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# Clery Updates for 2021

## Unpacking the New Guidance

November 9, 2020

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### Agenda

1. What happened?
2. What remains the same?
3. What changes with the new guidance?
4. What's next?



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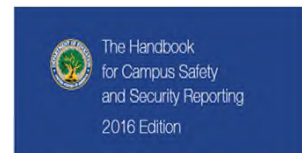
# What happened?

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## Clery Handbook

- “Nonbinding guidance”
- Published in 2016
- 265 pages
- 14 Sections, not including Appendices
- Filled with examples
- RESCINDED



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## FSA Clery Appendix



- “Nonbinding guidance”
- Electronic Announcement and Appendix
  - Announcement is 5 pages
  - Appendix is 13 pages
- Both published October 9, 2020
- “Rescission and Replacement” of 2016 Clery Handbook

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## Why did this happen?

*“The Department made the determination that the [Clery Handbook] did not achieve the Department’s goal of ensuring that adequate information is available to the public to foster improved campus safety and security. . . . The Department concluded that much of the guidance provided was outside of the scope of the relevant statutory . . . and regulatory . . . authority.”*

Announcement at p. 2

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## Effective Dates

- Clery Handbook is rescinded, effective immediately
  - Will continue to be referenced in program review reports and final determinations for the years during which it was effective
  - Still a safe harbor
  - Perfectly acceptable to rely on its provisions for 2020 ASR
  - “The Department recognizes that many Clery practitioners have become accustomed to the [Clery Handbook] . . . and may continue to rely on it for direction.”



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## Effective Dates

- Appendix is “effective for the reporting year following publication.”
  - ASR posted in 2021, reflecting 2020 statistics, is guided by the Appendix



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## What does it mean, practically speaking?

- Less rigidity?
- More flexibility?
- More questions!
- More documentation!



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## What remains the same?

## Fundamentals Remain

- Collect and classify reports of certain crimes
- Publish Annual Security Report
- Disclose crime statistics
- Issue timely warnings and emergency notifications
- Comply with VAWA requirements
- Maintain Daily Crime Log\*
- Missing Student and Fire Safety Requirements\*



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## Collecting and Reporting Information . . . . .

- Mandate remains to compile statistics
  - For Clery Act crimes
  - Reported to have occurred in the institution's Clery geography
  - Reported to a Campus Security Authority (CSA)



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## Timely Warning and Emergency Notifications

- Reference chart included in Appendix
- In addition, emergency response and evacuation procedures

|                     | Emergency Notifications   | Timely Warnings                                      |
|---------------------|---|--|
| Scope               | Significant emergency or dangerous situation                          | Clery crimes, reported to CSAs                       |
| Triggered by?       | Event that is currently occurring on or imminently threatening campus | Crimes that occurred and represent an ongoing threat |
| Where event occurs? | Only on campus  | Anywhere on Clery Geography                          |
| How soon to issue?  | Immediately upon confirmation of situation                            | As soon as information is available                  |

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## Publication of Policies & Procedures and Programming

- Dating violence, domestic violence, sexual assault and stalking
  - Information for victims
  - Reporting procedures
  - Institutional discipline
  - Description of education programs and campaigns
- Policies and programming related to campus law enforcement
- Drug Free Schools and Communities Act
- Missing Persons Policies and Procedures

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## Clery Geography and Title IX

- Title IX regulations extend to institution's "education program or activity"
  - Requires assessment of location, event or circumstance in which the alleged conduct occurred
- Result may be initiation of the Title IX Sexual Harassment Grievance Procedure without accompanying Clery reporting



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# What changes with the new guidance?



## Purpose of Clery Geography

- New appendix is clear all institutions must follow the Clery Statute and Regulations:
  - 20 USC § 1092(f)
  - 34 CFR § 668.46
- Too much information is just as detrimental as too little
- When in doubt, apply the plain meaning of the regulatory and statutory requirements



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## Types of Clery Geography

- Campus Property
- Noncampus Buildings or Property
- Public Property (within the campus or immediately adjacent and accessible from campus)

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## Campus vs. Noncampus Property

| Campus Property  | Noncampus Property   |
|--|--|
| Your institution owns or <b>controls</b> the site  | Your institution owns or <b>controls</b> the site  |
| <b>Building and property are within the same reasonably contiguous geographic area</b>                   | <b>Not reasonably contiguous to main campus</b>  |
| Property is used in direct support of, or in a manner related to, the institution's educational purposes | Property is used in direct support of, or in a manner related to, the institution's educational purposes |
|  | Frequently used by students  |

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## Public Property

- “all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.”

