The Clery Act – ED Enforcement & Your Risks

2020 CAMPUS SAFETY & VIOLENCE PREVENTION FORUM

March 10, 2020
• Housekeeping
• Intros
• Seminar Agenda
• Pre-test
• Opening Group Exercise
• Presentation & Conversation
• Q&A
Who’s In The Room

Let’s all stand up...

Sit down when what’s on the screen no longer is true for you...

- **Basic Level** - I know its Clery not *Clearly* or *Clergy*
- **Some Familiarity** – I know it’s about crime
- **Competence** – I know it takes a village
- **Mastery** – I should be presenting
Pre-test

• Why we’re here - Clery Act compliance is a “binary business,” ... Nevertheless, our research into ED’s Clery Act fines describes and examples the relative return on investment as you struggle to comply.

• What is a campus?

• When is a crime reported?

• What percentage of and IHE’s FTEs are CSAs?

• 3 key differences between a timely warning & an emergency notification?
Introduction

• What’s your IHE and how long there?
• What’s your role there?
• What’s your Clery Act responsibility?
• What’s your biggest Clery Act challenge?
• What’s your IHE’s biggest Clery Act challenge?
Jeanne was raped and murdered in her residence hall room at Lehigh University on April 5, 1986.

Her family believed that prospective students had not been warned about crimes on campus.

The Clery family became ardent advocates for changes in campus crime reporting laws.
1986: Jeanne Clery murdered at Lehigh University
1988: Pennsylvania Act 73
1990: Federal Crime Awareness & Campus Security Act
1992: Campus Sexual Assault Victims’ Bill of Rights
1994: Campus Security Act Regulations
1998: Higher Education Act Amendments
1999: Clery Act Regulations Issued
2000: Campus Security Stats Website
2002: Campus Sex Crimes Prevention Act
2005: ED’s Clery Handbook Published
2009: Final HEOA 2008 Regulations

• 2013: VAWA Amendments to the Clery Act
• 2014: Not Alone Report; OCR Q&A; Final Regulations
• 2015: Clery Final Regulations in effect continuing OCR guidance
• 2016: Clery Compliance Handbook is published & the Penn State Report is released.
• 2017: Rapid fire Final Program Review Determination reports to clear the backlog
• 2018 FPRD Univ. of Montana fines published
• 2019 ESPN releases Michigan State Univ. PRR
• 2020 Higher Ed Act reauthorized…?
Laws, Regs, & Other Stuff

LAW

Regulation

Subregulatory Guidance
A Word About Interpretation

• ED has noted that Clery Act compliance can usually be achieved by doing the right thing at the right time. We agree.

• There are may squishy areas where the regulations are conflicted or vague.

• Strict interpretation is always the best approach. ED has been hyper-technical in its interpretations in the past.

• Consider impediments, and create policies for them.

• For example, advisor of choice is without restriction. What if the accused student selects a key witness for the complaining student in a campus rape case? Can the institution bar the student from this advisor of choice?
Clery Act 101

- Publish & distribute an Annual Security Report w/various policy statements, policies, procedures and statistics (NLT October 1, each year)
- Provide ASR to current students & employees AND inform prospective students & employees about it
- Submit crime statistics to U.S. Dept. of Education
- Provide timely warnings and emergency notifications to the campus community
- Maintain a public, daily log of reported crimes
- Provide VAWA programming (on-going and initial)
- Fire Safety Report
Keeping Perspective

- Compliance is critical because risk is very high and criticality of error is higher
- Prevention and response are more important
- Nevertheless this is an enterprise-wide risk management effort
Why Does Clery Matter

PPA required to get $

- 34 CFR § 668.24
  - Records retention, format, access
- 34 CFR § 668.46
  - Clery Act proper (crime and safety)
  - Includes VAWA amendments from 2013
- 34 CFR § 668.41, .46, and .49
  - HEOA of 2008-Missing Student Notification & Fire Safety
  - Violent crime victim disciplinary outcome notification
  - DFSCA

ED Federal Student Aid Office (FSA), Clery Compliance Team, conducts reviews to evaluate compliance

- Initiated when a complaint is received
- An incident or event with media coverage
- An institution’s FSA audit identifies non-compliance
- Possible violations found by other agencies
ED’s Work IS Guidance


The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act is a federal statute requiring colleges and universities participating in federal financial aid programs to maintain and disclose campus crime statistics and security information. The U.S. Department of Education conducts reviews to evaluate an institution's compliance with the Clery Act requirements. A review may be initiated when a complaint is received, a media event raises certain concerns, the school’s independent audit identifies serious non-compliance, or through a review selection process that may also coincide with state reviews performed by the FBI’s Criminal Justice Information Service (CJIS) Audit Unit. Once a review is completed, the Department issues a Final Program Review Determination. In addition, the Department conducts general assessment compliance reviews and audits which may also result in fine actions taken by the Department against an institution for violations of the Clery Act.

