



March 24, 2022

Clery Compliance and Enforcement

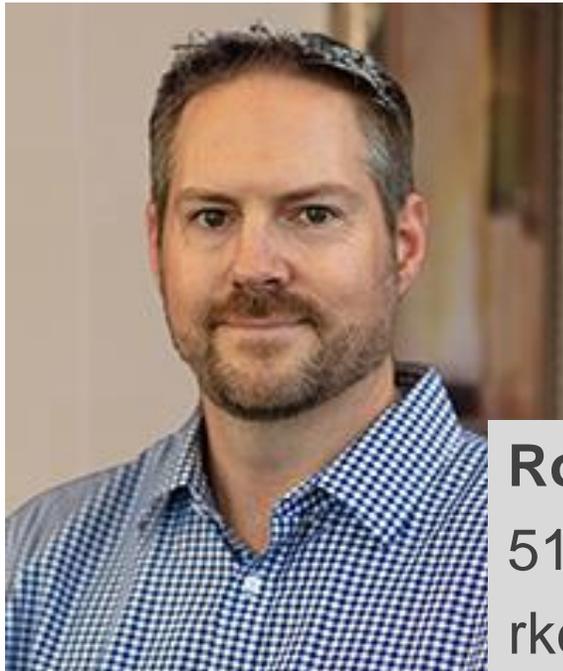


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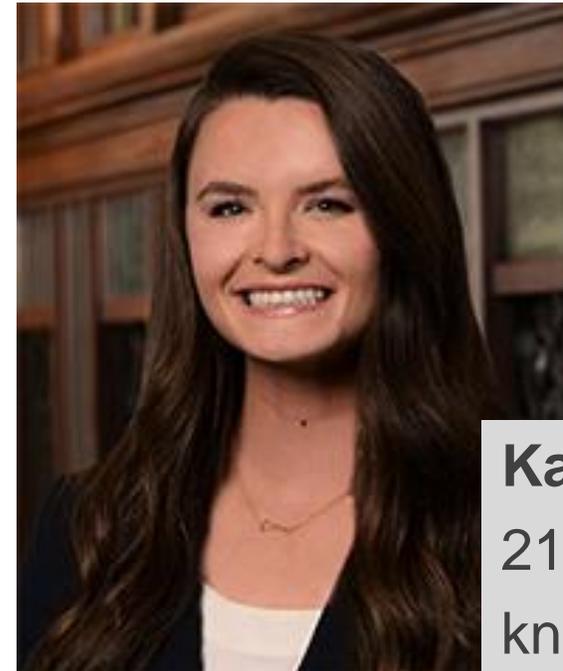
About us



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Disclaimer



We can't help it – we're lawyers!

