence, and stalking reported to a Title IX coordinator or other responsible employee, *and* those reported confidentially and anonymously, the latter not being required by federal law.⁸⁴ The PSVHEA further requires disclosure of statistics on complaint resolutions, investigations, and referrals to local law enforcement.⁸⁵ This is much more specific than federal law, which does not require these additional numbers.⁸⁶ And the PSVHEA requires schools to provide a comprehensive advisor to survivors and offer students the option to report incidents electronically, confidentially, or anonymously, as well as collect reports by third parties or bystanders, which federal law does not.⁸⁷ Lastly, the PSVHEA requires institutions to publish both their Clery Act ASR and Illinois annual reports on their websites, while federal law does not.⁸⁸ The following tables are taken from LUC’s 2024 PSVHEA annual report:⁸⁹

80. See 110 ILL. COMP. STAT. 205 / 9.21(b) (2024). During the 2024–25 school year, there were 185,590 students enrolled in Illinois public universities alone. ILL. BD. OF HIGHER ED., IBHE FIRST LOOK—FALL ENROLLMENT 2024-25 2–3 (2025), https://www.ibhe.org/assets/DataPoints/pdf/IBHE_FIRST_LOOK_FALL_ENROLLMENT_2024-25_October_20_24.pdf [<https://perma.cc/J6F5-GF58>].

81. See *Preventing Sexual Violence in Higher Education Act P.A. 99-426*, ILL. ATT’Y GEN., https://www.illinoisattorneygeneral.gov/Page-Attachments/Preventing_Sexual_Violence_in_Higher_EdAct.pdf [<https://perma.cc/P2F6-7WHT>] (last visited Oct. 6, 2025).

82. See 110 ILL. COMP. STAT. 205/9.21(b).

83. *Id.*

84. *Id.* § 9.21(b)(4)–(5); 20 U.S.C. § 1092(f)(1)(F) (2018).

85. 110 ILL. COMP. STAT. 205/9.21(b)(6)–(10).

86. See *id.*; § 1092(f)(1)(F).

87. 110 ILL. COMP. STAT. 155/10(2)(D)–(G), 20 (2024); § 1092(f)(1)(F).

88. 110 ILL. COMP. STAT. 155/35(h)(i)(2)–(3).

89. LOYOLA UNIV. CHI., 2023 PREVENTING SEXUAL VIOLENCE IN HIGHER EDUCATION

Identify the total number of reports made to the following groups of individuals in the preceding calendar year. If a higher education institution is aware that a student reported an incident more than once, it may provide an explanation for this or any other additional information regarding its reports in Part C below. *See* 110 ILCS 155/25 and 110 ILCS 205/9.21(b).

	Reports to the Title IX coordinator/responsible employees*	Reports to confidential and anonymous resources*
Sexual violence	13	98
Domestic violence	9	17
Dating violence	0 (all accounted for as domestic)	38
Stalking	8	5

A. Responses to Reports to the Title IX Coordinator or Responsible Employees

Of the total number of reports or disclosures made to the Title IX coordinator or responsible employees at the higher education institution (identified in Part B, Section II), please report the number of times the following occurred:

	Survivor requested not to proceed with the complaint resolution procedure	HEI investigated allegation	HEI referred allegation to local or State law enforcement	HEI resolved allegation through complaint resolution procedure
Sexual violence	9	3	4	5
Domestic violence	6	2	4	5
Dating violence	0	0	0	0
Stalking	3	1	1	5

B. Complaint Resolution Procedure Outcomes

Of the total number of reports reviewed through the complaint resolution procedure, identify the number of students who received the following outcomes. Please provide a description of the other types of discipline students received for violating the comprehensive policy in Part C of this report.

	Found not responsible for violation of comprehensive policy	Dismissed/expelled	Suspended	Otherwise disciplined
Sexual violence	1	0	1	3
Domestic violence	1	1	0	1
Dating violence	0	0	0	0
Stalking	0	0	0	1

ACT ANNUAL REPORT 2–3 (2024), https://www.luc.edu/media/lucedu/equity/pdfs/annual-reports/2023_Preventing%20Sexual%20Violence%20Annual%20Report_Loyola%20University%20Chicago.pdf [<https://perma.cc/8NA6-64N5>] [hereinafter LUC PSVHEA REPORT]. The 2023 tables from LUC represent the most recent numbers available for the school’s annual PSVHEA report, even though the school *has* published 2024 numbers pursuant to the Clery Act. *See id.* HEI as used in the table stands for “higher education institution.” *See id.* at 1–2.

II. PROCEDURAL AUTHORITY

The Department of Education, like all federal agencies, has the authority to create regulations through rulemaking.⁹⁰ Agency rulemaking is a process for formulating, amending, or repealing a rule, which is an agency's statement of general applicability that implements or interprets federal law or policy.⁹¹ Rulemaking may be legislative—having legal or binding effects—or non-legislative, which means that any legal effect the rule may have must come from preexisting statutes or regulations.⁹² Legislative rulemaking takes three forms: formal, informal (also known as notice-and-comment rulemaking), and hybrid (also known as publication).⁹³ Negotiated notice-and-comment rulemaking, a modified version of informal agency rulemaking, specifically pertains to the Department of Education and is the most effective avenue for the Department to issue updated regulations regarding the Clery Act.⁹⁴

The notice-and-comment rulemaking process is codified in the Administrative Procedure Act (APA) at 5 U.S.C. Section 553.⁹⁵ The APA's purpose is to create visibility for ongoing issues, encourage participation by interested members of the public, and improve the effectiveness of the rulemaking process.⁹⁶ First, an agency must issue a notice of the proposed rule in the Federal Register that “include[s] (1) a statement of the time, place, and nature of [the] public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.”⁹⁷ The agency must also publish a summary of the proposed rule in plain language, using no more than 100 words.⁹⁸ Second, the agency must give interested people notice of the proposed rule and the opportunity to participate or “comment” in the rulemaking process by submitting data, views, or

90. Linda Jellum, *Agency Rulemaking*, in STATUTORY INTERPRETATION IN THE FEDERAL AND STATE COURTS § 6.02 (2025); Administrative Procedure Act, 5 U.S.C. § 551(4)–(5) (2022); TODD GARVEY, CONG. RSCH. SERV., R41546, A BRIEF OVERVIEW OF RULEMAKING AND JUDICIAL REVIEW 4 (2017).

91. See Jellum, *supra* note 90, § 6.02(1).

92. *Id.* § 6.02(1).

93. *Id.* § 6.02(2)(a).

94. See *id.*; *infra* notes 103–139 and accompanying text.

95. 5 U.S.C. § 553.

96. See ACUS Recommendation 2011-2, Rulemaking Comments, 76 Fed. Reg. 48,789, 48,791 (Aug. 9, 2011).

97. 5 U.S.C. § 553.