Below, you can access the Clery reviews and accompanying documentation which may include the complaint, school response, or fine action that resulted from the program review in addition to documents related to fine actions initiated from other compliance reviews. Additional background information regarding Clery Act reviews is available here.
How About Good Faith

• There is only one “good faith” allowance

• Full compliance is expected with no margin for error (typographical or clerical)... It’s a binary business

• “The correction of violations by institutions after the fact does not diminish the seriousness of not correctly including these incidents in campus crime statistics at the time they occurred.”
# of PFRDs by Year

- **2003** – 0
- **2004** – 2 (1 no fine 50%)
- **2005** – 3 (2 no fine 66%)
- **2006** – 2 (1 no fine 50%)
- **2007** – 1
- **2008** – 2 (1 no fine 50%)
- **2009** – 7 (5 no fine 71%)
- **2010** – 6 (2 no fine 33%)
- **2011** – 6 (2 no fine 33%)
- **2012** – 11 (4 no fine 36%)
- **2013** – 7 (2 no fine 29%)
- **2014** – 10
  - **2015** – 9 (1 no fine 11%)
  - **2016** – 4
  - **2017** – 11
  - **2018** – 2
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<tr>
<th>Year FPRD Published</th>
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ED’s Fines by Yr. of FPRD

Outliers
- 2016 - PSU $2.4 M
- 2017 - Montana $.9 M
- 2019 Green River $.56 M

ED sometimes delays web publication of FPRDs for several months, thus 2018 data is tentative.
Crime data in some fashion accounts for 58% of all $ fined.

15 yr. Trend by Viol. Type

- VAWA Procedures * - $52,500
- TW - Policy - $110,000
- Administrative capability - $140,625
- TW/EN - Implementation - $203,750
- Crime data - Geography - $232,500
- Daily crime log/fire log - $345,000
- Crime data - VAWA - $400,000
- DFSCA - $707,625
- ASR Policy statements - $948,125
- Crime data - Sources/Collection - $1,152,989
- ASR/AFSR - Publish/Distribute - $1,190,250
- Crime data - Classification/Disciplinary Referrals - $3,310,500
2017 FPRDs

- Late ASR
- AFSR policies, drills, etc
- Geography for branch
- CSAs
- Fire data in AFSSR
- Insufficient or missing Logs
- Missing AFSR
- Flawed ASR
- Crime Data in ASR
- Distribution failures
- AFSR late & incomplete
- DFSCA
Penn State & Clery

- Crime Data in ASR
- ASR Publication/Distribution Flaws
- Sandusky
- Lacking Admin. Capability
- ASR/AFSR Policies Missing
- CSA
- Daily Crime Log
- Data Discrepancies ASR vs. CSDACT
- Failure of Notice of Availability
- DFSCA
- Failure for TWs
• What is a Policy?
• What is a Policy Statement (or Statement of Policy)?
• What about Procedures?
• Are there others?
Special Risks

- Geography – On campus, noncampus, patrol zone, other locations
Noncampus Property Examples

- Research facilities
- University owned hospitals
- Space rented or leased for the purposes of offering classes for set periods of time
- Off campus residential units owned or controlled by the institution
- Assembly areas, not within the “reasonably contiguous geographic area”
  - Reasonably contiguous means 1 mile of easy walking
Special Risk - DFSCA

- Alcohol policy
  - Sanctions
- Drug policy
  - Sanctions
- Alcohol & Substance Abuse – Prev. Programs

Remember DFSCA is being aggressively enforced!