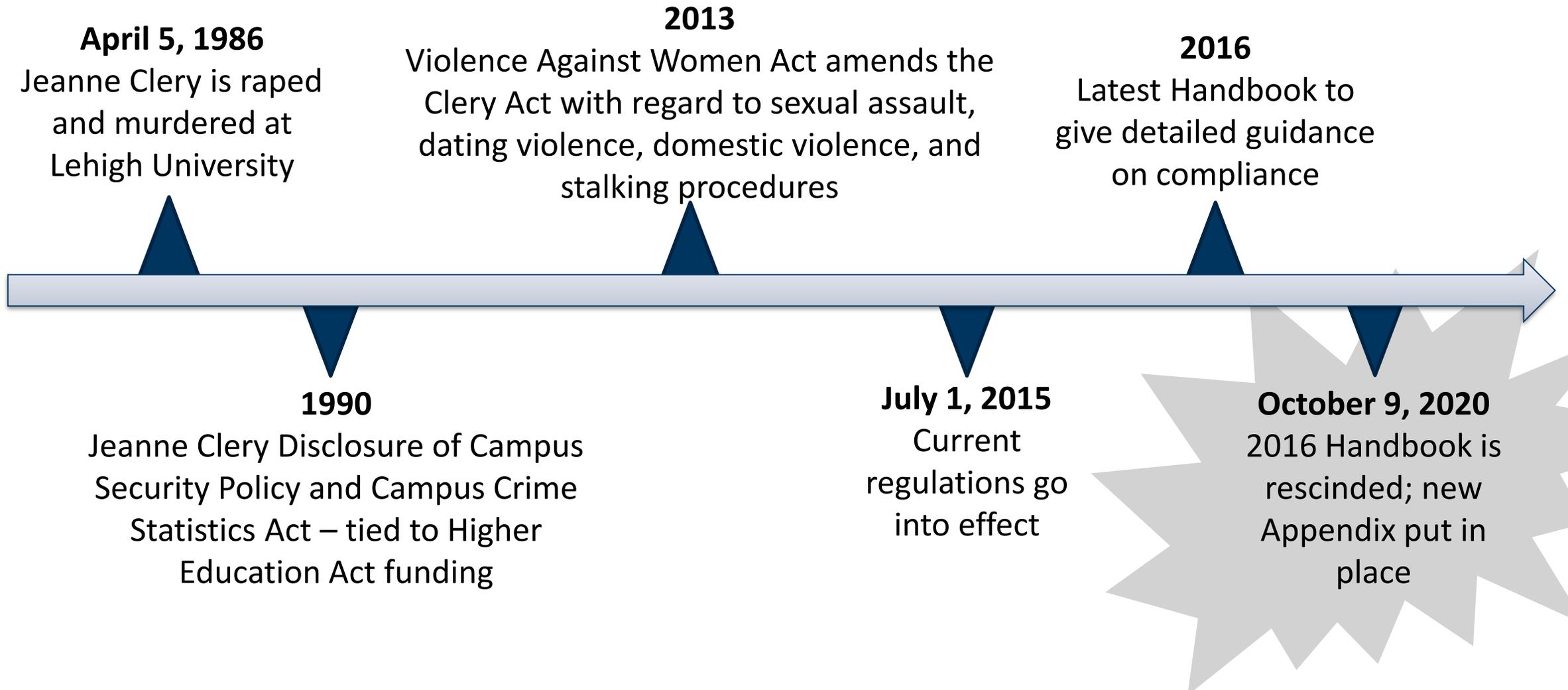
- We are not giving legal advice today.
- Please consult with your legal counsel regarding specific situations.
- Use chat function to ask general questions and hypotheticals. We encourage questions!
- Yes, we will send out the slides. If you used your email to register, look for a “Thank You For Attending!” email.

Today's Agenda

- Background
- Structural Best Practices
- Clery Requirements
- Annual Security Report
- Drug Free Schools and Communities Act
- Annual Fire Safety Report



How we got here



Rescission of Handbook → Appendix



“The Department will continue to apply the plain meaning of terms contained within each Clery requirement”

“The Department will accept an institution’s reasonable interpretation of terms as long as those terms are defined clearly to individuals who review the campus’ Clery Act reports”

Overview of Clery Act Requirements



- Collect, classify, and count crime reports and statistics
- Issue campus alerts and warning notices
- Publish an **Annual Security Report** (Due date: October 1)
- Disclose missing student notification procedures
- Submit crime and fire statistics to the Department
- Disclose procedures for institutional disciplinary actions
- Provide educational programs and campaigns
- Keep a daily crime log
- Disclose fire safety information



Structural Best Practices



Clery Coordinator

What does a Clery Coordinator do/facilitate?