98. *Id.* § 553(b)(4).

arguments.⁹⁹ Typically, the comment period lasts at least thirty to sixty days.¹⁰⁰ Then, the agency must consider all relevant and timely-submitted comments and respond to any issues raised during the comment period.¹⁰¹ Finally, should the agency choose to issue a final rule, it must publish the final rule in the Federal Register at least thirty days after the proposed rule was published.¹⁰²

In 1990, Congress passed the Negotiated Rulemaking Act, which developed a modified version of notice-and-comment rulemaking to supplement the procedures set out in the APA.¹⁰³ Negotiated rulemaking involves a committee of stakeholders with a unified goal of reaching a consensus on a proposed rule and is meant to produce rules that are easier to implement and less subject to litigation.¹⁰⁴ By way of the Negotiated Rulemaking Act, Congress intended for agencies to use negotiated rulemaking voluntarily, but in some instances, Congress has enacted specific requirements that mandate agencies to use negotiated rulemaking.¹⁰⁵

Negotiated notice-and-comment rulemaking takes place before the traditional notice-and-comment rulemaking period and differs slightly from that process in that an agency using it must submit draft regulations authored by a negotiated rulemaking committee to groups that are likely to be significantly affected by the regulations.¹⁰⁶ The agency must also negotiate with these groups over the substance of the regulations to produce a better draft basis for the notice-and-comment process.¹⁰⁷ The negotiation process is not meant to extinguish notice-and-comment rulemaking by binding parties to

99. ACUS, FACT SHEET: INFORMATION INTERCHANGE BULLETIN NO. 014, NOTICE-AND-COMMENT RULEMAKING (2021), <https://www.acus.gov/sites/default/files/documents/IIB014-Rulemaking.pdf> [<https://perma.cc/7855-48MF>].

100. *Id.*

101. *Id.*; 5 U.S.C. § 553(c). *But see*; *Am. Mining Cong. v. E.P.A.*, 907 F.2d 1179, 1187–88 (D.C. Cir. 1990) (“The notice-and-comment provision of the APA has never been interpreted to require an agency to respond to every comment, or to analyze every issue or alternative raised by comments, no matter how insubstantial. Rather, the agency need respond only to those comments which, if true, would require a change in an agency’s proposed rule.”) (citation modified).

102. 5 U.S.C. § 553(d) (allowing exceptions to the thirty-day rule for “[] a substantive rule which grants or recognizes an exemption or relieves a restriction; [] interpretive rules and statements of policy; or [] as otherwise provided by the agency for good cause found and published with the rule.”).

103. *Id.* §§ 561–569; MAEVE P. CAREY, CONG. RSCH. SERV., R46756, NEGOTIATED RULEMAKING: IN BRIEF 2–3 (2021).

104. CAREY, *supra* note 103.

105. *Id.*

106. *Id.* at 3; *see also* *USA Grp. Loan Servs., Inc. v. Riley*, 82 F.3d 708, 714 (7th Cir. 1996).

107. CAREY, *supra* note 103, at 3; *Riley*, 82 F.3d at 714.

promises made during the negotiation period before the proposed rule is published.¹⁰⁸ Rather, it is meant to foster a “consultative process” that encourages parties to narrow their differences in advance of formal notice-and-comment rulemaking.¹⁰⁹

The Department of Education is statutorily required to use negotiated rulemaking to develop rules for their programs under Title IV of the HEA unless deemed “impracticable, unnecessary, or contrary to the public interest” within the meaning of Section 553 of the APA.¹¹⁰ Therefore, the recommendations in Part 0 stem from the Department’s mandatory use of negotiated notice-and-comment rulemaking to create regulations.¹¹¹

A. *The Department of Education’s Negotiated Rulemaking*

First, to find issues to negotiate, the Department looks to newly enacted statutes, issues determined by the Department itself, or to public input.¹¹² Any newly enacted statutory provisions for which Title IV regulations are needed are “automatically included” in the Department’s rulemaking agenda.¹¹³ Once an issue is determined, the Department will publish a notice in the Federal Register announcing its intent to establish a negotiated rulemaking committee and to develop a proposed rule which includes a description of the issues to be considered, a list of interests likely to be affected, and a proposed agenda and schedule for completing the committee’s work.¹¹⁴ This announcement must also solicit nominations from the public for negotiators who will represent the constituencies, as well as identify the constituencies who themselves may be significantly affected by the regulations.¹¹⁵ These may be students, legal assistance organizations who represent students, state agencies, and others.¹¹⁶ Negotiators who are not selected may

108. *Riley*, 82 F.3d at 714–15 (holding that the Secretary’s nonenforcement of a proposal for a cap on liability during negotiation was not bad faith in violation of negotiated notice-and-comment rulemaking).

109. *Id.* at 715.

110. The Higher Education Act of 1965, 20 U.S.C. § 1098(b)(2).

111. See *infra* Part III; *Frequently Asked Questions: The Negotiated Rulemaking Process for Title IV Regulations*, U.S. DEPT OF EDUC., <https://www.ed.gov/laws-and-policy/higher-education-laws-and-policy/higher-education-policy/frequently-asked-questions-negotiated-rulemaking-process-title-iv-regulations> [<https://perma.cc/K5PM-XQY9>] (last updated Sept. 5, 2025) (discussed in section titled “What is negotiated rulemaking?”) [hereinafter *Negotiated Rulemaking FAQs*].

112. *Id.*; 5 U.S.C. § 563(a).

113. *Negotiated Rulemaking FAQs*, *supra* note 111.

114. *Id.*; 5 U.S.C. § 564(a).

115. *Negotiated Rulemaking FAQs*, *supra* note 111.

116. *Id.*

still participate by submitting comments during the notice-and-comment rulemaking process, just like other members of the public.¹¹⁷

Negotiations typically take place across three sessions, lasting three days each at roughly monthly intervals.¹¹⁸ Once the negotiators have finalized the agenda and protocols, they will discuss issues on the agenda.¹¹⁹ In between sessions, the Department will update and amend the proposed regulatory language based on committee discussions or tentative agreements between participants.¹²⁰ Language that reaches a consensus will become regulatory language for the proposed rule to be published in the Federal Register and available for public comment, consistent with the traditional notice-and-comment rulemaking process.¹²¹

The Department's most recent negotiated rulemaking process regarding the Clery Act took place following President Obama signing into law the VAWA reauthorization statute in 2013.¹²² Specifically, the rule incorporated VAWA "to require institutions to compile statistics for incidents of dating violence, domestic violence, sexual assault, and stalking and to include certain policies, procedures, and programs pertaining to those incidents in their annual security reports."¹²³ The Department announced its intent to establish a negotiated rulemaking committee to implement the VAWA changes to the Clery Act on September 19, 2013.¹²⁴ The committee represented constituencies including students, organizations that represent students, state higher education executive officers, institutions of higher education, and advocacy groups.¹²⁵ Following negotiations, the Secretary published a proposed rule on June 20, 2014.¹²⁶ The Department then solicited participation

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.* While the Negotiated Rulemaking Act defines consensus as "unanimous concurrence among the interests represented on a negotiated rulemaking committee," committees have sometimes used other definitions, such as "all committee members could live with the agreement, considered as a whole," or "no more than two negative votes in each issue area." CAREY, *supra* note 103.