Common misses include insufficient distribution and underdeveloped outcomes assessment & resultant program modification
Special Risk - DFSCA

- Useful information regarding the Drug Free Schools and Communities Act (DFSCA) and the Drug Free Schools and Campuses Regulations
  - [http://counsel.cua.edu/fedlaw/dfsca.cfm](http://counsel.cua.edu/fedlaw/dfsca.cfm)
  - [http://gordie.studenthealth.virginia.edu/](http://gordie.studenthealth.virginia.edu/)
Special Risk - TWs

- Specify Who Is Responsible
  - Individual (Title)
  - Department/Office
  - Consultation Process *(If it’s predictable, the crisis is preventable)*

- Open Communication-Avoid single points of failure
- Case-By-Case Basis
- Documentation
Special Risk - TW Elements

• Information that Promotes Safety
• Allows Individuals to Protect Themselves
• Time, **GENERAL** Location and Type of Crime
Institutions must ensure that notifications and warnings can be transmitted quickly to all students and employees. Therefore, an institution would not be able to rely solely on a text messaging system if all members of the campus community are not required to participate in that system. Similarly, relying on an e-mail would not be adequate for institutions that do not establish an e-mail account for all students and employees, or require each member of the campus community to register an e-mail address with the institution. (Handbook p. 6-4)
• Required Elements:
  - Emergency
  - 668.46(g)(6) The institution's procedures to test the emergency response and evacuation procedures on at least an annual basis, including –
    ✓ 668.46(g)(6)(i) Tests that may be announced or unannounced;
    ✓ 668.46(g)(6)(ii) Publicizing its emergency response and evacuation procedures in conjunction with at least one test per calendar year; and (MHA note: Fire drills don’t count)
    ✓ 668.46(g)(6)(iii) Documenting, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced.
• 668.46(f)(1)(i) The nature, date, time, and general location of each crime;

• 668.46(f)(1)(ii) The disposition of the complaint, if known.

• 668.46(f)(2) The institution must make an entry or an addition to an entry to the log within two business days, as defined under paragraph (a) of this section, of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.
1. Primary Crimes
2. Arrests & Disciplinary Action
3. Hate Crimes
4. Dating Violence, Domestic Violence & Stalking

*Each its own with own “sort of” hierarchy*
Sex Offenses (always counted with murder)

- Rape
- Fondling (If the only sex offense)
- Incest
- Statutory rape

3. Burglary requires trespass
4. Motor Vehicle Theft (golf carts & joyriding count)
5. Arson (designated official determination & always counted)
7 primary crimes that manifest evidence that the victim was intentionally selected because of the perpetrator’s bias. Additionally...

- Larceny-Theft
- Simple Assault
- Intimidation
- Destruction/Damage/Vandalism of Property
  ✓ Except Arson
  ✓ Requires “destroy, damage, deface, or otherwise injure” (Handbook p. 3-29)
• 668.46(b)((11)(ii) Procedures victims should follow if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, including written information about...

  - 668.46(b)(11)(ii)(A) The importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order.

  - 668.46(b)(11)(ii)(B) How and to whom the alleged offense should be reported.
• 668.46(b)(11)(ii)(D) Where applicable, the rights of victims and the institution’s responsibilities for orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution.
Clery Act Compliance
– It’s a Team Effort

2020 CAMPUS SAFETY & VIOLENCE PREVENTION FORUM

March 11, 2020
Jeanne was raped and murdered in her residence hall room at Lehigh University on April 5, 1986.

Her family believed that prospective students had not been warned about crimes on campus.

The Clery family became ardent advocates for changes in campus crime reporting laws.
First... Breathe...

Clery is hard but important. You can’t do it alone!

Good news... it’s not as hard you imagine and your campus is full of folks eager to help!
Session Overview

• SYNERGY
  • Think comprehensively
  • Participation is key – share!
  • Offer new information & ideas
  • The hive mind knows best
Imagine you’re interested in studying or working at your IHE. Visit the Admissions or HR site to get information. Note the page as a bookmark or on a note you’ll keep for later.
Lincoln’s Words

The dogmas of the quiet past are inadequate to the stormy present. The occasion is piled high with difficulty and we must rise with the occasion. As our case is new, we must think anew and act anew.
Clery Act 101

• Publish & distribute an Annual Security Report w/various policy statements, policies, procedures and statistics (NLT October 1, each year)
• Provide ASR to current students & employees AND inform prospective students & employees about it
• Submit crime statistics to ED
• Provide timely warnings and emergency notifications to the campus community
• Maintain a public, daily log of reported crimes
• Provide VAWA programming (on-going and initial)
• Fire Safety Report
Policy Lessons Learned

• Policy or program not applicable? You must disclose this. Don’t just skip it.