CSA reporting and
identification

Athletic, Title IX,
and Student
Conduct reporting
and reconciliation

CSA Training

Policy Update
Process

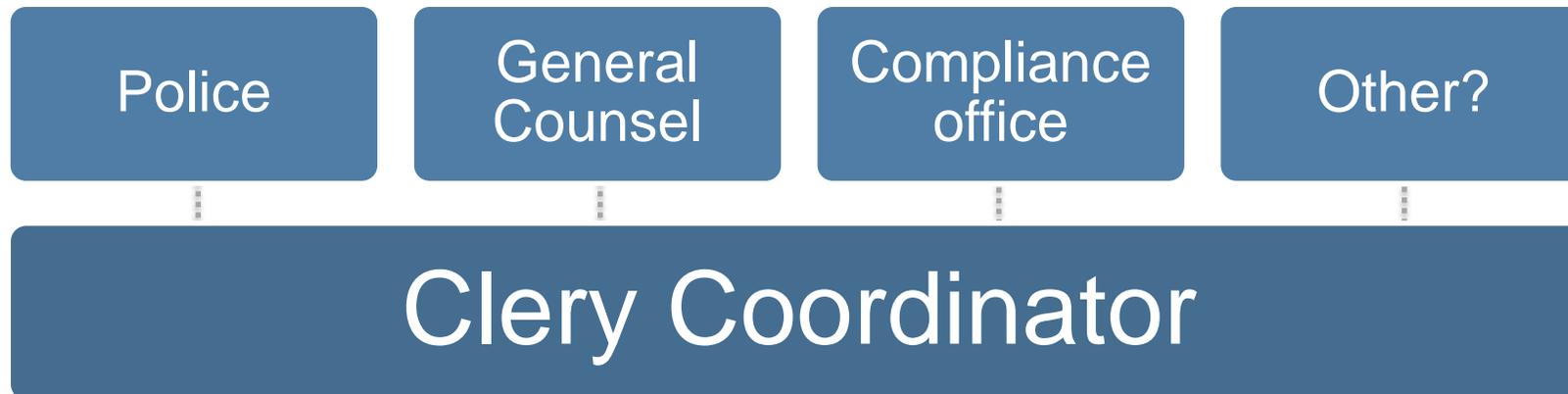
Local
police/noncampus
property statistics
outreach

ASFSR Prep

Timely Warning
Emergency
Notifications

Clery Coordinator

- Full-time or part-time?
- Where should this position be located? Which office?
- Who should have these responsibilities?



Campus Security Authorities



- Identification
- Training
 - All CSAs
 - Police and Security
 - Specialty areas

Communication & Collaboration

- Case management software
- CSA reporting
- Special CSA reporting





Annual Security Report

- *Published by October 1st every year*
- *Contains 14 main components*



Overview of ASR Contents



1. Crime Statistics
2. Policy on student reporting crimes
3. Policy on security of and access to campus facilities
4. Policy on campus law enforcement
5. Description of programs to inform students about campus security
6. Description of programs to inform students about prevention of crimes
7. Policy on non-campus orgs and crime monitoring through law enforcement
8. Policy on drinking
9. Policy on drugs
10. Description of any drug or alcohol-abuse education programs
11. Policy on the programs to prevent VAWA crimes (dating violence, domestic violence, sexual assault, and stalking)
12. Where sex offender information can be found
13. Policy on emergency response and evacuation procedures
14. Policy on missing student notification procedures

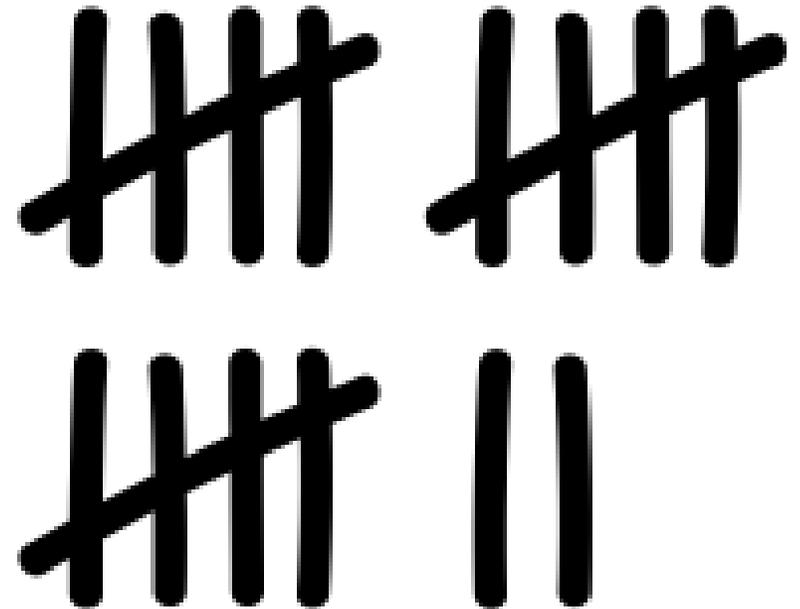
ASR: Crime Statistics



- Clery crimes within its Clery geography that are reported to campus security authority
- Must be reported and disclosed for the three most recent years