122. Violence Against Women Act, 79 Fed. Reg. 62,752, 62,752 (Oct. 20, 2014); GREGORY, ET AL., *supra* note 27, at 41.

123. Violence Against Women Act, 79 Fed. Reg. at 62,752; GREGORY, ET AL., *supra* note 27, at 41.

124. Negotiated Rulemaking Committee, Negotiator Nominations and Schedule of Committee Meetings—Title IV Federal Student Aid Programs, Violence Against Women Act, 78 Fed. Reg. 57,571, 57,572 (Sept. 19, 2013).

125. *Id.*

126. Violence Against Women Act Proposed Rule, 79 Fed. Reg. 35,418 (June 20, 2014).

by commenters regarding burden of the proposed rule, availability of ASRs online, and definitions of Clery geography, but ultimately, very few changes to the proposed rule were made.¹²⁷

During the notice-and-comment period, several commenters raised concerns about the availability of ASRs and statistics to the public, and suggested that schools publish this information, along with the relevant policies and procedures, on their websites.¹²⁸ The Department rejected this suggestion, responding that while statistics and policies “can be difficult to find . . . this information must all be contained in an institution’s annual security report.”¹²⁹ They also noted that “[a]lthough institutions are not required by the Clery Act to post their [ASR] on their [website], the Department collects the crime statistics from institutions each fall and makes the data available to the public on the Department’s College Navigator [website].”¹³⁰ Further, ED encouraged institutions that do choose to post ASRs on their websites to include all relevant information on a central page.¹³¹ Commenters also raised concerns about the proposed definition of “Clery geography” and specifically the meaning of public property under the term “Clery geography.”¹³² Some commenters were unsure of what would constitute public property for the purposes of Clery reporting, and others found the proposed definition too confusing.¹³³ The Department responded that they would not change “the long-standing definitions of ‘campus,’ ‘noncampus buildings or property,’ and ‘public property,’” and instead stated that the term Clery geography was meant to improve the readability and understandability of the regulations, so it would remain part of the regulations.¹³⁴

Regarding reporting, some commenters were concerned with duplicitous reporting, such as a single instance of a crime being counted multiple times across several reports; anonymous or third party reports giving “rise to unsubstantiated accusations;” and what to do with reports that turn out to be

127. Negotiated Rulemaking Committee, 78 Fed. Reg. at 57,572.

128. Violence Against Women Act, 79 Fed. Reg. at 62,754.

129. *Id.*

130. *Id.* Currently, the College Navigator’s website only contains ASR statistics from 2019 to 2021. See *College Navigator*, NAT’L CTR. FOR EDUC. STAT., <https://nces.ed.gov/collegenavigator/?q=Loyola+University+Chicago&s=all&id=146719#crime> [<https://perma.cc/HRJ4-HLTZ>] (last visited Dec. 26, 2025) (displaying, from the website’s search tool, Loyola University Chicago’s statistics from 2019, 2020, and 2021).

131. Violence Against Women Act, 79 Fed. Reg. at 62,754. However, the Department did not note *how* they encourage schools to do this in the final agency regulation. See *id.*

132. *Id.* at 62,755.

133. *Id.*

134. *Id.*

unfounded.¹³⁵ The Department remained steadfast in requiring that *all* reports within an institution's Clery geography be reported, including “*if* an institution provides for anonymous reporting through an online reporting form,” but noted that only reports of a single instance of a crime should be included.¹³⁶ However, the Department agreed that unfounded reports may be omitted from the report so long as the number of unfounded reports are also disclosed, and added this provision to the final regulation.¹³⁷

The Department implemented its final regulations on October 20, 2014; these officially became effective on July 1, 2015.¹³⁸ This rule remains the most recent federal regulation promulgated by the Department regarding the Clery Act, despite subsequent congressional amendments to the statute after 2014.¹³⁹

B. Congressional Action

Alternatively, to implement much-needed updates to the Clery Act, Congress can pass new legislation or amend the existing legislation pursuant to Article I, Section 1 of the Constitution.¹⁴⁰ Since the 2013 VAWA Reauthorization Act, Congress has amended the Clery Act twice.¹⁴¹ The most recent amendment to the Clery Act occurred in December 2024, when President Biden signed the Stop Campus Hazing Act into law.¹⁴² However, in the recent 117th and 118th Congresses, Congress introduced legislation that would have further amended the Clery Act, although none ultimately left the committees they were assigned to and therefore did not take effect.¹⁴³

135. *Id.* at 62,765.

136. *Id.* (emphasis added).

137. *Id.*

138. *Id.* at 62,752.

139. *See id.*; 20 U.S.C. § 1092; § 1092. *Institutional and Financial Assistance Information for Students*, “Statutory Notes and Related Subsidiaries,” OFF. OF THE L. REVISION COUNS. (2025), [https://uscode.house.gov/view.xhtml?req=\(title:20%20section:1092%20edition:prelim](https://uscode.house.gov/view.xhtml?req=(title:20%20section:1092%20edition:prelim) [<https://perma.cc/8HNA-LCUV>].

140. *See* U.S. CONST. art. I, § 1; H.R. Con. Res. 190, 110th Cong. (agreed July 25, 2007).

141. OFF. OF THE L. REVISION COUNS., *supra* note 139. The other amendment occurred in 2020 and made minor adjustments to wording and punctuation “to reflect the probable intent of Congress.” *Id.*

142. *Clery Center’s Policy History*, *supra* note 12. In 2025, Congress passed a law that, effective July 2028, will amend § 1092(d) to strike language regarding financial assistance programs, which will not affect the Clery Act. *See* OFF. OF THE L. REVISION COUNS., *supra* note 139.

