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The Price of
Non-Compliance:

Real Fines, Real Institutions, Real Lessons in
Clery Act Reporting

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Higher Education Group

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Presenters



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Agenda

- Setting the Stage
- Compliance Challenges
 - Clery Geography
 - Crime Statistics
 - Timely Warnings and Emergency Notifications
 - Policy Statements in the ASR
- Questions?



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Why Compliance Matters

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The Law



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- Campus Crime and Security Act of 1990:
 - **Amendments:** 1992, 1998, 2000, 2008, 2013, 2024
 - **2008:** Name of law changed to Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)
 - **2013:** Violence Against Women Reauthorization Act of 2013 (VAWA) signed into law
 - **2025:** Stop Campus Hazing Act and name change to Jeanne Clery Campus Safety Act

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The Regulations

- 34 CFR § 668.41 (publication of ASR)
- **34 CFR § 668.46 (Clery generally)**
- 34 CFR § 668.49 (fire safety)



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Why is Clery Compliance so Difficult?

- **Many Layers of Compliance:**

- Clery geography
- *Campus Security Authorities (CSAs):*
 - Identifying
 - Training?
- *Policy statements:*
 - Hitting the compliance points
- *Statistics:*
 - Categories of crimes
 - Correctly categorizing

- **Institutional Realities:**

- Working in silos
- Lack of training
- Clery Coordinator wearing many hats
- Turnover in staff
- The “September rush”
- Other institutional priorities

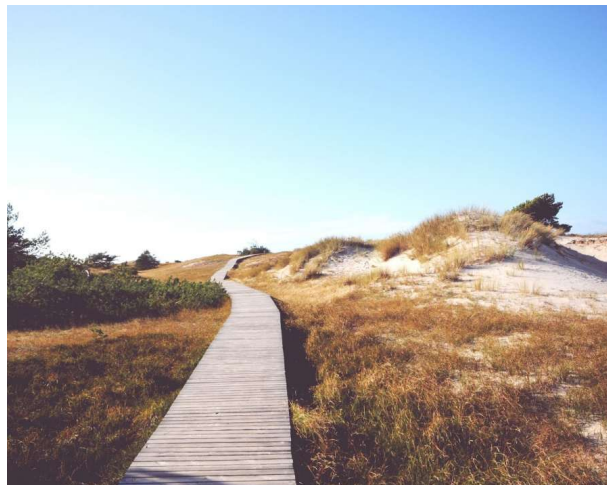
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A Reminder about Subregulatory Guidance

- Clery Handbook (The Handbook for Campus Safety and Security Reporting) – rescinded but still a safe harbor
- FSA Appendix
- Finding Letters