ASR: Crime Statistics Counting

- Must be recorded by location
- Cannot remove from statistics based on a decision by court, jury, etc.
- Must be recorded by calendar year (not academic year)
- Hate crimes must be recorded by category of bias
- Must make reasonable, good faith effort to obtain statistics, may rely on the information supplied by a local or State police agency



ASR: Crime Statistics Definitions

Definition of Clergy crimes

- The FBI has announced that it will retire the Summary Reporting System User Manual (SRS) and transition to using only the **National Incident-Based Reporting System User Manual (NIBRS)** in January 2021.



ASR: Crime Statistics



Primary crimes

1. Murder/Non-Negligent Manslaughter
2. Negligent Manslaughter
3. Rape
4. Fondling
5. Incest
6. Statutory Rape
7. Robbery
8. Aggravated assault
9. Burglary
10. Motor vehicle theft
11. Arson

Arrests and referrals for disciplinary actions for:

1. Liquor law violations
2. Drug law violations
3. Illegal weapons possessions

VAWA Offenses

1. Domestic Violence
2. Dating violence
3. Stalking

Hate Crimes: All primary crimes PLUS

1. Larceny-theft
2. Simple Assault
3. Intimidation
4. Destruction/damage/vandalism of property

ASR: Crime Statistics and Multiple Offenses

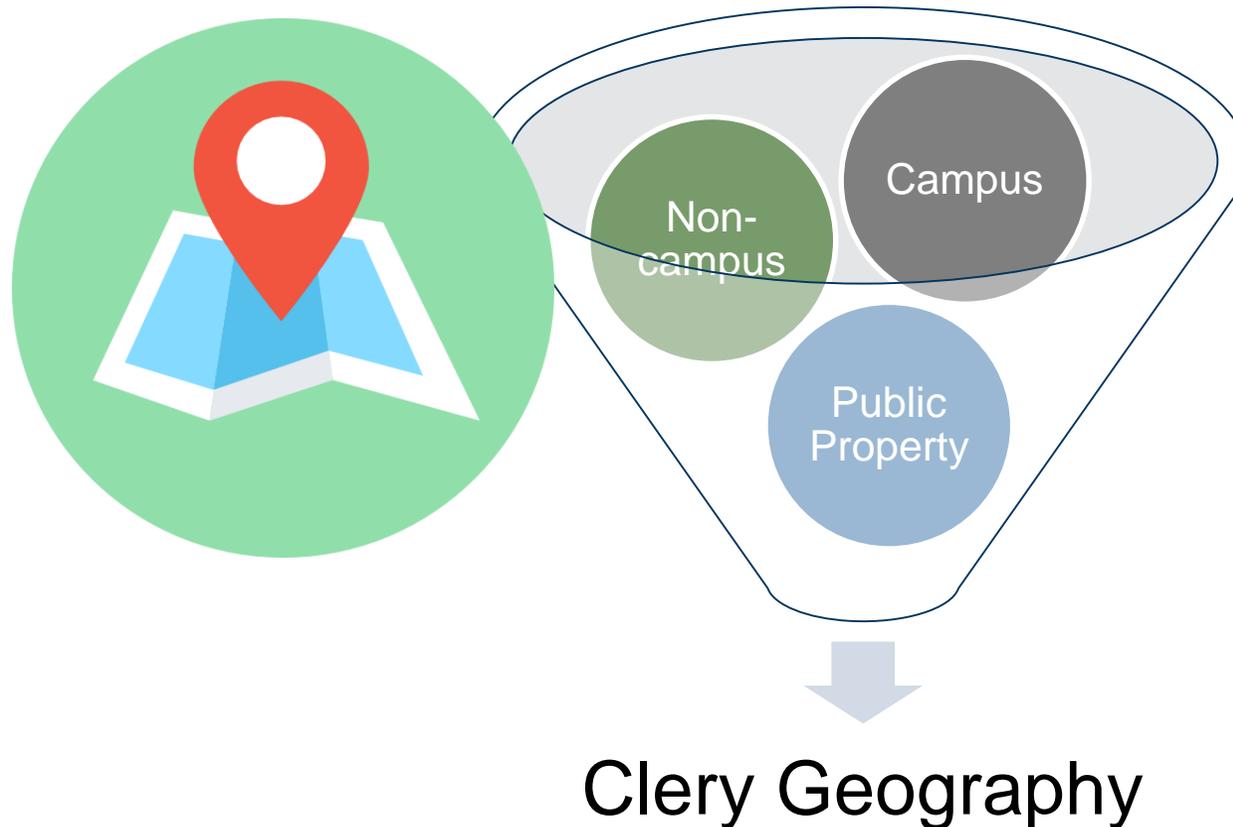


The NIBRS allows law enforcement to report up to **10 co-occurring offenses per single incident.**

→ *Used to be the FBI's SRS Hierarchy Rule (but was retired)*

ASR: Crime Statistics and Clery Geography

Crimes must be recorded by **location** (may use a map to depict different areas of campus)



Clery Geography: Campus



- Any building or property **owned or controlled by the institution**
- Any building or property that is:
 - Within or reasonably contiguous to the area identified as your “campus”
 - Owned by the institution but controlled by another person
 - Is frequently used by students, and
 - Supports the institution’s purposes

The Department will no longer apply any specific measurable distance definition to “reasonably contiguous” geographic area that was in the 2016 Handbook.

Clery Geography: Campus



- Residence Halls
- Dormitories or other residential facilities for students on campus

Clery Geography: Noncampus



- Any building or property owned or controlled by a student organization officially recognized by the institution; or
