

Session #23

The Clery Act: Hate Crimes, Sexual Violence, and Emergency Management

Anna Archila, Cynthia Hammond, and Ingrid Valentine
U.S. Department of Education

2019 FSA Training Conference *for Financial Aid Professionals*

Strategies For Success

Be Decisive and Proactive

Form Strong Partnerships
with Community Leaders
and Local Law
Enforcement Agencies

Encourage Prompt
Reporting and Foster a
Culture of Transparency

Resolve Complaints
Quickly and Completely!

Make it Easy for Everyone
to be Informed and Stay
Up-To-Date

The Basics of the Clery Act

- Annual Security Report (ASR) Production, Distribution, and Notification
- Annual Crime Statistics Survey
- Safety Alerts: Timely Warnings and Emergency Notifications
- Emergency Evacuation and Response Procedures
- Special Considerations: Schools with Campus Police/Public Safety and/or Student Housing
- Crime Logs
- Missing Students Notification
- Campus Sexual Assault Prevention & Response/Violence Against Women Act

Enforcement Tools

ED/FSA Enforcement Options:

- Fines: Up to \$57,317 per violation - Now on “Auto-Pilot”
- Provisional Certification - Growth Restrictions
- Heightened Cash Monitoring
- Limitation, Suspension, and Termination - (Denial of recertification or revocation of a Provisional Program Participation Agreement)

External Factors/Shifting Incentives:

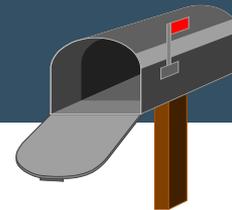
- Student Activism + Media Attention = Increased Awareness
- Reputational Harm (“Public Shaming”)
- Risk Management and Legal Exposure
- Financial Devastation and Existential Risk

Major Program Reviews 2015-2018

<https://studentaid.ed.gov/sa/about/data-center/school/clery-act-reports>

- Georgetown University - 2015
- Massachusetts Bay Community College - 2015
- Pennsylvania State University - 2016
- University of Jamestown - 2016
- Occidental College - 2017
- South Carolina State University - 2017
- University of Montana - 2017
- University of Saint Thomas - 2017
- Green River College - 2018
- Northern Virginia Community College - 2018
- Roxbury Community College - 2018
- University of North Carolina - 2019
- University of California, Berkeley - 2019
- Michigan State University - 2019

ASR Production, Distribution, and Notification



- Institutions must produce an accurate and complete Annual Security Report (ASR) (Must include campus safety and crime prevention policies, procedures, programmatic information and campus crime statistics)
- Must **actively distribute** an accurate and complete **Annual Security Report (ASR)** to all enrolled students and current employees
 - Examples of acceptable modes of delivery: U.S. Mail, hand delivery, email
- Must **actively notify** prospective students and employees about the availability of the ASR; the notice must include a description of the report's contents and explain how to obtain a copy of the report

Four General Categories of Crime



- Statistics must be disclosed for each of four separate categories (when an incident meets definitions in more than one of those categories, it must be reported in each category)
- “Reported” means that an incident was brought to the attention of a campus security authority or to local law enforcement. A report cannot be “unreported” but can be “unfounded” by law enforcement if certain conditions are met
- Don’t forget to request crime statistics from local law enforcement agencies

Additional Requirements



- Institutions must classify crimes using the definitions provided in Appendix A to Subpart D of the Department’s implementing regulations
- Institutions must disclose the total number of reported incidents that were “unfounded” by local law enforcement agencies
- Institutions with a campus police or public safety department must maintain a daily crime log that is accessible to the public during normal business hours

Hate Crimes

Hate Crime: A criminal offense that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim.