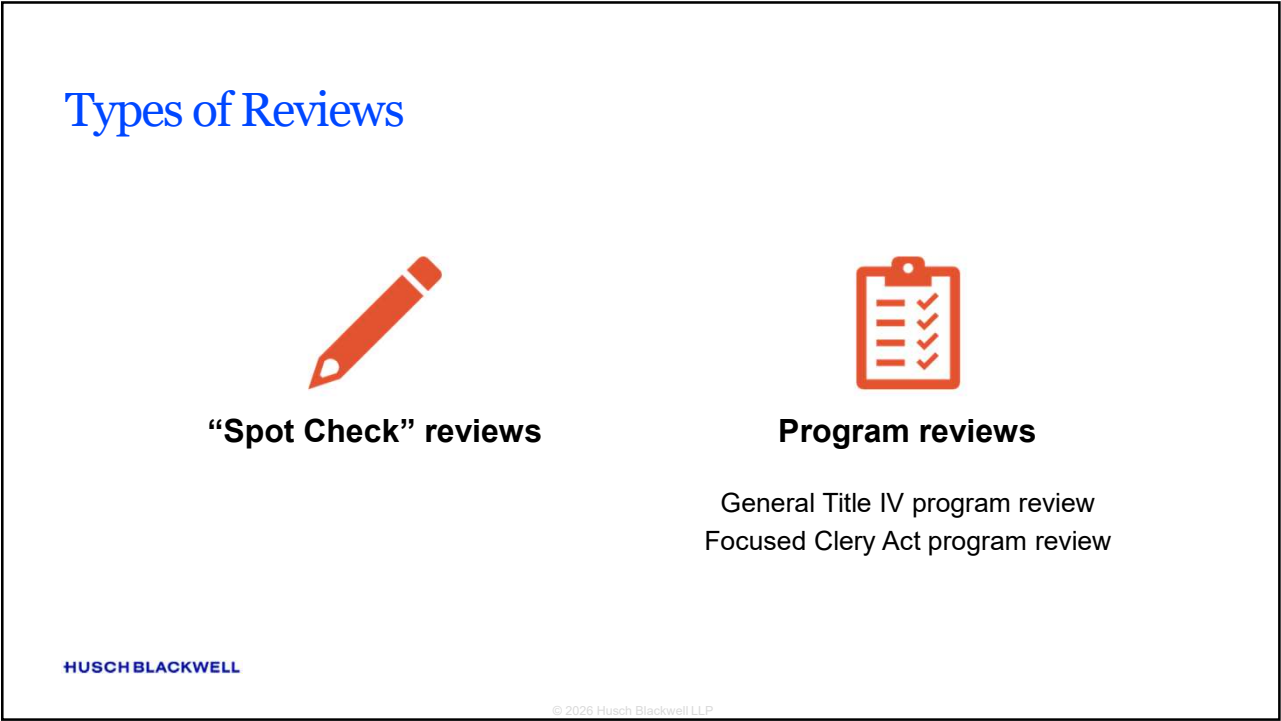
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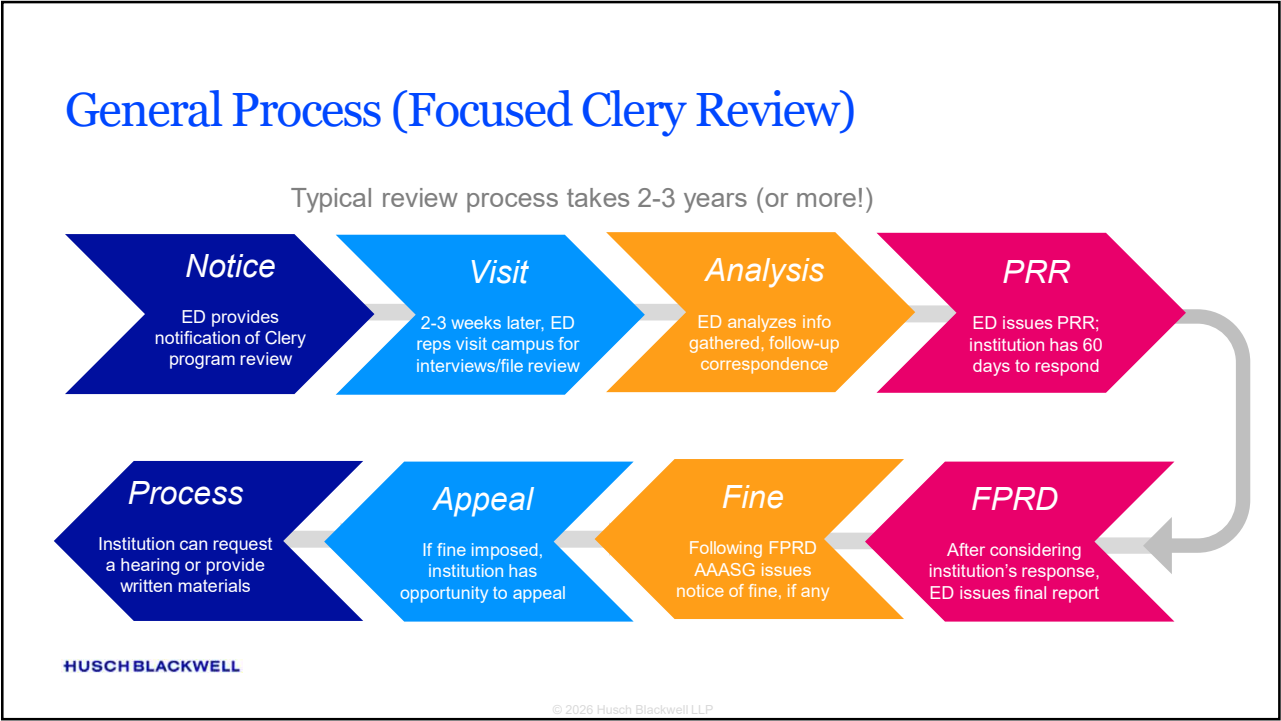
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Why It Matters: Non-Compliance Violations