143. COLE & EDGERTON, *supra* note 55. In the 117th Congress, H.R. 9136/S. 5047 would have amended the Clery Act to require institutions to report additional information about campus sexual assaults, such as the number of students who sought disciplinary action, the number of cases processed, and the number of respondents found responsible. Campus Accountability and Safety Act, H.R. 9136/S. 5047, 117th Cong. (2022) (as introduced). The

On August 1, 2024, the Senate introduced S. 4962, the Campus Accountability and Safety Act,¹⁴⁴ which would have changed certain language in the Clery Act and added a new transparency provision.¹⁴⁵ The bill proposed that the Clery Act require an institution's policies and statistics be published "in an easily accessible manner and available in different languages, to be prominently displayed on the website of the institution."¹⁴⁶ Additionally, the bill would have required schools to report the number of incidents in which the respondent is a student, and in those instances, disclose the number of incidents reported to the Title IX coordinator or other responsible employee, the number of cases processed through the school's disciplinary process, the number of respondents who were found responsible and not responsible, a description of the final sanctions for respondents found responsible, and the number of student disciplinary proceedings that were still without resolution since the following annual security report.¹⁴⁷ The bill also proposed adding the definition of "Title IX coordinator" under Section 106.8(a) of Title 34 of the Federal Regulations.¹⁴⁸ Further, the bill proposed that the Act specify that statistics "shall not identify complainants or respondents or contain any information from which complainants or respondents could be identified[.]"¹⁴⁹

Regarding transparency, the bill proposed adding a new provision to the end of the Clery Act which would require the Secretary to "ensure there is a publicly available, searchable, accessible, and user-friendly campus safety

bill also would have authorized the Department to administer grants of no more than \$500,000 for sexual assault prevention programs. *Id.* In the 118th Congress, H.R. 6419/S. 3184 would have required reporting on antisemitic incidents, and H.R. 2421/S. 1070 would have amended Clery to mandate accessible ASR formats. Ending Subsidies for Pro-Terrorist Activity on Campus Act, H.R. 6419/S. 3184, 118th Cong. (2023) (as introduced); Safe Equitable Campus Resources and Education Act of 2023, H.R. 2421/S. 1070, 118th Cong. (2023) (as introduced).

144. This particular bill shares the same name as a bill introduced by the 117th Congress in 2022, but they are different pieces of legislation. *See supra* text accompanying note 143.

145. Campus Accountability and Safety Act, S. 4962, 118th Cong. (2024) (as introduced). The bill refers to the Clery Act as "the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act" rather than "the Jeanne Clery Campus Safety Act," as it is now officially named as of December 2024. Stop Campus Hazing Act, Pub. L. No. 118-173 § 4.

146. S. 4962, *supra* note 145, § 2(1)(A).

147. *Id.* § 2(1)(K)(i)(I-VIII).

148. *Id.* § 2(2)(viii). Under this regulation, each institution recipient of federal funding "must designate and authorize at least one employee, [referred to as a Title IX Coordinator], to coordinate its efforts to comply with its responsibilities under [Title IX.]" 34 C.F.R. § 106.8(a)(1) (2024).

149. S. 4962 § 2(3). The proposed change would affect paragraph seven of the current Clery Act. *Id.*

website.”¹⁵⁰ The bill suggested the website include descriptions of roles of officials who may be contacted to discuss reporting sexual misconduct for each institution that receives funds under the HEA; the Department’s pending investigations, findings, and final resolutions for all media audits, complaints, and compliance reviews related to sexual harassment; downloads of data that institutions are required to report; and the contact information for “at least one individual at the Department who can answer questions from institutions of higher education, complainants, and other interested parties about such policies[.]”¹⁵¹ However, no further action was taken on the bill during that session, and no similar bill has been introduced in the 119th Congress.¹⁵²

III. RECOMMENDATIONS

2025 marked the start of a new era for the Department of Education, which has already experienced structural instability due to a significant workforce reduction at the direction of the second Trump Administration.¹⁵³ This Administration will likely continue to push for less federal involvement in higher education, so it is crucial for ED to clarify these regulations now while it is able to implement formal negotiated rulemaking, with a simplistic and efficient approach in mind.¹⁵⁴ If the federal role is truly meant to complement the state role, federal legislation must consider how to help states prioritize and achieve better outcomes in their higher education systems.¹⁵⁵ According to a 2024 report from the National Conference of State Legislatures regarding a collaborative relationship with the federal government, states would prefer the federal government to focus on transparency and improvement of various state goals, rather than an expanded federal role in affordability and accountability.¹⁵⁶ States cannot focus on their own individual policies if the federal requirements work against their own missions.¹⁵⁷ Thus, modeling a federal policy after a well-structured state policy is a step toward achieving this balance.

150. *Id.* § 3.

151. *Id.*

152. *See id.*

153. *See* Exec. Order No. 14,210, 90 Fed. Reg. 9,669 (Feb. 11, 2025); Exec. Order No. 14,242, 90 Fed. Reg. 13,679 (Mar. 20, 2025).

154. *See supra* Part I.A; THE STATE-FEDERAL RELATIONSHIP, *supra* note 9, at 3, 8. However, the Executive Branch will still be responsible for ensuring regulations for the Clery Act reflect congressional intent, even if the Department does not commence negotiated rulemaking and becomes effectively dissolved. CONGRESSIONAL OVERSIGHT MANUAL, *supra* note 31, at 5.

155. *See* THE STATE-FEDERAL RELATIONSHIP, *supra* note 9, at 1–3.

156. *Id.* at 2.

157. *See id.*

Despite the massive reduction at the Department of Education following President Trump's RIF order in March 2025, ED and its functions will continue to exist unless and until Congress abolishes it.¹⁵⁸ Therefore, the best course of action is for the Department to use its rulemaking authority to update the Clery Act now.¹⁵⁹ The structural and functional changes to the Department this year have illuminated a need to create as much transparency as possible within federal policy. A new federal regulation regarding the Clery Act that complements an existing state approach could help achieve transparency, while also promoting efficiency and reducing administrative burden on both higher education institutions and the Department. This is crucial at a time when ED's manpower is dwindling and uncertainty is causing confusion.¹⁶⁰ Additionally, while federal legislation mandates higher education institutions that receive federal funding to report sexual assaults by way of the Clery Act, states are not required to pass their own legislation.¹⁶¹ The Department must use its blanket authority to require schools to participate in reporting sexual assaults on college campuses to the public, in lieu of relying on states to create their own policies without any incentive.

In addition to benefiting both higher education institutions and ED, Clery Act updates would greatly benefit the general public. The Clery Act has previously been perceived by the public as confusing and unapproachable.¹⁶² Despite the Act's original purpose—to provide transparency to the public on college campus safety issues—in practice, information produced by institutions in compliance with the Act is convoluted, hard to find, and often misleading.¹⁶³ Therefore, an updated and improved federal regulation from the Department would further the purpose of the Act by ensuring that available information is digestible by the public, easy to access, and transparent. This

158. Exec. Order No. 14,242, 90 Fed. Reg. at 13,679; *Education Counsel Alert for March 20, 2025*, EDUCATIONCOUNSEL (Mar. 20, 2025), https://www.aasa.org/docs/default-source/advocacy/usedexecutiveorder.pdf?sfvrsn=eb437f1c_3 [<https://perma.cc/EX4Z-JAPR>].

