

Helping colleges ‘get it right’ on sexual assault policies

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Long before sexual assault on college campuses entered the public consciousness and garnered the attention of lawmakers, Ernie Allen was talking about the issue.

It’s been on his radar for nearly 30 years, just as he was establishing the National Center for Missing & Exploited Children.



Amanda Lowe and Kenneth Manning are members of Phillips Lytle's campus accountability team, which helps university clients prepare for new federal rules and regulations.

Now retired from the center and its international sister organization, he often speaks on the subject as a consultant and adviser to government and corporations.

He said people sometimes have a difficult time understanding that the single most victimized segment of the U.S. population is the demographic on college campuses.

“I’ve been talking about this for a long time,” said Allen, in town last month as part of a Phillips Lytle educational summit on the prevention and response to sexual misconduct. “You have kids, in most cases, who are away from home for the first time, have a sense of immortality ... and there is a propensity to drink. They think that they’re in a safe and secure setting.”

He pointed to President Barack Obama’s creation last year of the Task Force to Protect Students from Sexual Assault, as well as reports that say one in five female college students is a victim of sexual assault. A recent study by The Washington Post and Kaiser Family Foundation conducted empirical research of college campuses.

“This is a societal issue larger than just campuses, but sexual assault on college campuses is higher in incidents than sexual assault is in the rest of society,” Allen said. “There is particular risk for this segment, and part of it is the whole premise about the vulnerability of these youngsters. It’s just something America has to come to grips with.”

With greater numbers of incidents being reported and grabbing national media attention, state lawmakers have responded. On top of amendments to the federal Clery Act, legislation enacted in July as part of the Enough is Enough initiative requires New York colleges to adopt a credible plan and follow certain procedures to be in compliance, some as soon as October.

The Phillips Lytle summit was intended to raise awareness about policies and procedures, proper investigations and comprehensive training, as well as compassionate and fair responses when incidents do occur.

Allen said he was encouraged by the response: Just about every higher-education institution in Western New York was represented. He saw everyone from university presidents, members of boards of trustees and Title IX coordinators to heads of campus security, representatives of victim services and athletic directors.

“What you tend to encounter is something akin to denial. School administrators say, ‘This isn’t a problem at our school. This isn’t a problem in our community.’ We didn’t hear that at all in Buffalo,” Allen said. “What I saw was a cross-section of policymakers and decision makers who cared, who are nervous about this and are trying real hard to be prepared and do the right things. They’re eager for advice and assistance in how to do the right thing.”

Kenneth Manning, who leads the education practice at the Buffalo law firm, said organizers knew full well the impact Allen would have on attendees.

He said the college representatives were interested in fine-tuning their policies and procedures to comply with new guidelines.

“We had their undivided attention,” Manning said. “It was clear they were prepared on the subject matter; they asked questions and each person there was focused. It demonstrated a high level of enthusiasm, concern and respect for the new guidelines.”

Amanda Lowe, a Phillips Lytle attorney with experience in Title IX and Clery Act violations, said universities are simply trying to “get it right” and create a safe campus.

Allen said many institutions know the requirements but have questions about how to execute some of them. With compliance for Enough is Enough set for next month, officials recognize that it’s a serious issue that must be addressed.

Colleges are feeling the pressure, according to Allen. There are 117 American institutions under federal investigation for violations of Title IX, and there are more in New York than any other state. Enough is Enough adds an important layer of regulatory obligations.

“This is a very challenging situation for a college,” he said. “These are people who are not trained lawyers and do not have judicial experience, and suddenly they’re thrust into this role. So the support and advice of a respected law firm like Phillips Lytle, I think, is essential.”

What started as informal discussion while representing higher-ed clients evolved into more calls from places looking for legal help, according to Manning.

Phillips Lytle expanded its practice group and sharpened its focus, creating a campus accountability team so the firm would be “thought leaders in the field,” he said.

Last month’s summit in Buffalo was an outgrowth of a program Phillips Lytle presented in New York City several months earlier.

Campus ‘epidemic’

Allen said it’s a good thing people are paying attention because the issue has reached epidemic proportions. He described sexual assault as crimes that society has not identified: Victims are hidden, he said, and colleges aren’t equipped to play the role of investigator and provider of due process.

Research also shows that one in 20 male college students will be sexually assaulted on campus this year, and Allen is convinced those assaults are understated because men are less likely to report them.

The Justice Department, in its research from 2000, indicated that only 5 percent of campus assaults are actually reported. More recent research shows that the number has climbed to 20 percent, but that means four out of five don’t get reported.

There’s also the alcohol factor, Allen said. A Harvard study found that more than 40 percent of college students binge drink. And the Washington Post said 14 percent of sexual assault victims are incapacitated.

The typical response by a college is to protect itself, Allen said.

He said victims may be reluctant to subject themselves to the criminal justice system but may be more comfortable with a campus-based process.

“Colleges must demonstrate concern for the victim and send a message to the public that they care and they’re going to take positive, proactive steps to do what they’re obligated to do by law, but also to do everything they can for these victims and to make sure it doesn’t happen again,” he said.

“When a college administrator says to me that they haven’t had any of these incidents on their campus, my response is, ‘You haven’t had any that you know about.’ My message to them is: Be prepared, plan, have someone in charge, create experts so that when it happens, you know what to do.”