# Common Challenges with Clery Act Compliance

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## *Introduction*

Since we began working with institutions of higher education (IHEs) on Clery Act compliance issues nearly 10 years ago, we have learned that there are certain elements that are more likely to cause red flags or challenges throughout the year and during the Annual Security Report process. We are pleased to review some of these common challenges in the following paper and offer concrete explanations to help you avoid them. The Department or Education (ED) will provide a revised Handbook for Campus Safety and Security Reporting in the near future and we encourage those with Clery Act compliance responsibilities to review it once it is released.

## *Publication and Content*

All institutions of higher education (IHEs) that accept federal student aid under Title IV, are required to annually publish an Annual Security Report (ASR) by October 1 of each year. An ASR is an IHE's primary and most prominent demonstration of compliance with the Clery Act [20 U.S.C. § 1092(f)]. The Act has four primary compliance areas: 1) publication of policies and related disclosures in the ASR; 2) publication of statistics in the ASR; 3) maintenance of a daily crime (and perhaps fire) log; and, 4) timely communication of hazards (timely warnings and emergency notifications). The ASR

may also contain information required under the Higher Education Opportunity Act of 2008, known as the Campus Fire Safety Right to Know Act. In our role as trusted advisor to numerous IHEs across the country, we have the opportunity to review ASRs from institutions representing a diverse group of colleges and universities. We offer the following information based on our experience reviewing hundreds of ASRs, and include information from presentations provided by the United States Department of Education's (ED) Clery Compliance Team.[1]

The US Department of Education's (ED) Office of Federal Student Aid (FSA) Clery Compliance Team enforces the Clery Act, and violations may result in fines up to $35,000 per violation. A few of the most common ways that ED will review compliance by an IHE are if a complaint is filed; when an event captures significant media attention; or, when a compliance issue is revealed during a FSA financial aid audit.

Most of an ASR's content relates to policies, policy statements, descriptions, lists, processes, procedures, etc. Each of these requirements calls for a discrete statement, and it is critical to provide the correct information, and to address each discrete element. For instance, where the Clery Act requires a "description," but an IHE provides a list, the institution has not met the regulation's requirement. It is equally critical that the ASR reflects the actual practice on campus. The Handbook for Campus Safety and Crime Reporting (Handbook) notes on p. 98, "The important thing is that you say what you do and do what you say." It is equally critical that the ASR satisfy the particularized requirement of the regulation. For example, in the Missing Student Notification Policy,

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[1] The 2014 (session 32) and 2013 (session 31) presentations may be viewed at
http://fsaconferences.ed.gov/pastconferences.html.

an IHE is required to act "…within 24 hours…" If an IHE's policy requires an action after 24 hours, this policy would not comply with the Clery Act.

ED has begun routinely examining an institution's compliance with the Drug Free Schools and Communities Act (DFSCA). We consistently find that IHEs misunderstand the DFSCA requirements, which are partially restated in the Clery Act.[2] Like the Clery Act, the DFSCA contains very specific elements with respect to distribution of the notice, and publication of a biennial review.

*Campus Security Authorities and Data Collection*

An institution's Clery Act crime data must include crimes reported to campus security authorities (CSAs). You will likely have CSAs in nearly every functional area of the modern university. CSAs come in four types ([The Handbook](#), PDF, p. 74):

- IHE security, public safety, or law enforcement officers;
- Employees filling security roles;
- Employees designated as CSAs by the IHE; and
- Employees with significant responsibility for student and campus activities.

The IHE should identify its CSAs based upon their job responsibilities and duties. The Clery Act coordinator cannot accomplish this alone, and we recommend several campus administrators undertake this endeavor. Ideally, the human resources records management system should specify the CSA designation, facilitating the creation of a CSA list. Once the institution has identified its CSAs, it must notify them of their legal obligations "to report to the official or office designated by the institution… those

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[2] IHEs can obtain guidance by referring to
http://www.higheredcompliance.org/resources/resources/dfscr-hec-2006-manual.pdf.

allegations of Clery Act crimes…" (Handbook p. 76). Once the IHE has notified the CSA, it must provide training to ensure they understand their duties and can complete them. We suggest minimally two groups. The first are those CSAs with relatively little expectation beyond forwarding crime reports, who need minimal training, for example an assistant coach. The second are those CSAs who supervise CSAs, key compliance stakeholders, or members of the security function, for example an Assistant Dean of Students.

Historically, IHEs collected crime data annually from CSAs as they were preparing the ASR. We recognize that this process does not allow the institution to comply with the timely notification requirements. CSAs must provide reports of crime in real-time to allow the IHE to provide timely warnings (notice to the community of certain crimes and advice on how to prevent further victimization). IHEs need a fail-safe process to ensure every CSA (even those serving the institution abroad) timely reports all crimes. These processes must align with the institution's Title IX responsibilities (keeping in mind Title IX Coordinators and deputies are all CSAs).

The IHE should document the data collection processes using a flow chart, starting with the report to the CSA, through timely warning/emergency notification determination, to the eventual statistical disclosure.