• Do not just repeat...from year to year. Make sure that the statements actually reflect your institution’s procedures and practices.

• Guidance from the Handbook (Ch. 7, pgs. 7-1 to 7-2)
  • Language. Use language that will be understood by the general public (i.e., avoid heavily legal language).
  • Accuracy. Your statements or descriptions of policies must accurately reflect your institution’s current procedures and practices.
Policies, Policy Statements, etc.

• If multiple campuses, ASR must reflect policies of each separate campus or separate ASRs.

• Required components. Pay close attention to the discrete requirements of each policy statement.
  • Both the law and the regulations set minimum requirements for specific information.

• Missing policies - Failure to have a required policy or to disclose all policy statements is non-compliant.
Whose Job is it Anyway?

- The Clery Act was invaluable in increasing the importance of campus safety departments in the org. chart.
- The Clery Act never was exclusively a campus public safety task, but was widely viewed this way.
- The Clery Act post VAWA requires an interdisciplinary committee.
Coordinator & Committee

• Both have a cabinet-level or maybe Board-level charge (Think Title IX model.)

• Your president or chancellor must understand (at a high level) the risks.

  • $ => Fines / Reputation Damage (Admissions and IA)
    • Public Image
    • Additional enforcement scrutiny
    • Nearly every cabinet executive oversees some Clery
      • A&F / SA / OPS / PIO / OGC /
    • Again, PSU says BOT was unengaged
Multiple areas of overlap, and ED has historically imposed maximum fines where important VAWA issues were non-compliant

Collaboration w/ SA & HR on disc. processes

Collaboration with Campus Public Safety & public LEAs and NGOs about investigations and victim support services

CSAs
• VAWA programming
• Referrals for discipline
• CSA identification, notification, and training
• Union contracts
• 3rd parties under contract
Student Affairs – All of it, (almost)

- Wellness (programming)
- Student conduct - Don’t forget graduate population
- Student programming
- Residence life (missing students)
- Commuter students
- Intramurals
- CSAs
Athletics – All of it (almost)

- CSAs
- Coaches
- Trainers
- Equipment Managers
- Administrators
- Volunteers...
- Who’s not?
Admissions

- Notice of availability
- Admissions
  - Don’t forget Admissions of every type
  - *Visit your institution’s admission website as a prospective student*...
  - Very common & easily found violation, try it now!
• Study trips (foreign still the law, for now).
  • They’re not just TIX - REs!!!
  • CSAs...
• Faculty Discipline
• Faculty Hiring (notice of availability)
• Academic camps
  • statutory rape / ER&E
  • CSAs
• Camps & Conferences
  • CSAs
  • Statutory rape / TW/EN and ER&E / While not directly Clery Act... is your minors policy good?
• Real estate (local, domestic, foreign, HIDDEN)
• Financial Aid
• Auditing or compliance
PIO

- Managing the message
- Macro – TW and EN / ASR
- Micro – Programming
- Make the ASR look like an institutional because it is, remember this is a consumer awareness document not a campus safety publication, because it is not!
Imagine you’re with FSA Clery Compliance Div.
The IHE where you work is in the news because a bad thing happened
Go back to our pre-test webpage.

Is there a Clery notice there?
The guide below provides suggested timing for Clery tasks. Review of this project plan should be a regular agenda item at each Clery Compliance Committee Meeting.