- More secure campus environment
- Financial cost
 - Current fines are over \$71,000 per violation
 - Litigation
 - Hours of complying with investigation
- Protecting the institution's reputation
- Long-term effects

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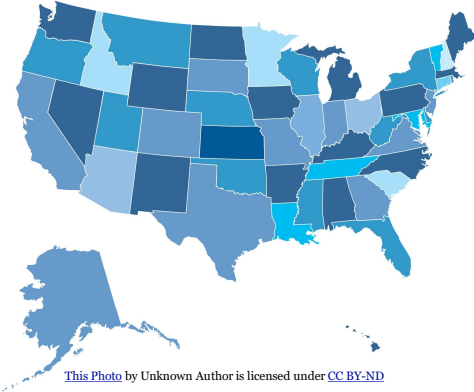
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Clery Geography



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- Institutions must disclose statistics for reported Clery Act crimes that occur on their Clery geography
- Knowing your campus geography is *essential* to Clery compliance

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What is Clery Geography?

- The Clery Regulation defines Clery geography as:
- Buildings and property that are part of the institution’s campus
- The institution’s noncampus buildings and property
- Public property within or immediately adjacent to and accessible from the camps
- *For purposes of the Daily Crime Log:* the patrol jurisdiction of the campus police or security department



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What could possibly go wrong??



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- Failure to understand the nuances of “control”
- Failure to keep track of the institution’s buildings and property
- Failure to keep tabs on institutional activities away from the main campus

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On Campus Property

- Per the regulation:

Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls.

- Per interpretation:

- Who owns it? Who leases it? How much institutional involvement is there?

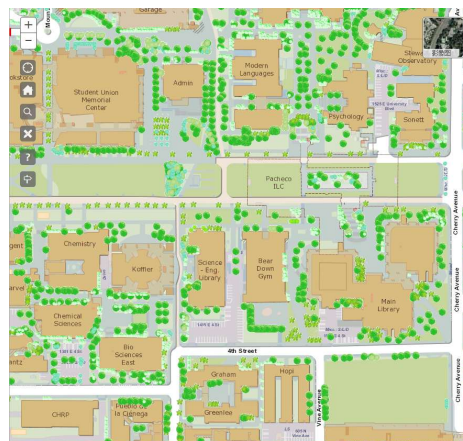
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Ask yourself:

- Who owns or controls the space?
If it's the institution,
 - Is it reasonably contiguous to the main campus and used to support the institution's educational purposes?
 - If yes, it's **on campus property**.



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Noncampus Building or Property

- Per the regulation:
 - *Any building or property owned or controlled by a student organization that is officially recognized by the institution; or*
 - *Any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.*

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What is happening away from the main campus?

Someone at the institution should be monitoring things like:

- Research areas, e.g., farms, greenhouses, labs
- Student housing opportunities
- Departments or programs that have moved off campus
- Internship sites
- Trips, e.g., study abroad, student organization or athletics trips, etc.



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Purchases, Leases, and Sales



Someone at the institution should be monitoring:

- What buildings and properties has the institution acquired?
- What buildings and properties has the institution sold?
- What new leases has the institution taken on? Has a program expanded into a neighboring building?
- What portions of buildings is the institution no longer using? Has a floor or wing been leased to a different entity?