- The Clery Hate Crime provisions apply to all Clery-reportable offenses as well as the crimes of Larceny, Simple Assault, Intimidation, and Vandalism/Destruction of Property
- Categories of Bias: Race, Religion, Sexual Orientation, Gender, Gender Identity, Ethnicity, National Origin, and Disability

Hate Crimes: Categories of Bias Defined

- **Gender Identity:** Preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender non-conforming individuals
- **Ethnicity:** Negative opinion or attitude toward a group of people whose members identify with each other, through a common heritage (language, culture, religion, and/or ideology) that stresses common ancestry. This concept differs from the closely related term “race,” which primarily refers to a grouping based on biological criteria, while “ethnicity” also encompasses cultural factors
- **National Origin:** Preformed negative opinion or attitude toward a group of people based on their actual or perceived country of birth

Hate Crimes - Factors to be Considered

While no single fact may be conclusive, the following facts, particularly in their totality, may support a finding of bias:

- The offender and the victim are of a different race, religion, disability, sexual orientation, ethnicity, national origin, gender or gender identity. Be very careful!
- Bias-related oral comments, written statements or gestures were made by the offender, that indicate the offender's bias. For example, the offender shouted a racial epithet at the victim.
- Bias-related drawings, markings, symbols or graffiti were left at the crime scene. For example, a swastika was painted on the door of a synagogue, anti-Islamic statements on the wall of a mosque, or anti-gay graffiti on the door of an LGBTQ center.

Hate Crimes - Factors to be Considered (cont.)

- Certain objects, items, or things which indicate bias were used. For example, the offenders taped a photo of a burning cross to the door of an African American student's dorm room.
- The victim is a member of a group that is overwhelmingly outnumbered by other residents in the student housing facility where the victim lives and the incident took place. This factor loses significance with the passage of time (i.e. is most significant when the victim first moved into the facility, and becomes less significant with the passage of time).
- Several incidents occurred in the same location at or about the same time, and the victims shared common statuses or characteristics.

Hate Crimes - Factors to be Considered (cont.)

- A substantial portion of the campus community where the crime occurred perceived that the incident was motivated by bias - Be cautious while taking campus climate into account!
- The victim was engaged in activities related to his or her covered status or characteristics. For example, the victim was a member of the National Association for the Advancement of Colored People (NAACP) or participated in an LGBTQ pride celebration.
- The incident coincided with a holiday or a date of particular significance to a specific individual or group, e.g., Martin Luther King Jr. Day, Rosh Hashanah, or the Transgender Day of Remembrance.

Hate Crimes - Factors to be Considered (cont.)

- The offender was previously involved in a similar hate crime or is a hate group member
- There is evidence or some other indications that a hate group was involved, such as a hate group claimed responsibility for the incident
- A historically established animosity existed between the victim(s) and the offending group(s)
- The victim, although not a member of the targeted group, was a member of an advocacy group supporting the precepts of the victim group

Hate Crimes - Additional Considerations

- **The importance of a case-by-case assessment of the facts:** An institution must collect relevant information and objectively evaluate the operative facts to determine bias motivation
- **Beware of misleading facts:** For example, the offender used an epithet to refer to the victim's race, but the offender and victim were of the same race
- **Feigned facts:** Evidence left by the offenders that is meant to give the false impression that the incident was motivated by bias. For example, students of a religious school vandalize their own school, leaving anti-religious statements and symbols on its walls in the hope that they will be excused from attending class

Hate Crimes - Additional Considerations (cont.)

- **Offender's mistaken perception.** Even if the offender was mistaken about the victim's race, religion, disability, sexual orientation, ethnicity, national origin, gender or gender identity, the offense is still a Hate Crime as long as the offender was motivated by bias against that group.
- For example, a non-gay student leaving a publicized LGBTQ meeting in a non-campus fraternity house is followed back to campus and attacked behind a dorm by six teenagers who mistakenly believed the victim is gay. Although the offenders were mistaken, the offense is a hate crime because it was motivated by the offenders' anti-gay bias.
- Remember, it is the perception of the offender, not the perception of the victim that determines whether a crime is classified as a hate crime. Also, knowing that an offender is prejudiced is not enough to classify a crime as a hate crime. There must be evidence that the offender was motivated by that prejudice to commit the crime.

Who is a Campus Security Authority (CSA)?