159. See *supra* note 154 and accompanying text.

160. See Exec. Order No. 14,210, 90 Fed. Reg. 9,669 (Feb. 11, 2025); Exec. Order No. 14,242, 90 Fed. Reg. at 13,679 (Mar. 20, 2025); Laura Mannweiler, *Impasse at the Education Department: Where Does it Stand Now Amid Shutdown RIFs?*, U.S. NEWS (Oct. 20, 2025), <https://www.usnews.com/news/education-news/articles/2025-10-20/impasse-at-the-education-department-where-does-it-stand-now-amid-shutdown-rifs> [<https://perma.cc/RU69-JZQ9>] (stating that the government shutdown in October 2025, in addition to Trump's earlier executive orders, "has left the Department [] in yet another swirl of political and legal confusion" and has led to further employee reduction).

161. See Jamieson, *supra* note 77 (discussing the federal government's influence, not mandate, on states regarding sexual assault reporting legislation).

162. See GREGORY, ET AL., *supra* note 27, at 43.

163. See *id.*

would be especially helpful for students and families to make informed decisions about enrollment.

A. Recommendations for Negotiated Rulemaking

ED's Clery regulations are over a decade old; it is time the Department commences negotiated rulemaking to update and clarify its regulations.¹⁶⁴ This is especially important in light of a dwindling Department of Education that would benefit now more than ever from efficient and streamlined procedures.¹⁶⁵ ED should use its rulemaking authority to propose changes to three particular issues, as a means of adopting an approach similar to the Illinois PSVHEA statute: (1) clarifying the expectation of reporting statistics in the ASR; (2) expanding the requirements for statistics themselves; and (3) adding a transparency provision.

The Department has valid grounds to commence negotiated rulemaking to address these issues.¹⁶⁶ Because the Clery Act is part of the HEA, the Department must use negotiated rulemaking to develop regulations to implement new legislation or amendments regarding the Clery Act.¹⁶⁷ While the Secretary may waive negotiated rulemaking by deeming the process "impracticable, unnecessary, or contrary to public interest" for the issues at hand, the Department usually abides by the requirement.¹⁶⁸ Additionally, because the former regulations regarding the Clery Act used negotiated rulemaking, there is likely

164. See Violence Against Women Act, 79 Fed. Reg. 62,752, 62,783 (Oct. 20, 2014).

165. On May 12, 2025, the Department of Education announced its intent to establish a negotiated rulemaking committee "to prepare proposed regulations for the Federal Student Aid programs authorized under [T]itle IV of [HEA]." Negotiated Rulemaking Committee; Negotiator Nominations and Schedule of Committee Meetings, 90 Fed. Reg. 20,142, 20,142 (May 12, 2025). The topics being considered include "[r]efining definitions of a qualifying employer for the purposes of determining eligibility for the Public Service Loan Forgiveness program" and "[r]evisiting family size, restructuring repayment plan provisions, including the alternative repayment plan, and certain other provisions of the July 10, 2023 rule." *Id.* The committee commenced its first negotiation session from June 30 to July 2. *Id.* at 20,143. However, the proposed issues do not involve the Clery Act, and therefore, the Department will need to create a separate committee to discuss and carry out the recommendations suggested in this comment.

166. See *Negotiated Rulemaking FAQs*, *supra* note 111.

167. See Kristen Brown & Jordan DiMaggio, *An Introduction to Negotiated Rulemaking for Higher Education*, UPCEA (Jan. 22, 2024), <https://upcea.edu/news/government-affairs/an-introduction-to-negotiated-rulemaking-for-higher-education/> [<https://perma.cc/XSS2-UBST>] (authored with input by the UPCEA Policy Committee and Staff).

168. *Id.*

no reason the Secretary would now waive negotiated rulemaking regarding the Clery Act.¹⁶⁹

Similar to the last negotiated rulemaking process, the committee should seek input from higher education institutions, advocacy groups, and students themselves to produce well-rounded perspectives beyond those who have been directly affected by sexual violence on campuses. The Department should also involve the professionals in charge of assessing instances of sexual assaults and producing the reports consistent with the Clery Act.¹⁷⁰ For example, these individuals and groups may consist of those who specifically review and enforce state annual reports, those who participated in the legislation surrounding the reporting, and organizations that advocate for and against the reports. This may help round out perspectives on the administrative burden for both the institutions and the Department.

Additionally, during this round of rulemaking, the Department should solicit participation from state officials and organizations from the twenty-four states that have sexual assault reporting policies in place to assess the various state policy frameworks and compare their administration and effectiveness with the current Clery Act.¹⁷¹ Soliciting presence from Illinois state officials or Illinois sexual assault policy organizations is especially important so that the negotiation committee is equipped to compare the new proposed regulation with the current Illinois state policy from people who actively work with the Illinois policy, potentially helped in its creation, and are involved in recommending further improvements to the Illinois legislation.¹⁷²

The first issue the negotiation committee should consider is the expectation of reporting crime statistics in the ASR pursuant to Section 668.46(b)(1) of the Code of Federal Regulations.¹⁷³ First, the Department should update the regulations to be consistent with the Clery Act's official name change as of the December 2024 Amendment.¹⁷⁴ Next, the committee should negotiate

169. See Negotiated Rulemaking Committee, Negotiator Nominations and Schedule of Committee Meetings—Title IV Federal Student Aid Programs, Violence Against Women Act, 78 Fed. Reg. at 57,571.

170. See *supra* Part II.A. For example, professionals from a school's Title IX office, as well as school psychologists or other student-facing professionals, may offer important perspectives into procedural aspects of reporting. See *Title IX At Loyola University Chicago*, LOY. UNIV. CHI.: OFF. FOR EQUITY & COMPLIANCE, <https://www.luc.edu/equity/titleixequitylaws/titleix/> [<https://perma.cc/N4VY-HWV3>] (last visited Nov. 19, 2025).

171. See THE STATE-FEDERAL RELATIONSHIP, *supra* note 9, at 1–3.

172. See *infra* Part III.C (discussing how future research may explore how to align an update to federal policy with ongoing improvements to state policy).