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Ask yourself:

- If the institution owns or controls it, and it's not reasonably contiguous, is it frequently used by students?
 - If yes, it's **noncampus property, unless**
- There are courses offered onsite that lead to a degree or certificate, and an administrator onsite
 - Then it's a **separate campus***

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Public Property

- Per the regulation:

All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus.

- Per guidance:
 - Noncampus property does not have a public property reporting requirement
 - Sidewalk-street-sidewalk rule

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Best Practices

- Keep an inventory of all the institution's property (owned and leased)
- Facilitate (demand?) cooperation between those responsible for property acquisition and disposal and those responsible for Clery compliance
- Require unit heads to "sign off" on the buildings and property that they use each year
- Create a system for logging purchases, leases, and sales of property

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Crime Statistics

An institution subject to the Clery Act must:

- Disclose statistics
 - For Clery crimes
 - Reported to have occurred on the institution's Clery geography
 - That have been reported to a Campus Security Authority (CSA) or to local police
- *In our experience, failure to report crime statistics accurately results in the highest Clery fines*

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What could possibly go wrong??

- Incorrect identification and classification of reported crimes – including under- and over-reporting
- Mismatch between ASR and report to ED
- Incorrectly identifying crimes as “unfounded”
- Incorrectly identifying hate crimes
- Inability to explain why a crime was classified the way it was

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Incorrect Identification

- Annual Security Report (ASR) must include all crimes that were reported to a CSA (not just crimes that were verified)
- Statistics in your ASR should match the statistics your institution provides to ED
- Institutions should follow the Clery crime definitions *to the letter*
- Under- and over-reporting are both considered noncompliance
- Clerical errors matter

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Failure of ASR to Match Statistics Submitted to ED

- We have seen *several* institutions cited for discrepancies between statistics in their ASRs and those reported to ED
 - ASR must be published by October 1
 - Reports must be made to ED within a few weeks thereafter
- This is one of the primary ways that an institution will get flagged for a review

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Unfounded Crimes

An institution may withhold, or subsequently remove, a reported crime from its crime statistics in the rare situation where sworn or commissioned law enforcement personnel have fully investigated the reported crime and, based on the results of this investigation and evidence, have made a formal determination that the crime report is false and baseless and therefore “unfounded.”

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What Unfounded Crimes are *Not*

- Situations where the institution's investigation into the reported crime results in no finding of violation
- Situations where property that is reported stolen is recovered
- Situations where stolen property is of little value
- Situations where the aggrieved party chooses not to participate in the investigation

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Incorrectly Identifying Hate Crimes

- Criminal offense that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim
- Categories of bias (must be included in ASR):
 - Race, gender, gender identity, religion, sexual orientation, ethnicity, national origin, disability
- Primary crimes *and* larceny-theft, simple assault, intimidation, destruction/damage/vandalism of property

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Inability to Explain a Crime Classification

- ED expects institutions to be able to support their reported statistics
- ED stated in one of its finding letters:

[The institution's audit was] complicated by serious defects in the University's processes for documenting incidents of crime and misconduct.

- Documentation is essential, both for decisions to report and decisions not to report

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Best Practices

- Check and double check statistics (and make sure you're including hazing statistics this year!)
- Implement checks and balances (more than one person should be checking the statistics)
- Compare ASR statistics with statistics reported to ED prior to pressing submit
- Document all reporting (and non-reporting) decisions
- Maintain all documentation for seven years

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Timely Warnings

The Clery regulations require institutions, in a manner that is timely and that will aid in the prevention of similar crimes, to report to the campus community:

1. Clery crimes
2. Reported to CSAs or local police agencies
3. Considered to represent a threat to students and employees

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Emergency Notifications

The Clery regulations require institutions to immediately notify the campus community upon confirmation of:

1. A significant emergency or dangerous situation
2. Occurring on campus
3. Involving an immediate threat to the health or safety of students or employees

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What could possibly go wrong??