The Clery Act requires an IHE to collect and publish statistics for all referrals for campus discipline whether or not there was an arrest when a weapons, drug or liquor law was violated. While student conduct offices are the most likely source of these records, there are other often overlooked repositories, for example, human resources, athletics, ROTC, etc. We recommend institutions reconcile their Clery Act crime data monthly and that all applicable offices, including those noted above, participate. IHEs

should pay special attention in identifying crimes because Clery definitions are often different from state statutory criminal definitions. Some examples of common misclassification are burglary, sex offenses, domestic violence, dating violence, stalking, hate crimes, and arson. Additionally, local laws play a large role in determining whether alcohol, drug, or weapons violations were committed.

### *Common Errors in Data and Reporting*

As mentioned earlier, IHEs must publish a daily crime log (and possibly a daily fire log). While the Handbook explains the log in detail, we find IHEs' logs routinely contain a few common errors. Chief among these errors is a failure to maintain current dispositions for the first 60 days after the initial crime report log entry. Another common error is for the log to reflect the date of the offense and the date of the report as the same date, when that may not be the case, for example, a delayed report of a burglary. The third common error is that the log contains only the Clery Act crimes, as opposed to ALL crimes reported to the campus safety agency.

Clery geography can be confusing and we frequently find that institutions struggle with accurately identifying their distinct Clery geographical areas. This is especially true for separate campuses, which the Handbook addresses in depth (Chapter 2). Another Clery geographical area that IHEs often misunderstand is the "noncampus" property category. In 2012, ED's technical assistance partner Westat provided additional guidance on how to define noncampus property by email. This [email](#) included information on "extended stay" and "repeated use." It is critical that IHEs review all trips (curricular, co-curricular, extra-curricular, athletic, etc.) to ensure it identifies all noncampus properties, and as required, it requests crime data from the law enforcement agency having primary jurisdiction for the "non-campus" property.

*The Violence Against Women Act Amendments*

The [Violence Against Women Act's (VAWA) amendments](#) to the Clery Act created several new obligations for IHEs. Prominently, several very specific requirements for programming based upon the status of the employee or student (incoming or ongoing) and content (ex. risk reduction, awareness, prevention, bystander intervention). The Clery Act regulations provide definitions for these important programming elements. We strongly urge those responsible for developing the campus sexual and gender violence and harassment programs for both students and employees AND those responsible for developing the ASR to review the preamble as well as the regulations. The preamble contains important contextual information helpful in fulfilling the spirit as well as the letter of the regulation. We believe the regulations and the related Title IX guidance thematically argue for a holistic and strategic learning plan that includes several learning modalities and likely requires engagement with both on and off campus expertise. We suggest IHEs develop a well-considered and data-mapped survey, likely with the help of the institutional research unit, creating a centralized database for campus programming that will support several compliance areas like the Drug-Free Schools and Communities Act; Clery; grant applications; and IHE reaccreditation requirements for learning outcomes, etc.

*Testing Your Policies and Procedures*

It is important to consider the practicality of your policies and/or procedures. Test its functionality in a "tabletop" or action-action review, and to assess their implementation. For example:

- Does the policy say the police chief will approve the wording on the emergency notification? What if the police chief is also designated as the Incident Commander and there has been a chlorine gas leak with potential loss of life on campus? Will they be able to do both to satisfy Clery's very short time window for an emergency notification?

- When you count referrals, are you correctly applying local or state laws for violations? Does a 19-year old who fails a portable breath test or has the odor of alcoholic beverage on their breath violate a "constructive possession" of alcoholic beverage law in the state or county?

- Does the IHE maintain ALL records that support the ASR for seven years (for example unlawful possession of alcohol student disciplinary records)?

## *Staffing for Clery Compliance*

Finally, we have been urging, since the early 2000s, that traditional mid-sized and larger IHEs need a full-time staff member who has Clery compliance as a primary proportion of their job description, and smaller IHEs need to devote at least ½ a full-time position to this important duty. The time when a member of the campus public safety agency could put a couple of hours a day for a few weeks between late August and the end of September to satisfy the Clery Act is gone, if it ever really existed at all! Similarly, we firmly believe that every IHE needs a Clery Coordinating Committee formally charged and tasked at the presidential or cabinet level. We recommend the committee include all major stakeholders, especially:

- Campus Public Safety
- Wellness (or the office providing health programming)
- Student Conduct/Student Affairs

- Student Programming

- Residence Life

- Human Resources

- Academic Affairs [Study Abroad (domestic and foreign)]

- Athletics

- As Needed

  - General Counsel

  - Real Estate

  - Local Police and Prosecutor

  - Sexual Assault Victim Advocates

*If You Need Help*

Margolis Healy provides support to institutions of higher education in the areas of organizational assessment and development, security and safety technology, emergency preparedness, and regulatory compliance. We also assist institutions with issues of bias incident response and review of equitable and unbiased campus public safety services. Our team has provided support to hundreds of institutions representing all types of educational models. If we can be of assistance, please feel free to contact us at 866-817-5817.