- Members of a campus law enforcement or public safety entity
- Any individual who has responsibility for campus safety but is not part of a campus law enforcement or public safety entity (hall monitors, parking attendants)
- Any institutional official with significant responsibility for student and campus activities
- Any other individual to whom students and employees are directed to report crimes
- **Actual** professional & pastoral counselors are exempt

Note: Special considerations for institutions specializing in counseling or affiliated with churches/religious orders

Likely Categories of CSAs On Your Campus

Campus Leadership
and Administrators

Residence Life Staff,
including Resident
Assistants (RA)

Athletic Directors and
Coaches

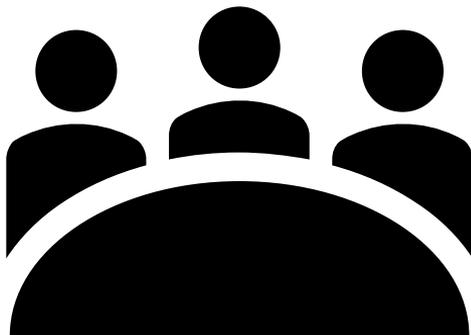
Victim Advocates and
Ombudspersons

Campus Law
Enforcement and Public
Safety Professionals

Student Life and
Student Organizations
Staff, including Student
Leaders

Title IX Coordinators
and Staff

What's Happening on Your Campus?



- How many CSAs does your campus have?
- How does your school notify CSAs of their reporting responsibilities?
- What evidence does your school keep to show that CSAs have been notified of their reporting responsibilities?
- Do CSAs receive any training?

“I never thought this could happen here”



Andrew Boldt



Safety Alerts...When Seconds Count

Issue Timely Warnings and Emergency Notifications

- Institutions must issue campus safety alerts to provide students and employees with timely information about ongoing threats due to crime or other dangerous conditions
– Auburn/Univ. of Maryland/Univ. of Texas

Two kinds of alerts:

- Timely warnings are issued for **Clery-reportable crimes** that may pose a serious ongoing threat (**Clery Geography**)
- Emergency notifications are issued upon the confirmation of any significant **emergency or dangerous situation** that may pose an immediate threat to health or safety (**Campus Only**)

Does your school have a **THIRD** category of crime bulletins?

Emergency Evacuation and Response

- An institution must include a statement of policy regarding its emergency response and evacuation procedures in the annual security report. This statement must include:
 - A clear explanation of the methods that the school will use to immediately notify the campus community about any immediate threat to the health or safety of students or employees occurring on the campus, and
 - A description of the process the institution will use to confirm the presence of such a condition.
- An institution must also determine the segment or segments of the campus community that need to receive the notice then quickly determine the content of the notice and initiate the notification system.

Emergency Evacuation and Response (cont.)

An institution must also have:

- A list of the titles of the person or persons or organization or organizations responsible for carrying out the notification process
- The process that will be used to disseminate emergency information to the larger community
- Procedures for testing the effectiveness of the emergency response and evacuation system on at least an annual basis
- The notice of testing which states whether the tests will be announced or unannounced and include a description of the nature of the test and the date, time, and outcomes of the exercise

Emergency Management

How do you develop an Emergency Management Action Plan?

- Step 1: Get Organized
- Step 2: Identify Hazards (“All Risk/Threat Basis”)
- Step 3: Conduct a Risk Assessment
- Step 4: Develop/Update the Emergency Management Plan
- Step 5: Implement the Emergency Management Plan

“Action Guide for Emergency Management at Institutions of Higher Education”

<https://files.eric.ed.gov/fulltext/ED504389.pdf>

Other Serious Threats

Comprehensively evaluate threats from an “All Risk/Threat Perspective”

- Protests, Demonstrations, and Sit-Ins
- Political Instability and Terrorism
- Sabotage (internal threats)
- Predators
- Weather***
- Pandemics
- Social Media/Internet
- Untreated Mental Illness
- Drug and/or Alcohol Addiction

Disaster Assistance Information Page

Federal Student Aid

An OFFICE of the U.S. DEPARTMENT of EDUCATION

PROUD SPONSOR of
the AMERICAN MIND®

IFAP

[Home](#) [Getting Started](#) [What's New](#) [Calendar](#) [iLibrary](#) [Training](#) [Help](#) [Feedback](#)

Search: [GO](#)
[Advanced Search](#)

My IFAP

- System & Processing Links - Application
- System & Processing Links - Programs
- System & Processing Links - Transmission
- Participation Links - Application
- Participation Links - Audits

Information for Financial Aid Professionals (IFAP)



The Information for Financial Aid Professionals (IFAP) website consolidates guidance, resources, and information related to the administration and processing of Title IV federal student aid into one online site for use by the entire financial aid community.