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## Appendix Eliminates Definitions

- Owned or Controlled by
- Directly Supports
- Eliminates any specific or measurable distance definition to “reasonably contiguous” (one mile rule is gone)
- Overnight stays/institutional travel
- Separate campus—an institution must comply with the requirements of this section for each separate campus.
- Study Abroad

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## Decision Points on Geography

- Defining/refining your campus geography for 2021
- Best practice to have a map outlining campus geography
- Documentation of determination of separate campus
- Policy determination for travel and study abroad



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## Clery Crime Reporting

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| Category                           | Descriptions  |
|------------------------------------|---|
| Primary Criminal Offenses          | Criminal Homicide : (1) Murder/Non-Negligent Manslaughter; (2) Manslaughter by Negligence; Sex Offenses: (1) Rape; (2) Fondling; (3) Incest; (4) Statutory Rape; Robbery; Aggravated Assault; Burglary; Motor Vehicle Theft; and Arson  |
| Hate Crimes                        | <ul style="list-style-type: none"><li>• Hate crimes include the primary criminal offenses listed above plus: Larceny-Theft; Simple Assault; Intimidation; and Destruction/Damage/Vandalism to Property.</li><li>• The eight categories of bias that may result in a hate crime being reported are as follows: race, gender, gender identity, religion, sexual orientation, ethnicity, national origin, or disability.</li></ul> |
| Arrests and Disciplinary Referrals | The number of arrests and the number of persons referred for disciplinary action for the following law violations: Drug Abuse Violations; Liquor Law Violations; and Weapons: Carrying, Possessing, Etc.  |
| VAWA Offenses                      | Dating Violence; Domestic Violence; and Stalking  |

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## FBI Uniform Crime Reporting

- *Hierarchy Rule.* A requirement in the FBI's UCR program that, for purposes of reporting crimes in that system, when more than one criminal offense was committed during a single incident, only the most serious offense be counted.
- Arson is the only exception
- Unknown: The effect of eliminating the SRS as of January 1st <https://ucr.fbi.gov/nibrs/2012/resources/a-guide-to-understanding-nibrs>

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## Crime Definitions

- Clergy regulations cite both the SRS and NIBRS definitions for crimes
- SRS definitions are being retired by the FBI in January
- FBI will continue to use the NIBRS definitions moving forward

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## Appendix is silent on

- If fondling is recognized as an element of the other sex offenses (e.g., Rape, Incest, and Statutory Rape)
- Therefore, it is unclear if you report fondling and another sex offense



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## Campus Security Authorities (CSAs)

1. A campus police or a campus security department of an institution
2. Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or security department (e.g., an individual who is responsible for monitoring the entrance into institutional property)
3. Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses
4. An *official* of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings

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## Decision Points

- Department will defer to the institution's designation of CSAs (focus on significant responsibilities)
- Designate an individual or office to designate, coordinate and oversee CSAs
- Make sure CSAs know they have been designated as such
- Training to CSAs
- Identify a procedure to report crimes
- Keep all documentation of reported crimes from CSAs



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## Final Issues to consider.....

Daily Crime Log—still required however the limits to Clery geography and ***not patrol jurisdiction.***

Elimination of specific statements required in the ASR from the Handbook

Recordkeeping guidance from the Handbook eliminated

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# What's next?

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## From President-elect Biden

- **Strengthen Title IX and Clery Act enforcement.** The Trump Administration has rolled back important protections for student survivors by [rescinding](#) the Obama-Biden Administration's 2011 Title IX guidance. Any backstepping on Title IX is unacceptable. The Biden Administration will restore the Title IX guidance for colleges, including the [2011 Dear Colleague Letter](#), which outlined for schools how to fairly conduct Title IX proceedings. Biden will also increase fines imposed on colleges for Clery Act violations, or failing to report statistics about campus safety, as well as develop stronger enforcement protocols to oversee reporting under the U.S. Department of Education.

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## Enforcement Overview



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## Types of Reviews

- Program reviews
  - General Title IV program review
  - Focused Clery Act program review
- “Spot Check” reviews



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## General Process (Focused Clery Review)

Typical review process takes 2-3 years



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## Final Reminders

## ASR Deadline Extended

### The Department of Education:

- ✓ Extended the deadline to complete 2019 ASR
- ✓ Deadline is December 31, 2020
- ✓ All elements of ASR still required



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## Current year policies . . .

- Remember, your ASR must contain current policy statement as of the date of publication
- According to the Clery Handbook, “Regardless of which policy you’re addressing there are some general guidelines to keep in mind: . . . . Your statements or descriptions of policies must accurately reflect your institution’s **current procedures and practices.**” (pp. 7-1, emphasis in original)

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