- Any building or property
 - (1) owned or controlled by an institution (i.e., leased)
 - (2) that is used in direct support of, or in relation to, the institution's educational purposes,
 - (3) is frequently used by students, and
 - (4) is not within the same reasonably contiguous geographic area of the institution.

The Appendix removed definitions not found in regulation or statute

Clery Geography: Noncampus



- What about these locations?
 - Overnight trip by a sports team for an away game
 - Semi-formal trip by a fraternity to the mountains
 - Hotels and spaces rented during a study abroad semester
 - COVID locations
 - Extension locations

Clery Geography: Public Property



Must satisfy all three:

1. public (e.g., publicly-owned);
2. within or adjacent to campus; and
3. accessible from campus

Clery Geography: Handbook v. Appendix



- The Department will no longer apply any specific measurable distance definition to “reasonably contiguous” geographic area
- When in doubt, apply the plain meaning of regulatory and statutory requirements.

Campus Security Authority (CSA)



Those individuals who:

- Are a part of the institution's campus security department
- Are identified in institutional security policies
- Have security-related responsibilities
- Have significant responsibility for student and campus activities
 - Ex. student housing, student discipline, and campus judicial proceedings

Department of Education will defer to an institution's designation of CSAs

CSA: Handbook v. Appendix



| The Appendix | 2016 Handbook (rescinded) |
|--|---|
| <ul style="list-style-type: none">• Strictly adhere to definition of CSA• Will respect institutions' discretion in their reasonable determinations of who constitutes a CSA | <ul style="list-style-type: none">• Expanded the definition of a CSA• Took an expansive view of the phrase "significant responsibility for student and campus activities" found at 34 CFR 668.46(a).• Captured groups of individuals who did not have "significant responsibility."• Created more confusion than clarity |

ASR : Policy for students to report crimes

A statement of policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. Must include:

Timely Warning
Policy



Policy for
preparing the
annual
disclosure of
crime statistics

Policy for victims
or witnesses to
report crimes on
a voluntary,
confidential
basis

