

# HIGHER EDUCATION COMPLIANCE YEAR IN REVIEW

2018 HCCA / SCCE  
Higher Education Compliance Conference



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**WELCOME**  
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# Agenda Title Here

## 1. Year In Review

- a. Higher Ed In the News
- b. Regulatory Updates
- c. Enforcement Actions

## 2. Compliance Impact

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**YEAR IN REVIEW**

# Higher Ed In the News Free Speech on Campus

Fostering ideas and individual growth expands Higher Education's societal role beyond education and research. The current divided political climate can force institutions to the center of clashing ideologies and expressions.



Individuals have **free speech rights** under the First Amendment.

Free speech protections extend to hate speech and other **controversial opinions**.

Universities, as employers, public entities and academic facilities must **balance competing priorities** across student groups, faculty members, and other institution constituencies.

# Higher Ed In the News Free Speech on Campus

## University of Virginia

- In August 2017, white supremacists held a rally that partially took place on the UVA campus.
- A counter-protestor was killed and the governor of Virginia declared a state of emergency.

### University Involvement:

- University officials held panels and film screenings discussing race as an alternative to counter-protesting.
- The city of Charlottesville commissioned an independent audit of the University police department and its preparedness to respond to the planned rally.
- The individual who organized the rally was banned from the UVA campus.
- The University is considering changes to its policies governing use of campus space by groups unaffiliated with the institution.

# Higher Ed In the News Free Speech on Campus

## University of Calif., Berkeley

- Conservative speakers attempted to visit the UC-Berkeley campus throughout 2017; multiple events were cancelled due to violent protests.
- One speaker came to campus unsponsored by a student group and was met with protestors.

### University Involvement:

- The Chancellor of the University appointed a Free Speech commission in the wake of the events.
- The University adopted a “major events” policy applicable to gatherings of 300 or more expected guests, requiring six weeks’ notice be given to the University and that the sponsoring group cover “basic security costs”.
- The student group attempting to host the speakers filed a lawsuit against the University alleging that University suppressed conservative speech by charging “unconstitutionally high security fees” and setting “impermissibly vague” policies; the Justice Department filed a statement of interest.
- The University stated it spent nearly \$4 million for security in a month of free speech events, paying for outside police and their expenses, having ambulances on standby, and barricades.

Source: Berkeley News, [Free Speech Commission issues its findings](#), May 2, 2018  
LA Times, [UC Berkeley spent \\$4 million for free speech event security](#), February 5, 2018  
Daily Cal, [UC Berkeley conservatives allowed to proceed with free speech lawsuit against campus](#), April 26, 2018



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# Higher Ed In the News Free Speech on Campus

## University of Nebraska

- An undergraduate student distributed literature for a conservative organization in a common area. A graduate student protested nearby.
- Three state senators questioned student safety and requested an external audit.

### University Involvement:

- The University complied with multiple open records requests seeking emails from University leadership related to the dispute.
- The University censured the graduate student and did not allow her to return to teaching, but did not find cause to fire the graduate student.
- The University hired the external organization requested by the state senators; the organization found that the University’s treatment of the graduate student threatened free speech.
- A new freedom of expression policy was adopted that calls for education on the First Amendment and requires campuses to develop policies governing use of public spaces.
- The University engaged in a PR campaign, highlighting the research conducted by the University and its economic impact on the state. Three state senators stated the campaign was an attempt to downplay the treatment of conservative students.

Source: The Chronicle of Higher Education, [State of Conflict](#), April 27, 2018  
Omaha World-Herald, [NU's free speech controversy won't die; 2 groups express concern about new policy](#), March 26, 2018  
AP News, [University of Nebraska free speech policy draws criticism](#), March 26, 2018



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# Higher Ed In the News Free Speech: Institution Considerations



**REPUTATION**  
among constituencies, including students, faculty, governing bodies, and communities



**SAFETY**  
and overall campus climate for various constituencies



**COST**  
of security measures and identifying who pays for these costs



**POLITICAL**  
considerations that involve governing bodies, including state legislatures and national agencies



**REGULATORY**  
implications, including the impact on public funding sources and use of public facilities

# Higher Ed In the News Me Too Movement

The **#MeToo Campaign** has grown into a **global movement against sexual harassment**, spreading across industries, including education

Institutions are often questioned whether **reported cases were appropriately investigated**

Institutions should consider how to **balance justice and safety** of its students, faculty, and staff



# Higher Ed In the News Me Too Movement

## Middlebury College

- A student published an unsubstantiated list of men who allegedly raped, sexually harassed, and/or emotionally abused women.
- The student refused to share the names of survivors with the University's judicial office.

### University Involvement:

- The University issued a statement that the College will continue to follow established procedures to review allegations of sexual harassment and assault.
- The student who posted "The List" is facing disciplinary action for failing to comply with a College investigation that was launched following the publication.

Source: Inside Higher Ed, [A College's List of Alleged Rapists](#), January 30, 2018  
New York Daily News, [A slippy crusade against sex crimes, in and after college](#), February 12, 2018  
Middlebury Campus, [Student Who Posted 'The List' Faces Discipline](#), January 24, 2018

# Higher Ed In the News Me Too Movement

## Michigan State University

- A university physician was convicted of sexually assaulting female athletes.
- Subsequently, a dean was charged with failing to protect students.
- The University settled with victims for \$500 million.