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<th>TASK</th>
<th>DUE DATE</th>
<th>RESPONSIBLE PARTY</th>
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<td>Reconcile crime data</td>
<td>Monthly</td>
<td>Clery Compliance/ PD/ MHR/ Counsel/ TIX/ ATH/ ROTC/Others</td>
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<td>Request Information about travel that</td>
<td>On-going</td>
<td>Clery Compliance Coordinator with appropriate cabinet level VP or VC support</td>
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<td>Verify &quot;notice of availability&quot; is placed</td>
<td>On-going</td>
<td>Clery Compliance Coordinator with appropriate department head</td>
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<td>Review campus properties to ensure</td>
<td>Semi-annually</td>
<td>Clery Committee/ Institutional/ Academic Affairs/ Student Activities/ Travel/ IUI/ Progress/ Prov or Regular for remote campus</td>
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<td>Review list of CSAs, training verified &amp;</td>
<td>Semi-annually</td>
<td>Clery Committee &amp; Department Heads</td>
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<td>Request Data from CSAs</td>
<td>Quarterly</td>
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<td>Provide Training to CSAs who lack it</td>
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<td>Ensure all Clery compliance documentation is filed for current year</td>
<td>Semi-annually</td>
<td>Clery Coordinator assisted by Clery Committee (HR, Student Affairs)</td>
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<td>Request information on programs</td>
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<td>Request Data from Local LEAs</td>
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<td>Review Prior Year AESSR for changes</td>
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<td>All key stakeholder departments</td>
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<td>Clery Compliance Review AESSR</td>
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<td>Clery Committee</td>
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<td>AESSR to Communications</td>
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<td>Communications Department</td>
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<td>Upload Crime Stats to the ED website</td>
<td>15-Sep</td>
<td>Clery Compliance Coordinator and 2 &quot;reviewers&quot;</td>
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<td>Published in real-time reviews should be submitted to the CSDA/ CTE to ensure matches the AESSR</td>
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<td>(Clery Act requires no later than 10/1)</td>
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<tr>
<td>AESSR with published &amp; Notice of</td>
<td>15-Sep</td>
<td>Info Technology &amp; HR/ Admissions</td>
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<td>Availability Verified</td>
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<td>AESSR w/ Notice of Appointed officials' work &amp; Admissions/ HR Notice is posted</td>
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<tr>
<td>Distribute notice of availability</td>
<td>30-Sep</td>
<td>Info Technology &amp; Clery Compliance</td>
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<tr>
<td>Collect programming/spreadsheets</td>
<td>Semi-annually</td>
<td>Clery Coordinator and affected departments (HR/ Student Life</td>
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<td>Assuming there is no electronic recordkeeping. May be in real-time</td>
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<tr>
<td>Conduct annual Emergency Response</td>
<td>Semi-annually</td>
<td>Clery Coordinator &amp; appropriate emergency resources on and off campus as appropriate</td>
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<td>&amp; Triage Exercise</td>
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</table>

*Tasks with all month cells shaded are recurring monthly tasks. If a task is done in another month, the cell should be marked for that month.*
A copy of (name of institution) annual security report. This report includes statistics for the previous three years concerning reported crimes that occurred on campus; in certain off-campus buildings or property owned or controlled by (name of institution); and on public property within, or immediately adjacent to and accessible from, the campus.

The report also includes institutional policies concerning campus security, such as policies concerning sexual assault, and other matters.

You can obtain a copy of this report by contacting (name of office) or by accessing the following web site (address of web site).
• 668.46(b)(11)(iv) A statement that the institution will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, and other services available for victims, both within the institution and in the community.

• Special note about advocates:

From the Preamble: “However, we strongly encourage institutions and local and State domestic violence and sexual assault coalitions to form such relationships so that victims of sexual violence will be better served.”
• 668.46(b)(11)(v) A statement that the institution will provide written notification to victims about options for, and available assistance in, changing academic, living, transportation, and working situations. The institution must make such accommodations if the victim requests them and if they are reasonably available, regardless of whether the victim chooses to report the crime to campus police or local law enforcement.
• 668.46(b)(11)(vi) An explanation of the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking, as required by paragraph (k) of this section.
• 668.46(b)(11)(vii) A statement that, when a student or employee reports to the institution that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student’s or employee’s rights and options, as described in paragraphs (b)(11)(ii) through (vi) of this section.
Some Sample NOROs

http://www.emerson.edu/social-justice-center/violence-prevention-response/find-support
http://dpss.umich.edu/docs/community-matters-brochure.pdf
http://sexualviolence.ucdavis.edu/docs/sexual_violence_support_brochure.pdf
668.46(j)(1)(ii) A description of the institution’s ongoing prevention and awareness campaigns for students and employees, including information described in paragraph (j)(1)(i)(A) through (j)(1)(i)(F). S/A is more than rape.
668.46(k)(1)(iii) Lists all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking. ASR p. 33

Handbook p. 8-17- Be specific. For example, if suspension is a possible sanction, describe the type and length of the suspension, and any requirements that must be met for reinstatement. You are not prohibited from using a sanction not listed in this statement as long as your policy statement is updated to include the sanction for the next published annual security report.
VAWA Amendments

• 668.46(k)(1)(i) Describes each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking.
## MHA’s Training Benchmark