173. See Violence Against Women Act, 79 Fed. Reg. 62,752, 62,785 (to be codified at 34 C.F.R. pt. 668, § 668.46(b)(1)).

174. See 20 U.S.C. § 1092(f).

how to clarify the presentation of statistics within the ASR. Including the 2024 Amendments, the most recent Clery Act states that the annual security report requires disclosure of “[s]tatistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the [two] preceding calendar years” offenses that have been reported to campus security authorities or local police agencies.¹⁷⁵ However, the 2014 rule guides institutions to “report to the Department and disclose in its annual security report statistics for the three most recent calendar years concerning the number of [incidents] that occurred on or within its Clery geography and that are reported to local police agencies or to a campus security authority.”¹⁷⁶ This has resulted in institutions grouping statistics together into a single table, separated out by year and by location, which appears cluttered and is hard to read.¹⁷⁷ In plain language, the statute seems to read in a way that requests reports from the current year, *as well as* from the preceding two years.¹⁷⁸

A new federal regulation should propose that the most recent calendar year be reported separately from the preceding two calendar years for clarity and to prevent convoluting the statistics. Nothing in the Clery Act itself requires the numbers be separated by category, so it would not be inconsistent with the statute to request that schools also report a total number of reports that occurred within all Clery geography. For example, a school should report statistics for a given year that occurred within the entire definition of Clery geography—campus, noncampus, and public property—in a single column so that a reader has a general idea of the total number of reports that occur within the boundaries of Clery geography and that were officially reported to responsible individuals. Lastly, the Clery Act does not specify *how* reports that count may be made.¹⁷⁹ Technology has taken over most industries in recent years, and the Act should specify that institutions must create methods for students to electronically report to required individuals, as this method is likely more accessible for today’s generation of students and may help the accuracy of reports that are counted in a school’s ASR.

175. *Id.* § 1092(f)(1)(F)(i).

176. Violence Against Women Act, 79 Fed. Reg. at 62,786 (to be codified at 34 C.F.R. pt. 668, § 668.46(c)(1)–(2)).

177. *See* table, LUC CLERY ASR, *supra* note 54.

178. *See* 20 U.S.C. § 1092(f).

179. *See generally* 20 U.S.C. § 1092(f); Violence Against Women Act, 79 Fed. Reg. at 62,783. While the last notice-and-comment rulemaking acknowledged that schools may implement anonymous reporting, they do not require it even though the statute does not prevent them from doing so. *See supra* notes 118–121 and accompanying text.

The second issue the negotiation committee should consider is what statistics are to be included in the report. The current regulations require disclosure of statistics that are reported to local police agencies or a campus security authority.¹⁸⁰ However, they do not account for confidential or anonymous reports or reports made by third-parties, nor do they inform whether electronic reporting should be made available and is sufficient.¹⁸¹ The regulations specifically state that “[a]n institution is not *required* to report statistics . . . for crimes reported to a pastoral or professional counselor.”¹⁸² Per the 2014 Rule, a pastoral counselor is “[a] person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.”¹⁸³ A professional counselor is “[a] person whose official responsibilities include providing mental health counseling to members of the institution’s community and who is functioning within the scope of the counselor’s license or certification.”¹⁸⁴ On the other hand, a campus security authority is

[a] campus police department or a campus security department . . . ; [a]ny individual [] who ha[s] responsibility for campus security but who do[es] not constitute [the former section;] [a]ny individual or organization specified in an institution’s statement of campus security policy as an individual or organization to which students and employees should report criminal offenses[;] [and] [a]n official [] who has significant responsibility for student and campus activities, including [] student housing, student discipline, and campus judicial proceedings.¹⁸⁵

As a result of both the geographic requirement and who must receive the report, the numbers reported in ASRs seems deflated and even nominal, especially when compared to statistics reported under Illinois state policy.¹⁸⁶ For example, Loyola University Chicago reported in its ASR for the 2023 school year what appears to be a total of seven instances of rape in all Clery geography locations on its Lake Shore and Water Tower campuses.¹⁸⁷ In

180. Violence Against Women Act, 79 Fed. Reg. at 62,786 (to be codified at 34 C.F.R. pt. 668, § 668.46(c)).

181. *See id.*

182. *Id.* at 62,786–87 (to be codified at 34 C.F.R. pt. 668, § 668.46(c)(8)) (emphasis added).

183. *Id.* at 62,784 (to be codified at 34 C.F.R. pt. 668, § 668.46(a)).

184. *Id.*

185. *Id.* at 62,783–84.

186. LUC CLERY ASR, *supra* note 54, at 56–57; LUC PSVHEA REPORT, *supra* note 89, at 2–3.

187. LUC CLERY ASR, *supra* note 54, at 56–59. The numbers reported in the “On-Campus Student Housing Facilities” columns are not included in the count of seven, because the ASR notes that this category is a subset of the “On-Campus” column. *Id.* at 54.

2023, Loyola University Chicago enrolled 12,487 undergraduates.¹⁸⁸ The fact that only seven reports came out of Clery Act requirements is extremely disproportionate to the total number of undergraduates, and is a waste of limited federal resources to mandate schools to report such small numbers. And, these reports cannot take into account the number of individuals who will choose not to report incidents of sexual assaults; more accurately reporting numbers of those who do choose to report will improve visibility for the landscape of sexual assaults on campuses as a whole.

In comparison, Illinois law requires a school to present separately, without a geographic requirement, the number of confidential and anonymous results received as well as the number of reports received to the Title IX coordinator.¹⁸⁹ As a result, Loyola University Chicago's 2024 annual report pursuant to Illinois state policy reflects exponentially higher numbers of reports received by confidential sources compared to reports received by Title IX coordinators, especially when compared to Loyola's Clery Act ASR.¹⁹⁰ In 2023, for the sexual violence category, the school reported a total of one hundred and eleven instances reported to both the Title IX coordinator and to

188. *Loyola University Chicago*, NAT'L CTR. FOR EDUC. STATS., <https://nces.ed.gov/collegenavigator/?q=Loyola+University+Chicago&s=all&id=146719> [<https://perma.cc/6DV3-PQ6Z>] (last visited Dec. 24, 2025). As of Fall 2024, the enrollment number remained steady at 12,538 students. *Loyola University Chicago*, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-colleges/loyola-university-chicago-1710> [<https://perma.cc/4KPN-WJWV>] (last visited Dec. 24, 2025).

189. 110 ILL. COMP. STAT. 205/9.21(b).