List of titles of
each person and
office students
and employees
should report
crimes

Timely Warning Policy



Required to Report

- Clergy crimes
- Reported to CSA as identified under College's policies
- Considered by the College to be a **THREAT** to student and employees



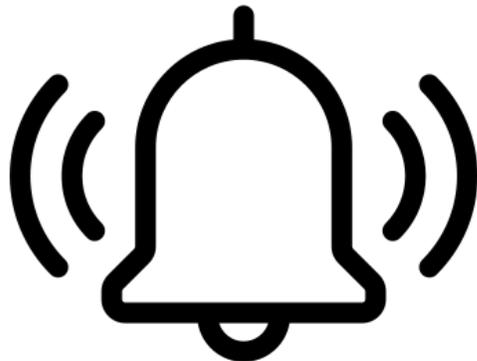
Not required to Report

- Reported to a pastor or professional counselor

ASR: Emergency Notification Procedures and Policy

Statement of policy regarding its emergency response and evacuation procedures including:

1. Procedures to immediately notify campus
2. Description of the process
3. Statement the College will initiate the notification system without delay
4. List of people responsible for carrying out process
5. Procedure for disseminating to larger community
6. The institution's procedures to test the emergency response and evacuation procedures on at least an annual basis



Emergency Notification Procedures and Policy vs. Timely Notifications



| | Emergency Notifications | Timely Warnings |
|---------------------|---|--|
| Scope | Significant emergency or dangerous situation | Clery crimes, reported to CSAs |
| Triggered by? | Event that is currently occurring on or imminently threatening campus | Crimes that occurred and represent an ongoing threat |
| Where event occurs? | Only on campus | Anywhere on Clery Geography |
| How soon to issue? | Immediately upon confirmation of situation | As soon as information is available |

ASR: Policy on campus law enforcement

Must address:

- Enforcement authority + jurisdiction of security personnel
- Relationship between campus security and local policy agencies
 - Who has authority to make an arrest?
 - Agreements (ex. MOU)



ASR: Missing Student Policy

In short, the policy must include:



List of titles of persons to for reporting that a student has been missing for 24 hours



Requirement that any missing student report be referred immediately to campus security



An option for each student to identify a contact person, whom the institution will notify within 24 hours upon a determination that the student is missing

ASR: Missing Student Policy



- Students must be advised their contact information will be kept confidential
- If student under 18:
 - The institution must notify, within 24 hours, a custodian, parent, or guardian that the student is missing; and
 - The institution will notify law enforcement within 24 hours that the student is missing

ASR: Policy on the programs to prevent VAWA offenses

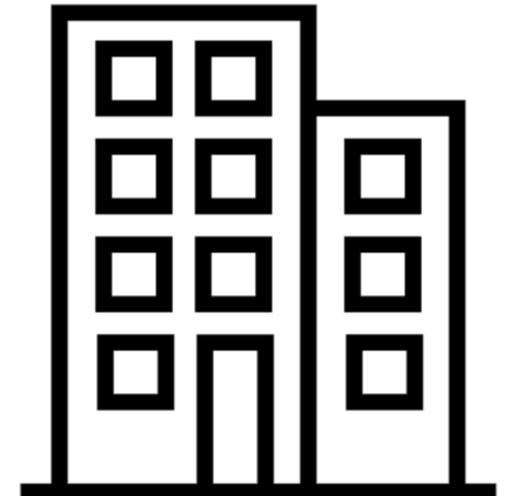


- **Intersection with Title IX**
- **Must include:**
 - Descriptions of:
 - Prevention programs
 - Educational programs and campaigns for incoming students and new employees
 - Procedures the College will follow when one of these crimes is reported
 - Procedure a victim should follow if crime has occurred
 - How College will protect parties' confidentiality
 - Procedure for disciplinary action (decision making process, complaint, advisors, etc.)