The most recent postings to the site are listed in the [What's New](#) section.

Tools for Schools

Click on this box to access online and computer-based training resources.

Worksheets, Schedules, & Tables

Click on this box to access worksheet, schedule, and table resources.

Hot Topics

- TECHNOLOGY SECURITY ALERT – Exploitation of Ellucian Banner System Vulnerability – Update #1
- Information Regarding Supporting ITT Students
- Program Integrity Information - Questions and Answers
- Federal Student Aid Data Center
- Disaster Assistance**

Information Pages

Natural Disasters – Declared by FEMA

Federal Emergency Management Agency (FEMA) distinguishes among types of designations. Individual Assistance vs. Public Assistance

Individual Assistance:

- [Dear College Letter GEN-17-08](#): Guidance for helping *Title IV* participants affected by a major disaster
- Campus-Based Funding – Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS)
- Contact your School Participation Division

[Information on disasters from FEMA: https://www.fema.gov/disasters](https://www.fema.gov/disasters)

Natural Disasters – Not Declared for Individual Assistance

Public Assistance:

- Contact your School Participation Division

Local Event (not declared by FEMA):

- Contact your School Participation Division

Natural Disasters – Other Weather Events

- Institutions are strongly encouraged to provide FSA two emergency contacts
 - How to provide emergency contacts:
<https://ifap.ed.gov/eannouncements/082511EmergencyPreparation.html>



Natural Disasters – Other Weather Events

- Record Retention – 34 C.F.R. 668.24
 - Best Practice: Offsite storage of copies of files and records



FSA's Emergency Response Team

Established in 2017 in response to the wave of natural disasters across the southern United States, California, Hawaii, and the Caribbean, the team's focus includes:

- Monitoring sizeable weather-related threats
- Mobilizing internal stakeholders to provide for an immediate, coordinated community response
- Assisting with assessing the needs of school community stakeholders
- Developing reports designed for FSA, ED, and the general public
- Providing ongoing support, information, technical assistance, and other resources to students, *Title IV* participating institutions, and borrowers impacted by natural disasters
- Providing proactive communications before the disasters strike and regular communications following the disaster; operational assistance; and regulatory and administrative relief and reporting flexibilities

“Omen of Things to Come?”

The special relationship creates a duty to protect or warn students from foreseeable acts of violence in classroom activities.

- *The Regents of the University of California (UCLA) v. The Superior Court of Los Angeles (Rosen)*.
- In defining this duty, the court was careful to say that colleges did not have a duty to prevent all violence on their campuses nor all violence toward students. The court noted that it would be unrealistic to extend the duty to the public at large, to unpreventable violence, and to off-campus and student social activities unrelated to school. **“Rather, the school's duty is to take *reasonable* steps to protect students when it becomes aware of a *foreseeable* threat to their safety.”**

Laura Dickinson and Jeanne Clery



Campus Sexual Assault



Violence Against Women Reauthorization Act of 2013

- Supplements and enhances the existing Campus Sexual Assault Victim's Bill of Rights
- Expanded reporting for incidents of sexual assault, dating violence, domestic violence, and stalking (including cyber-stalking)
- Additional information about policies, procedures, and programs focused on sexual assault prevention and response
- Awareness campaigns and expanded training on primary prevention, risk reduction and bystander intervention
- Expands academic and living accommodations and other protective measures

<http://ifap.ed.gov/eannouncements/102014ViolenceAgainstWomenAct.html>

Violence Against Women Reauthorization Act of 2013 (cont.)