190. LUC PSVHEA REPORT, *supra* note 89, at 2–3. Other institutions in Illinois, such as Northwestern University and DePaul University, present similar scenarios of large discrepancies between their statistics in state versus federal annual reports. *Compare* DEPAUL UNIV., 2022 PREVENTING SEXUAL VIOLENCE IN HIGHER EDUCATION ACT ANNUAL REPORT 4–5 (2023), <https://offices.depaul.edu/student-affairs/title-ix/training/Documents/reports/DePaulUniversity-ILPSVHEA-Annual-Report-2022.pdf> [<https://perma.cc/8RE9-JRQH>], *with* DEPAUL UNIV., 2025 SAFETY AND SECURITY INFORMATION REPORT AND FIRE SAFETY REPORT 13 (2024), <https://offices.depaul.edu/public-safety/safety/Documents/asr.pdf> [<https://perma.cc/LS6P-BDKF>] (reporting significantly lower numbers in their Clery ASR for the 2022 year than in their PSVHEA annual report, with 2022 being the most recent statistics published for the latter); *compare* NW. UNIV., ILLINOIS PREVENTING SEXUAL VIOLENCE IN HIGHER EDUCATION ACT ANNUAL REPORT 3–4 (2024) <https://www.northwestern.edu/civil-rights-office/docs/2023-ipsvhea-report-final.pdf> [<https://perma.cc/S8B2-98EY>], *with* NW. UNIV., ANNUAL SECURITY AND FIRE SAFETY REPORT 2024 34, 36 (2024) <https://www.northwestern.edu/compliance/docs/annual-security-report-evanston-chicago.pdf> [<https://perma.cc/S4LR-NLU6>] (similarly reporting significantly lower numbers in their Clery ASR for the 2023 year than in their PSVHEA annual report, with 2023 being the most recent statistics published for the latter).

confidential sources.¹⁹¹ The number of confidential reports alone—ninety-eight—was more than seven times the amount of reports officially made to the Title IX coordinator—just thirteen.¹⁹² This is extremely misleading for an individual who seeks disclosure of sexual assault statistics and only reviews a Clery ASR, which does not account for confidential reporting or incidents that occur outside of Clery geography where students may frequent.¹⁹³ The Clery Act report presents a nearly empty table that looks like a waste of resources, rather than a relatively safe campus in the context of sexual assaults.

Further, the Clery Act requires schools to describe procedures and programs that encourage confidential reporting, so they should not withhold these statistics.¹⁹⁴ The Clery Act also acknowledges that schools must state within their policies “[i]nformation about how the institution will protect the confidentiality of victims[.]” including how they will “[c]omplete publicly available recordkeeping, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the victim, as defined in [] the Violence Against Women Act[.]”¹⁹⁵ However, there is no reason to believe that reporting a total number of confidential reports, such

191. LUC PSVHEA REPORT, *supra* note 89, at 2. Under the Illinois PSVHEA statute, “sexual violence” means “physical sexual acts attempted or perpetrated against a person’s will or when a person is incapable of giving consent, including without limitation rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.” 110 ILL. COMP. STAT. 205/9.21(b). Even though this definition is more encompassing than the Clery Act’s crime categories, adding up all instances of sexual assault under the Clery Act would still reflect smaller numbers than what is presented under Illinois law. LUC CLERY ASR, *supra* note 54, at 56–58.

192. LUC PSVHEA REPORT, *supra* note 89, at 2.

193. *Id.* For the domestic violence category, nine reports were made to the Title IX coordinator, while seventeen reports were made to confidential and anonymous resources. *Id.* For the dating violence category, zero reports were made to the Title IX coordinator, while thirty-eight reports were made to confidential and anonymous resources. *Id.* Stalking was the only category where reports made to Title IX coordinators were slightly higher than those made to confidential and anonymous resources, with eight to the former and five to the latter. *Id.*

194. The Clery Act Agency Regulation, 79 Fed. Reg. at 62,760, 62,761.

195. *Id.* at 62,785. The regulation refers to the definition of “personally identifying information” from 42 U.S.C. 13925(a)(20) of VAWA, which was effectively transferred to 34 U.S.C. § 12291(a)(25) and means “individually identifying information for or about an individual including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking.” Crime Control and Law Enforcement, 34 U.S.C. § 12291(a)(25) (2025). This information includes first and last names, physical addresses, contact information, social security numbers, driver’s license numbers, passport numbers, student identification numbers, date of birth, race, religion, or any other information that could serve to identify an individual. *Id.*

as required under Illinois law, discloses identifying information, particularly when the location of an instance of assault is not disclosed and instead lumped together in a single totals category. And, while past proposed legislation has included the addition of more specific statistics, such as regarding procedural results and the number of reports made by students, it is most important for the Department to update its regulations now to include more broadly reported statistics.

In the most recent notice-and-comment proceeding regarding the Clery Act in 2014, the Department added the term “Clery geography” to “improve the readability and understandability of the regulations.”¹⁹⁶ While the Clery geography requirement convolutes the presentation of statistics and may overcomplicate a report, there is no reason to eliminate the Clery geography definition altogether.¹⁹⁷ However, if institutions must already sort through reports and qualify them based on their occurrence within Clery geography boundaries, schools should not withhold reporting statistics that fall outside of those bounds, especially when it is reasonable to believe that there may be a significant number of reports falling outside those bounds (i.e., the reported numbers would be much higher should the out-of-bounds reports be included in the ASR).¹⁹⁸ The committee should suggest reporting any statistics that the institution received from local police and campus security authorities that do not qualify under Clery geography to fill the gaps exhibited by their reported numbers and promote transparency.

Lastly, the negotiation committee should clarify the existing regulation by including transparency provisions similar to the Illinois state policy. Illinois requires higher education institutions to publish both their Clery ASRs and their reports pursuant to Illinois state law on their website in an easily accessible manner.¹⁹⁹ A negotiation committee should propose that this be added to the current requirement that reports must be disseminated to all current and prospective students and employees. Adding clarifying information that the dissemination may be accomplished by publishing information that is easily accessible online would strengthen the transparency of the reports and be more efficient than responding to individual requests for reports or individually emailing or mailing the reports out. Notably, commenters suggested website publication during the 2014 notice-and-comment rulemaking, but the Department ultimately rejected this suggestion, justifying that the

196. Violence Against Women Act, Final Regulations, 79 Fed. Reg. at 62,755.

197. *Id.* Proposing to do so would likely receive the same response the Department gave in the last proceeding, which was to reject that idea. *See id.*

198. *See* LUC CLERY ASR, *supra* note 54, at 56–58; LUC PSVHEA REPORT, *supra* note 89, at 2–3.

199. 110 ILL. COMP. STAT. 155/35(i).

information was to be collected and found on another website.²⁰⁰ Since it has been over a decade since the issue was last considered by a committee and the Department, a new committee should rediscuss this issue with the argument that it is intuitive for people to find the information they seek from a particular school on that school's website, rather than hunting down an external website run by the government that may face delays in accurate updating given the current state of the Department. Additionally, proposed legislation shows that Congress has already been considering adding this provision, so the committee should weigh in on how to incorporate transparency in a new federal regulation.²⁰¹

The Department of Education may face challenges that would obstruct these recommendations from coming to fruition during the current Administration. First, as noted, the current Administration has expressed intent to dissolve the Department altogether, which has begun with a reduction in workforce.²⁰² Given the uncertainty of its existence that changes each day and its dwindling resources, the Department may be hesitant to undertake a new negotiated rulemaking process that would require significant resources and effort. And, the Department is already in negotiated rulemaking regarding a different aspect of the overarching statute, which may stall the process to begin rulemaking specifically regarding the Clery Act.²⁰³ Nonetheless, it is crucial for the Department to implement changes while they still possess authority in the interest of transparency in federal education policies.