### Promising Practice Standard for Title IX Training

<table>
<thead>
<tr>
<th>Group</th>
<th>Training Level</th>
<th>Frequency</th>
<th>Mode</th>
<th>Who</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Employees</td>
<td>Orientation (Title IX Awareness, Clery Act Orientation; Institution's Policies &amp; Procedures, Rights &amp; Options; What to Do...)</td>
<td>Initial, New Employee Orientation, on-going, etc.</td>
<td>In-person; on-line</td>
<td>Title IX Coordinator; HR Director; Violence Prevention Office</td>
</tr>
<tr>
<td>Title IX Coordinators</td>
<td>Level 3 (3-5 days)</td>
<td>Initial &amp; on-going (Clery requires annual training)</td>
<td>In-person, online, etc.</td>
<td>SME</td>
</tr>
<tr>
<td>Investigators</td>
<td>Level 3 (3 - 5+ days)</td>
<td>Initial &amp; on-going (Clery requires annual training)</td>
<td>In-person, supplemented with resources</td>
<td>SME</td>
</tr>
<tr>
<td>Hearing Board Members / Hearing Officers (Depends On Model)</td>
<td>Level 2 (min: 8 hours)</td>
<td>Yearly and on-going, as appropriate</td>
<td>In-person</td>
<td>SME</td>
</tr>
<tr>
<td>Appellate Boards / Appellate Officer</td>
<td>Level 2 (min: 8 hours)</td>
<td>Yearly</td>
<td>In-person</td>
<td>SME/inside or outside counsel</td>
</tr>
<tr>
<td>Board of Trustees</td>
<td>Orientation</td>
<td>Yearly</td>
<td>In-person</td>
<td>SME/inside or outside counsel</td>
</tr>
<tr>
<td>Individuals likely to witness sexual or gender violence or receive reports</td>
<td>See Table Below</td>
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</table>
How to Find Them

• Consider the function of individual/office
• Look for officials whose functions involve relationships with students
• Significant responsibility for students and campus activities = CSA
What to do with Them

• Identify and record who they are
• Notify them of their duty
• Train them in how they should respond to a report of a crime.
• DOCUMENT COMPLIANCE PROOFS OF EACH STEP
**CSAs & Privilege**

- To be exempt from disclosing reported offenses, pastoral or professional counselors must be acting in the role.

- In most cases it is possible for a CSA to fulfill his or her responsibilities while still maintaining victim confidentiality. CSA reports are used by the institution to compile statistics for Clery Act reporting and to help determine if there is a serious or continuing threat to the safety of the campus community that would require an alert (i.e., a timely warning or emergency notification discussed in Chapter 6). However, those responsibilities can usually be met without disclosing personally identifying information. A CSA report does not need to automatically result in the initiation of a police or disciplinary investigation if the victim does not want to pursue this action. Handbook (pages 4-3, 4-4 and 4-8)
• ED emphasized that only professional and pastoral counselors while in that role (but not managers or administrators) have exemption from Clery Act requirements.

• Info provided under privilege must be “scrubbed” of any personally identifying information.

• At the NCCPS conference in DC on 7.25.16, Moore of ED notes
  - Nothing prevents disclosure of non-personally identifiable information (PII) in furtherance of CSA obligations even when privilege is statutorily granted.
  - Additionally, we recommend the careful distinction of “private,” “confidential,” and “privileged” as these terms are very different but often confused and understood synonymously by the general campus community member.
A Campus Security Authority’s primary responsibility is...

“...reporting allegations of Clery Act crimes that are reported to them in their capacity as a CSA.” (Handbook p. 4-5)

This has been refined to require near-real-time for not only the counting of the crime data, but the determination of a timely warning (and an emergency notification).
• On-line resources (forms, definitions, etc.)
• On-line training
• Fail-proofed reporting systems, consider
  - Limited access to internet
  - Limited access to phones
What is and Why do a Data Audit

• We like ED consistently find data is the most serious violation

• A data audit is an examination of the accuracy of Clery Act crime classification and counting undertaken by the IHE

• It is implied in the Title IV PPA requirement for “checks and balances”

• Like financial records, it is best undertaken by competent reviewers.

• ED expects an “audit trail”
And What about Reconciliation

• When crime is reported, commonly it may be reported to multiple campus offices. Each office’s Clery Act actionable report must be reconciled to provide accurate crime data.

