Clery Act Compliance

Understanding the Basics of Federal Campus Safety and Crime Prevention Requirements

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“This presentation includes graphic content about violent crime and related topics that may be disturbing for some audience members. Please also note that this session is intended to provide general information about the Clery Act and related laws. It does not represent a complete recitation of the applicable law or ED/FSA policies and is for discussion purposes only. This presentation must not be used for any other purpose. Actual compliance determinations must be made after a careful analysis of specific facts on a case-by-case basis. Comments made during this presentation are for instructional and illustrative purposes only and are not intended for attribution or publication.”
Agenda

• Introduction and Themes
• The Basics of the Clery Act
• The Clery Act: What’s at Stake?
• What Else You Need to Know About the Clery Act
• What You Can Do to Protect Your Institution
Themes

- Campus safety & crime prevention is always Job #1
- You need a team - Think “Ocean’s 11”
- Compliance is primarily about doing the right things well
- Compliance is not a “twisted test”
- Compliance is the floor
- While we are at it, Protect the “Brand”
- Culture attracts character and character shapes the culture
- We cannot be our best when we operate from fear
- Relax a little
- Make an impact
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
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
A Few Cases that Show What is at Stake

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Major Program Reviews 2015-2018


- 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
The Cost of Clery Violations: Penn State

- Most of Penn State’s fine had nothing to do with Jerry Sandusky or Joseph Paterno.
- Primarily a result of failing to disclose crime statistics.
- Failed to disclose 100s of arrests and disciplinary referrals.
- Sandusky scandal was impetus for ED’s review.
ASR Production, Distribution, and Notification

• Institutions must produce an accurate and complete Annual Security Report (ASR).
• Must actively distribute an accurate and complete Annual Security Report.
• Must actively notify prospective students and employees about the availability of the ASR.
Four General Categories of Crime

- Criminal Offenses
- Hate Crimes
- VAWA Offenses
- Arrests and Referrals for Disciplinary Action
What You Need to Know About Campus Security Authorities (CSAs)

What are CSAs?

What do CSAs do?
Who is a Campus Security Authority?

1. Members of a campus law enforcement or public safety entity

2. 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)

3. Any institutional official with significant responsibility for student and campus activities

4. Any other individual to whom students and employees are directed to report crimes

5. 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 RAs
- 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”
How do we develop an Emergency Management Action Plan?

1. Get Organized
2. Identify Hazards ("All Risk/Threat Basis")
3. Conduct a Risk Assessment
4. Develop/Update the Emergency Management Plan
5. Implement the Emergency Management Plan

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?
University of Texas
Stevens Institute of Business and Arts
Stevens Institute of Business and Arts
Students are running everywhere. Holy God.

Omg there's someone shooting on campus.
Umpqua Community College
Umpqua Community College
Other Serious Threats

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

1. Protests, Demonstrations, and Sit-Ins
2. Political instability
3. Sabotage (internal threats)
4. Predators
5. Weather
6. Pandemics
7. Untreated Mental Illness
8. Drug and/or Alcohol Addiction
9. Terrorism
10. Social Media and the Internet
The Brothers Boldt
"I killed Andrew Boldt because I wanted to. I am glad that he’s dead.”

Cody Cousins

- Andrew suffered five gunshots and 19 stab wounds at the hands of Cousins
- “I have performed roughly 9,500 autopsies and this was by far the worst homicide I have ever seen.”
- Dr. Elmo Griggs
- Cody Cousins visited the Office of Counseling and Psychological Services at least 17 times
The special relationship creates a duty to protect or warn students from foreseeable acts of violence in classroom activities. In the case before the court, The Regents of the University of California (UCLA) v. The Superior Court of Los Angeles (Rosen), a female student was seriously injured by a fellow student in a chemistry lab class when the fellow student attacked her from behind with a kitchen knife. Although the attacker had not previously exhibited violent tendencies and had denied any plans of violence, UCLA allegedly had knowledge of the attacker's schizophrenia, that he had been hearing voices, and that he had recently begun identifying the victim as someone whom he thought had called him names.

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 safety threat."
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

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
  • 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?
Larry Nassar
What You Can Do To Protect Your Institution
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
What are some strategies that your school uses to help ensure better Clery Act compliance?
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”
The Key: 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. 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
Based on what you have learned today, would your school be able to demonstrate an acceptable level of Administrative Capability when it comes to Clery Act compliance and overall campus safety operations?
Best Practices

• Appoint and empower a Clery Act Compliance Officer
• Understand your “Clery Geography”
• ID/train CSAs & provide an easy mechanism for them to report
• Specifically inform students and employees about how to report incidents of crime
• Check crime statistics for similar schools using the “Cutting Tool”
• Be proactive: You can’t fix a problem that you don’t know about
• Be alert to cultural and policy drift
• Be open to new information
• Manage expectations
• Do not rely on positional authority - Do not ask your experts to “lay prostrate to the “higher mind.”
• Give the right people a seat at the table
• Remember that there is no money to be made in clarity
• 1) Develop policy 2) Implement policy 3) “Live” your policies, all the while understanding that the imperative to do #3 is why schools don’t do #1 and #2
• Remain calm, the sky is probably not actually falling…yet
• Get ready for the next thing…
Any Questions

Need More Help?

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