B. Recommendations for Congressional Amendment

Alternatively, Congress could propose these recommendations by introducing a new bill that would amend the Clery Act.²⁰⁴ Congress has more flexibility in amending the Clery Act than the Department of Education does in creating federal regulations as Congress would be creating the statute that regulations must be consistent with.²⁰⁵ That being said, Congress can alter the current requirements of the Act, which the Department would then be responsible for regulating by rulemaking.²⁰⁶ Congress should officially amend the Clery Act to require reporting a totals category, and to require

200. Violence Against Women Act, Final Regulations, 79 Fed. Reg. at 62,754.

201. See 2024 Campus Accountability and Safety Act, *supra* note 145, § 2.

202. See Exec. Order No. 14,242, 90 Fed. Reg. 13,679 (Mar. 20, 2025).

203. See *supra* note 165.

204. However, even if Congress did enact new legislation amending the Clery Act, the Department should still commence notice-and-comment rulemaking to implement the changes.

205. H.R. Con Res. 190, 110th Cong. (agreed July 25, 2007).

206. *Id.*; HEA, 20 U.S.C. § 1098(a).

the inclusion of confidential reports and numbers outside Clery geography within their statistics.²⁰⁷ Additionally, Congress should eliminate altogether the three-year reporting requirement to alleviate some administrative burden on the institutions.²⁰⁸ Illinois policy requires statistics reporting from only the most recent calendar year.²⁰⁹ This would result in a clean data table with easily discernable information, rather than a clutter of data across three years.²¹⁰ Further, there is little argument for requiring schools to go through more effort to report numbers from previous years if schools properly comply with annual reporting in the first place. People should obtain statistics from the report consistent with the year they seek, so it is unnecessary to report the same statistics in succeeding reports.

Congress should also require that schools at least collect, if not report in their ASRs, higher-level demographics of statistics to improve transparency. Institutions are likely gathering demographic information from individuals who report sexual assaults regardless, and they should be required to at least disclose this information to interested individuals upon request. Not only would this help data collection to inform institutional policy, but it would improve transparency with the public regarding the instances of sexual assaults on college campuses. Further, high-level demographics, such as sexual orientation, gender orientation, religious affiliation, languages spoken, race, and ethnicity would not violate the VAWA provision that protects any disclosure of identifying information to a particular victim.²¹¹ There is no way to discern from total numbers lumped together into broad categories who a victim is, especially when the demographic statistics are reported separately from the location of the crime under Clery geography.

While Congress has authority to make substantive changes to the Clery Act and should attempt to do so, it may face difficulty passing a new law during this Administration. Congress has experienced a stall in productivity compared to previous administrations, passing just six bills during the first one hundred days of the second Trump Administration.²¹² Further, it

207. See generally *supra* Part III.A.

208. See text accompanying *supra* note 83.

209. 110 ILL. COMP. STAT. 205/9.21(b).

210. LUC CLERY ASR, *supra* note 54, at 56–58; LUC PSVHEA REPORT, *supra* note 89, at 2–3. While procedurally, a clean, transparent presentation of the current year’s data would improve reader clarity, including multiple years of data in one report also allows viewers to easily spot trends from previous years. Clearer presentation of previous years’ data for trend purposes presents an area for further research. *Infra* Part III.C.

211. See *supra* note 195.

212. Nik Popli, *What Congress Got Done in Trump’s First 100 Days*, TIME (Apr. 29, 2025, 10:41 AM), <https://time.com/7281249/congress-trump-100-days/> [<https://perma.cc/KH7X-45MZ>].

appears that in the previous two Congresses, legislation that would have amended the Clery Act did not leave their committees.²¹³ Thus, the best avenue to implement the recommended changes to the Clery Act is for the Department to commence negotiated rulemaking.²¹⁴

C. *Limitations and Further Research*

These recommendations present ample areas for further research. First, it is crucial to acknowledge that the numbers reported in ASRs do not take into account the many instances of sexual assault that never get officially reported.²¹⁵ To further explore how reported numbers may more accurately represent the instances of sexual violence experienced by students, it is important to research the effects of schools' internal reporting procedures and advising services on data outcomes. Taking a "survivor-focused approach"—considering the actual effects of policy on survivors and making changes with their best interest in mind—will create stronger administrative and legislative improvements to the federal sexual assault reporting policy. Second, there is room to consider how best to represent a school's data trends from previous years. While this Comment recommends prioritizing clarity by keeping the focus on the current year's data, more consideration is needed on how to present a holistic perspective of the trends in a school's campus environment while maintaining a clear presentation of recent data. Lastly, while Illinois's policy presents a sufficiently strong model for the federal sexual assault reporting policy, it is important to note that interest groups are constantly looking for ways to improve state policies too.²¹⁶ It is worthwhile to continue to follow improvements to the state law to anticipate beneficial changes to incorporate into the recommended change in federal legislation.

CONCLUSION

The Department of Education has been a vessel for ensuring federal-level civil rights protections for students since 1979, despite criticism of its encroachment into the states' realm of power.²¹⁷ While the current Administration has expressed intent to hand educational power exclusively over to

213. See *supra* note 143.

214. See *supra* Part III.A.

215. See text accompanying *supra* note 182.

216. See *Clery Center's Policy History*, *supra* note 12 (detailing previous and ongoing policy work between the Clery Center, a national nonprofit, and lawmakers to help universities meet evolving compliance standards).

217. See RAPP, *supra* note 7, § 3.01(1).

the states, ED's fate remains in the hands of Congress.²¹⁸ Now, it is more important than ever for the Department to use its rulemaking authority on behalf of its founding purpose: to promote improvements in educational quality, disseminate transparent information, and complement state educational efforts.²¹⁹

When it comes to the Clery Act, the current federal regulations developed by the Department are outdated.²²⁰ The regulations are overdue for an update regarding reporting statistics and transparency provisions, and the Department should act now to contribute to clarifying these provisions. But regardless of the Department's current or future state, the Executive Branch must still ensure its regulations are consistent with Congressional intent, and should update the Clery Act accordingly. Further, the continued expectation of reduction in the Department's workforce sheds light on the need for efficient administrative processes so that, despite dwindling manpower, the regulations can still accomplish carrying out the policies that are working to improve safety on college campuses in Jeanne Clery's honor every day.

218. See Exec. Order No. 14,242, 90 Fed. Reg. 13,679 (Mar. 20, 2025); *McMahon v. New York*, 145 S. Ct. 2643 (2025) (on application for stay) (Sotomayor, J., dissenting).

219. *Evolution of Federal Education*, *supra* note 1.

220. See VAWA, Final Regulations, 79 Fed. Reg. at 62,752.