• Key stakeholders of datasets (i.e. Security or police, Title IX, student conduct, residence life, HR, athletics) meet regularly to review cases for consensus on each Clery Act crime.
Key Takeaways from PSU

- ED may require a self audit that uncovers violations.

- PSU $2.4m didn’t examine every report.

- Failure to “establish a system that ensured [mgmt of] important records [for]the Clery Act.

- If you keep more than 7 years, these are reviewable.

- “The Penn State BOT was overly-deferential to senior management, including the President’s Council“.

- Clery compliance requires a committee.

- “Penn State failed to establish clear paths of communication and systems... to ensure the effective compilation ..., especially where CSAs were concerned.”

- Ineffectively applied policies go toward noncompliance.

- ED will examine $ in budget vs. $ in safety expenditures.

- Reports to CSAs must get to the daily crime log.

- ENs can be for threats that have long existed ex. lead paint.
Key Takeaways from PSU

- ED will examine campus culture that interferes with compliance... “Specifically concerning the Clery Act, our investigation indicates that these failures also manifested themselves in the attitudes and behaviors of some student-athletes and some crime victims as well, resulting in decreased crime reporting and compromised campus safety.”

- ED will assess stats seeking evidence of cultural issues.

- The agreement can require IHE manage cultural issues.

- Assertions in the ASR are Clery enforceable even if not required. Sort of a “special duty” “[ED] has consistently made clear that an institution must act in conformity with the [statements] that are included in its consumer information publications. This is true even if the stated policy, procedure, or practice exceeds the requirements of Federal statutes and/or the Department’s implementing regulations.”
Key Takeaways from PSU

- [ED]standards of admin capability also require that an institution employ “an adequate number of qualified persons” as well as ensure that program activities are undertaken with appropriate “checks and balances in its system of internal controls.”

- [A] capable [IHE] also “has written procedures for or written information indicating the responsibilities of the various offices with respect to . . . the preparation and submission of reports to the Secretary.

- These standards apply to all aspects of the Title IV Program regulations, including the Clery Act.

- Document CSAs annually including Counselor exemptions

- CSA managers need more in-depth training

- Programming didn’t cover employees or commuter students

- Clery coordinator must be empowered to compel training and submission of crime statistics

- Trauma drops created Clery data

- Currency of Log dispositions

- Daily Crime Log REQUIRES lesser included offenses to meet “all crimes” requirement.

- Statistical changes ALWAYS require explanation.

- Proof of full distribution is critical
6 Ways to Enhance Compliance

1. Formally appoint a Clery Act Compliance Coordinator
   • Processes, on-going data gathering and campus collaboration, demand focus
   • At a minimum, 50% of time dedicated to Clery
   • Coordinator leads Clery Act Committee
     - Formally chartered group of administrators should guide the institution's Clery compliance activities.
2. Review your required policies
   • Ensure policies and policy statements are updated and represent your current practices
   • Review at least annually
   • Emphasis on policies governing Timely Warning Reports, Campus Sexual Assault, Domestic/Intimate Partner Violence & Stalking Prevention Programs, Emergency Notifications and Missing Students
3. Identify and train your campus security authorities

- Use org. chart to identify those officials who have significant responsibilities for students and campus activities. Deans, directors, and coaches are a start.
- You likely have hundreds, possibly thousands
- Conduct in-person training for Tier 1/Tier 2 CSAs
- On line for others
4. Fail-proof your crime and arrest/referral data collection process

- Flowchart your process for collecting data from required sources
- Are there offices that have disciplinary systems that you’re not aware of, or have confusion over what has to be reported?
- Do you have the necessary forms to facilitate data collection?
- Data reconciliation at least monthly
5. Identify and track all of your safety awareness, crime prevention and primary prevention programs

• Give credit where credit is due; many ASRs omit the programs offered by other campus departments.

• Maintain an inventory of all campus programs and update as needed.

• Ensure you DESCRIBE type and frequency of all programs in your ASR.
6. Stay abreast of the guidance

• Regulations INCLUDING THE PREAMBLE and the Handbook are located at: https://www2.ed.gov/admins/lead/safety/campus.html
Risk & Vulnerability Assessment

Participants should:

Identify tasks on the “To Do List”
- Assign a score based upon criticality of risk
- Assign a score based upon duration of work to complete the task
- Assign a score based upon the anticipated expense to complete the task
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