- Dating Violence
- Domestic Violence
- Sexual Assault
- Stalking

Other ASR Policy Components

- Policy on non-campus organizations and crime monitoring
- Description of programs about prevention of crimes
- Programs to inform students about campus security
- Policy on security of and access to campus facilities
 - What the institution does to keep its facilities secure
 - What are building hours?
 - How do people gain access (ex. keycards)?
- Where sex offender information can be found



Crime Log



Campus police or security department? Generally, the institution must create, maintain, and make available an easily understood daily crime log.

What is in the Crime Log?

- Daily crime log that records, by the date the crime was reported, Clery crimes that occurred within Clery geography
- The log must include the:
 - Nature,
 - Date,
 - Time,
 - General location, and
 - The disposition of the complaint, if known.

Making the Crime Log Available to Public



- College must make the crime log for the most recent 60-day period open to public inspection during normal business hours.
- The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection

ASR: Drinking & drugs

- Policy on drinking and drug use

The possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws



The possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws



- Description of any drug or alcohol-abuse education programs
 - Required by the Drug-Free Schools and Communities Act (DFSCA)



Drug Free Schools and Communities Act (DFSCA)



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General Background



- Education Department General Administrative Regulations (EDGAR) Part 86
- Who is responsible for DFSCA compliance?
- Designed to prevent the unlawful possession, use and distribution of illicit drugs and alcohol abuse on campus and at institutionally-recognized events and activities.

DFSCA Requirements

- Requires colleges and universities receiving federal funds to:

Adopt and implement a drug and alcohol abuse prevention programs (DAAPP)

Annually notify students and employees of DAAPP

Conduct a biennial review of DAAPP

Retain all records related to DFSCA compliance for three years

Annual Notification



Information to be shared:

1. Standards that clearly prohibit illegal drug and alcohol use
2. List of possible legal sanctions
3. Description of health risks
4. List of drug and alcohol programs available to students and employees (counseling, treatment, etc.)
5. Clear statement that the institution will impose disciplinary sanctions

Biennial Review Considerations

In what ways does the institution conduct biennial reviews of DAAPP to determine effectiveness, implement necessary changes, and ensure that disciplinary sanctions are enforced?



Surveys



Suggestion
Box
Comments



Focus Groups



Interviews



Annual Fire Safety Report

- *Published by October 1st every year*
- *Contains 8 main components*



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Overview of AFSR Contents

1. Fire statistics
2. Description of each on-campus student housing facility fire safety system
3. Number of fire drills
4. Policy on portable electrical appliances, smoking, and open flames in a student housing facility
5. Procedure for student housing evacuation in the case of a fire
6. Policy on fire safety education and training for students and employees
7. A list of titles of individuals/organizations to which students and employees should report that a fire occurred
8. If determined necessary by College, plans for future improvements in fire safety



AFSR: Fire statistics

- For each on-campus student housing facility
- For the three most recent calendar years
- Include:
 - Number of fires
 - Cause of fires
 - Number of persons injured that resulted in medical facility treatment
 - Number of deaths
 - Value of property damaged



AFSR Components

- ❑ Description of fire safety systems
 - Smoke detectors, fire extinguishers, sprinkler systems, fire suppression systems, etc.
- ❑ Number of fire drills
- ❑ Policy on portable electrical appliances, smoking, and open flames in a student housing facility
 - For example:
 - Candles/incense/potpourri burners
 - Cooking appliances
 - Decorations,
 - Etc.



AFSR Components (cont.)

- Procedure for student housing evacuation in the case of a fire
- Fire safety education and training
 - Students and employees
- List of who to report fires
 - Titles of each person or organization to which students and employees should report fires
- Plans for future improvement (*if determined necessary by the institution*)



Fire log

Generally, the institution must create, maintain, and make available an easily understood fire log.

- By the date that the fire was reported, any fire that occurred in an on-campus student housing facility.
- This log must include the nature, date, time, and general location of each fire.



Questions?



Next Events



Mark your calendars!

Free Webinars (all held at noon EST) – www.bricker.com/events

- April 20th – Name, Image, and Likeness Update
- May 12th – Title IX Litigation Update

Ongoing Title IX Training Program – www.bricker.com/titleix

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