### University Involvement:

- The University president resigned, and multiple board members are not running for re-election.
- The University is having to consider how it will pay for the settlement; tuition freezes are proposed to avoid passing costs onto students.
- The University undertook an external review of its Title IX policies and procedures and has implemented a plan to "foster a safer campus", including:
  - Improving internal communications around Title IX outreach.
  - Providing training on how to report sexual assault and child abuse.
  - Reorganizing the offices responsible for Title IX.
  - Hiring additional staff with compliance oversight and investigative responsibilities.

Source: Detroit Free Press, [What's next at MSU after Nassar settlement? Investigations and reform](#), May 20, 2018  
Chicago Tribune, [Michigan State dean who oversaw Larry Nassar charged with storing nude photos of female students](#), May 21, 2018  
Michigan State University, [Taking action to foster a safer campus](#), May 9, 2018

# Higher Ed In the News Me Too: Institutional Considerations



**DUE PROCESS**  
and the rights of all  
involved parties,  
including accusers and  
the accused



**SAFETY**  
and overall campus  
climate for various  
constituencies



**RESOURCES**  
available to investigate  
and adjudicate claims



**REGULATORY**  
implications, including  
the interplay among  
Title IX, Clery Act, and  
Campus SaVE

# Regulatory Updates Title IX Guidance

**In September 2017,  
the Department of  
Education withdrew  
the 2011 “Dear  
Colleague” letter and  
issued interim  
guidance on campus  
sexual misconduct.**

Significant changes include:

- Allowing institutions to select between a “clear and convincing evidence” or “preponderance of the evidence” standard
- Removing the requirement that institutions provide for an appeals process
- Allowing institutions to provide informal resolution of disputes in lieu of adjudication
- Removing the requirement that institutions must complete an investigation within 60 days

Source: Department of Education, [Department of Education Issues New Interim Guidance on Campus Sexual Misconduct](#), September 22, 2017  
The Chronicle of Higher Education, [What You Need to Know About the New Guidance on Title IX](#), September 22, 2017  
CNN, [Education Department withdraws Obama-era campus sexual assault guidance](#), September 22, 2017

# Regulatory Updates NSF Terms and Conditions

**In February 2018, the National Science Foundation (NSF) announced its intention to combat sexual harassment in research environments.**

Significant proposed changes include:

- Mandate institutions report any findings of harassment by any NSF grant-funded personnel
- Report when an institution places an accused PI or co-PI on administrative leave
- Mandate accessible and evident means for reporting violations and exercise due diligence in investigations and corrective action
- Launching a web portal to provide access to information related to sexual and other forms of harassment and allow reporting directly to NSF

Source: National Science Foundation, [Important Notice No. 144: Harassment](#), February 8, 2018  
Science, [NSF requires institutions to report sexual harassment findings](#), February 9, 2018



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# Regulatory Updates EU General Data Protection Regulations

Overview	Key Changes	Impact
<ul style="list-style-type: none"> <li>• Designed to protect personal information of EU residents and change how organizations approach data privacy</li> <li>• Replaces the Data Protection Directive (DPD) of 1995</li> <li>• The GDPR was adopted in 2016 and became effective on May 25, 2018</li> </ul>	<ul style="list-style-type: none"> <li>• Applies to all entities, including US institutions, processing personal data of EU residents, regardless of the entity's location, or the resident's nationality</li> <li>• Consent must be intelligible and easily accessible, with the purpose for data use included in that consent</li> </ul>	<ul style="list-style-type: none"> <li>• Institutions may face penalty charges for non-compliance, a maximum of 4% of the annual global turnover or €20M</li> <li>• Institutions may be required to minimize the amount of data they keep on EU residents</li> <li>• Risk of losing prospective students</li> </ul>

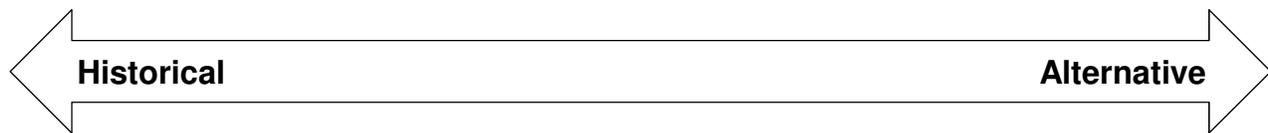
Source: EUR-Lex, [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016](#), April 27, 2016  
Inside Higher Education, [European Rules \(and Big Fines\) for American Colleges](#), March 13, 2018  
Educause, [What Higher Ed HR Professionals Need to Know About New Data Privacy Rules in the European Union](#), March 26, 2018



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# Enforcement Actions Research Employee Compensation

Compensation verification has evolved to reflect the more flexible nature of the UG:



Traditional Effort Reporting	Exploring UG's Flexibility	Changing "What" is Verified	Further Reform
Adhering to the standards and traditional implementation of A-21	Variations on who can sign, length of reporting period, how information is organized	Certification of compensation versus effort	Emphasis on a unique set of internal controls

# Enforcement Actions Research Employee Compensation

## University of North Texas

- UNT self-disclosed discrepancies between payments made to individuals supported by federal grants and effort reported on those projects.
- The University settled with the Department of Justice for \$13 million.