- Failure to issue timely warnings or emergency notifications when they are required
- Failure to issue alerts in a manner that is timely
- Failure to adhere to the institution's own policies regarding timely warnings
- Inconsistent procedures (what is included in the ASR not matching other policies on the same topic)
- Failure to follow up appropriately after issuing a timely warning

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What does it mean to be “timely”?

- ED cited an institution that defined “timely” to mean the next business day
 - “Timely” cannot be determined outside of the applicable circumstances
 - Do not try to define “timely” using a set standard in your policy
- **Emergency notifications:** immediately upon confirmation of a dangerous situation or emergency
- **Timely warnings:** as soon as pertinent information is available

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Timely Warning/Emergency Notification Policies

1. **Have them!** Using a decision-making matrix is a good idea.
2. **Follow them!** Ensure that the relevant stakeholders know about them, how to find them, and what they entail.
3. **Ensure consistency!** Make sure that there aren’t different versions of the policy(ies) being disseminated.
4. **Document decision-making!** Keep records for all decisions to issue and not issue emergency alerts.

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Policy Statements in the ASR

The ASR must contain the policy statements for the following:*

- Reporting crimes (including CSAs)
- Confidential reporting
- Building security and maintenance
- Law enforcement jurisdiction
- Pastoral and professional counselors
- Campus security training
- Alcohol and drugs
- Dating violence, domestic violence, sexual assault, and stalking (and associated programming and procedures)
- Sex offender lists
- Emergency response and evacuation
- Missing student notification (if the institution has student housing)
- Disciplinary procedures in cases of alleged dating violence, domestic violence, sexual assault, and stalking
- Hazing

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What could possibly go wrong??

- So many detailed compliance obligations
- *Lots* of ways to make mistakes
- Really hard to tell what ED auditors will seize on
- Fines potentially over \$71,000
- We generally see lower fines for more minor policy shortcomings (but that can't be guaranteed)
- When we review ASRs, we are very particular, because there are so many ways to fall short

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Examples

- Department cited institutions for the following omissions from/issues with their ASR policy statements (or drug and alcohol documentation):
 - Procedures regarding pastoral and professional counselors
 - Sanctions for VAWA offenses
 - Sanctions for drug and alcohol offenses
 - Description of drug/alcohol counseling and treatment programs
 - Missing student procedures
 - Ambiguous policy statements regarding sexual violence
 - Statement about information complainant about the outcome of a campus disciplinary proceeding regarding a sexual assault allegation

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Required Policy Statements: Reporting



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- Include information on how to report crimes:
 - *To whom:*
 - On campus
 - Local Police
- Include information on how to report crimes confidentially (and think about whether confidentiality can be promised in all situations, e.g., Title IX)

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Required Policy Statements: General Safety and Security

- Include a statement about monitoring criminal activity at off-campus locations of recognized student organizations
 - If the institution has no RSOs with off-campus locations, that should be stated
- Include a statement that the institution will disclose to the alleged victim (or next of kin) of a crime of violence the report on the results of a disciplinary proceeding
- Include information about security considerations in the maintenance of facilities
 - Lights, landscaping, etc.
- Include complete educational programming language
 - Type **and** frequency
 - Students **and** employees
 - Procedures **and** prevention

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Required Policy Statements: Drugs and Alcohol

Be sure to include:

- Language regarding **enforcing** underage drinking laws and federal and state drug laws
- All the required elements of the drug and alcohol program, either in the ASR or by cross-reference, including the biennial review
- Information for both **students** and **employees**



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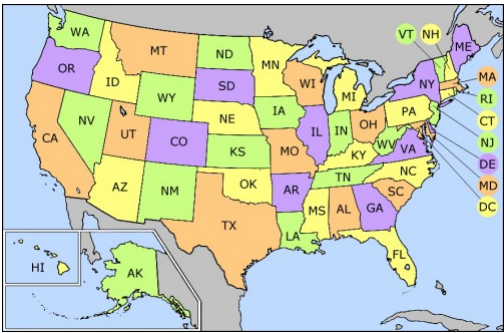
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Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking

Include the current state laws for the relevant jurisdiction:

- Requirement: Include in the ASR the definitions of dating violence, domestic violence, sexual assault, stalking, and consent (with regard to sexual activity) in the applicable jurisdiction
- These are not Clery definitions; these are state law definitions
- The institution must confirm each year that they are accurate (as these laws are subject to change)
- If your institution has campuses in more than one state, the ASR must include state laws for each separate campus



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Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking



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Be sure to include complete information regarding the PPAP and OPAC:

- *Primary Prevention and Awareness Programs*
 - Incoming **students** and new **employees**
 - Intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur
- *Ongoing Prevention and Awareness Campaigns*
 - Sustained over time
 - Increased understanding

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Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking



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Be sure to include information regarding no contact orders:

- Regulatory requirement to include “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”

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Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking

Be sure to include statements about available resources for:

- Counseling
- Health
- Mental Health
- Victim advocacy
- Legal assistance
- Visa and immigration assistance
- Student financial aid
- Other victim services



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Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking

Be sure to include the language about the confidentiality of accommodations and protective measures:

The institution will maintain as confidential any accommodations or protective measures provided a victim to the extent that maintaining confidentiality would not impair the institution's ability to provide them. However, there may be times when certain information must be disclosed to a third party in order to implement the accommodation or protective measure. Such decisions will be made by the institution in light of the surrounding circumstances, and disclosures of this nature will be limited so that only the information necessary to implement the accommodation or protective measure is provided. In the event it is necessary to disclose information about a victim in order to provide an accommodation or protective order, the institution will inform the victim of that necessity prior to the disclosure, including which information will be shared, with whom it will be shared and why.

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Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking

Be sure to include all elements of Disciplinary Proceedings:

- Steps
- Anticipated timelines
- Decision-making process
- How to file a complaint
- Standard of evidence
- How the institution determines which type of proceeding to use for allegations of dating violence, domestic violence, sexual assault, or stalking

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Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking

Be sure to include all potential sanctions:

- Regulatory language says that all sanctions must be included (whereas only the range of protective measures must be included)
- We recommend against using language like, “including but not limited to”



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Required Policy Statements: Timely Warnings and Emergency Response

Be sure to include the process the institution will use to:

- Confirm there is a significant emergency
- Determine the appropriate segment of the campus community to receive a notification
- Determine the content of the notification
- Initiate the notification system

Institutions must also:

- Include the titles of those responsible for carrying out the above
- Include a statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.
- **Make sure that the information in the ASR matches the information elsewhere at the institution**

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Required Policy Statements: Timely Warnings and Emergency Response



Don't forget to include:

- Methods for notifying the campus (including the larger community)
- How to sign up to receive alerts
- Information about testing and documentation of testing

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Required Policy Statements: Missing Students



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Be sure to:

- Distinguish between a standard emergency contact and a missing student contact
- Provide information regarding how to designate a missing student contact
- Include a statement that the information will be kept confidential
- Specify that the institution will also contact the parents of unemancipated minors
- Include a requirement that any employee who learns of a missing student will immediately report to campus police/security

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Required Policy Statements: Hazing

1. This is a new requirement with the Stop Campus Hazing Act
2. Must include the institution's hazing policy (including the institution's definition of hazing)
3. How to report
4. Process used to investigate
5. Information on applicable local, state, and tribal laws
6. Prevention and awareness programming

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Best Practices

- Create a Clery committee that shares responsibility for completing the ASR
- Train those involved in Clery compliance
- Start ASR preparation early to avoid the September rush
- Create a culture of compliance, where stakeholders are invested in, and accountable for, the information in the ASR:
 - Require sign-off
 - Give those responsible for the ASR the authority they need to gather the information they need
- Don't saddle one person with full ASR responsibility
- When in doubt, consult an expert

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Upcoming Software Demos: Clery Compliance Toolset

- Software designed by higher education attorneys
- Addresses all ASR and CHTR requirements
- Combats knowledge loss from staff turn-over
- Provides updated federal laws and state statutes
- Optional "red flag" review by higher ed attorney

For more information, contact Anastasia Caffrey,
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