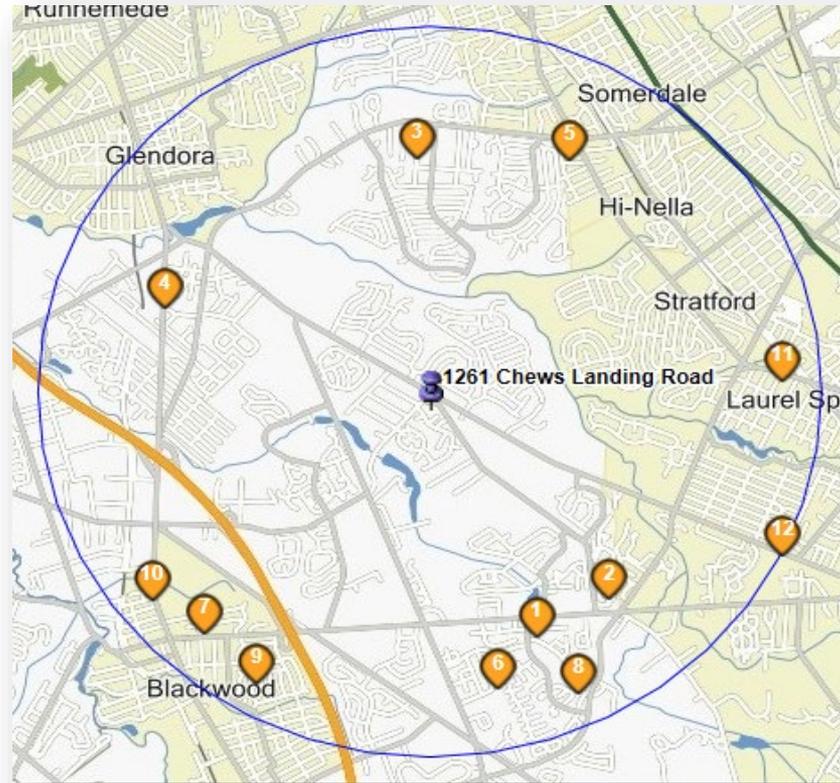
Key Provisions:

- Revises the Definition of Rape
- Adds Gender Identity and Perceived Gender to Hate Crimes Provision
- Requires Specialized Training for Disciplinary Hearing Officials
- Reforms the Disciplinary Proceeding Process

Violence Against Women Reauthorization Act of 2013 (cont.)

- Reforms the disciplinary proceeding process
 - More information on how to file complaints
 - List possible sanctions
 - Describe the range of protective measures
 - Explicit right to timely notice of all meetings (including appeals)
 - Fair, prompt, and impartial process (do not delay!)
 - Advisor of choice
 - Equal opportunities to be heard, present evidence, and have others present (Basic procedural rights to notice and to hearing)
 - Unconditional and simultaneous notice of outcomes reached and sanctions imposed

What Does A Predator Look Like?



Jerry Sandusky



Stephen Jenson



Larry Nassar



What You Can Do To Protect Your Institution

The Key: Administrative Capability

To participate in any *Title IV* program, an institution must demonstrate that it is capable of adequately administering the program under the standards established by the Secretary, including:

- Employing “an adequate number of qualified persons”
- Ensuring that programs are administered with appropriate “checks and balances” in a system of “internal controls”
- Implementing written procedures that document the responsibilities of institutional officials with respect to the “preparation and submission of reports to the Secretary”

Demonstrating Administrative Capability

The key to Administrative Capability is to design and implement a system of policies, procedures, training programs, and systems that will provide ***reasonable assurance*** that required actions will be taken and that mechanisms are in place to detect deficiencies before they become systemic or result in catastrophic failure.

Demonstrating Administrative Capability (cont.)

Among other elements, an adequate Clery compliance program will include:

- **Detailed** procedures for preparing an accurate and complete ASR and distributing the report
- **Substantive** processes for identifying and classifying the institution's "Clery Geography"
- **Comprehensive** procedures for identifying CSAs and notifying them of their responsibilities
- **Reliable** processes for requesting and collecting information about Clery-reportable crimes from institutional CSAs and local law enforcement agencies
- **Consistent** procedures for properly responding to ED's annual crime statistics survey

Questions?

Need More Help?

ED Campus Safety Help Desk -
campussafetyhelp@westat.com
or 1-800-435-5985