### University Involvement:

- The University restructured research administration, adding five positions and reassigning ten existing positions into compliance and oversight roles.
- Policies and procedures were revised to provide for additional controls over the effort certification process, including additional reviews of payroll documentation and an explicit escalation process to promote timely certification.
- The University invested in additional software via upgrades to its research accounting system to provide systematic controls over the payroll and effort certification processes.

# Enforcement Actions Research Employee Compensation

## University of Calif., Riverside

- UC-Riverside conducted a pilot program, allowing PIs to annually certify salaries by project.
- The OIG found that the pilot “did not provide sufficient basis... to demonstrate... means of verification.” The OIG estimated that \$17.6 million of salary and & costs was put at risk.

### University Involvement:

- The University disagreed with all but one recommendation, which was directed at stronger controls on changes to previously certified salary.
- The auditors did not prohibit the University from continuing to use the Payroll Certification System.

Source: HHS OIG, [The University of California at Riverside's Pilot Payroll Certification System Did Not Provide Accountability Over Payroll Charges to Federal Awards](#), February 2017

# Enforcement Actions Title IV Financial Aid Compliance

**Title IV governs federal aid funding supporting individual post-secondary education.**

**Institutions are subject to audits and must be recertified every six years.**

Significant requirements include:

- Establishing policies and procedures
- Providing accurate consumer information
- Reviewing student outcomes data and student default rates
- Establishing cash management controls governing receipt and disbursement of funds
- Providing consumers with details of refund policies
- Meeting general institutional eligibility criteria

Source: Federal Student Aid, [FSA Assessments](#), accessed May 21, 2018  
LASFAA, [The Importance of Title IV Policies and Procedures](#), accessed May 21, 2018

# Enforcement Actions Title IV Financial Aid Compliance

## Howard University

- An anonymous complaint posted on a website alleged that University employees misappropriated financial aid funds.
- The University self-reported the issue to the Department of Education.

### University Response:

- The President initiated an internal review of the financial aid office.
- The University conducted an internal into the allegations, as well as hiring an external auditor to review the matter and determine if federal funds were misappropriated.
- Six employees were fired for “gross misconduct and neglect of duties”.

Source: NBC Washington, [6 Howard University Employees Fired for Misappropriating Financial Aid](#), March 29, 2018  
The Root, [Report Details How Employees Scammed Howard University for Hundreds of Thousands of Dollars](#), April 10, 2018

# Enforcement Actions NCAA Recruiting Compliance

**The NCAA enforces recruiting rules on college employees and representatives to promote a “fair recruiting environment that limits intrusions into the lives of student-athletes and their families.”**

Significant rules include:

- Limiting expenses associated with an official recruiting visit to transportation, lodging, meals, and reasonable entertainment expenses
- Prohibiting providing remuneration to recruits outside of expenses associated with an official or unofficial visit
- Prohibiting other schools from recruiting a student once the student has signed a National Letter of Intent

Source: NCAA, [Recruiting](#), accessed May 24, 2018  
NCAA Publications, [2017-2018 NCAA Division I Manual - AUGUST VERSION](#), accessed May 24, 2018

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# COMPLIANCE IMPACT

## Compliance Impact Benefits of an Effective Program



• **Proactively identify and manage risk** without imposing unnecessary constraints on the institution's operations



Provide **appropriate staffing and resources** to allow the institution to plan for and respond to incidents



Reduce the **negative impact of having non-compliance discovered** by regulators or funding agencies



Help **navigate communications**, including internal communications and external responses

# Compliance Impact Institutional Partners

<b>Expanded Partners</b>	<ul style="list-style-type: none"> <li>• Student and Faculty Affairs</li> <li>• Diversity Offices</li> <li>• University Police</li> <li>• Others?</li> </ul>
<b>Traditional Partners</b>	<ul style="list-style-type: none"> <li>• Enterprise Risk Management</li> <li>• Internal Audit</li> <li>• General Counsel</li> </ul>
<b>Compliance Programs</b>	<ul style="list-style-type: none"> <li>• Institutional Compliance</li> <li>• Research Compliance</li> <li>• Athletics Compliance</li> </ul>



**The structure of your compliance program and the issue at hand will directly impact the involvement of the compliance office.**

# Compliance Impact Factors to Consider

**Consider the following factors when determining the scope of the compliance program's involvement in issues:**

- History and culture of the institution, barriers to change, mission and vision
- Commitment of institution's leadership to invest in improvement and "champion" change initiatives
- Effective mechanisms for internal controls across organizational units
- Applicable policies & procedures
- The institution's overall risk profile, including business, legal and regulatory, and reputational risks
- Staffing levels, roles, responsibilities & delegated authorities
- Coordinated and focused management of issues, capitalizing on strengths and capabilities across the institution



# THANK YOU

 HURON

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