

Charting a Course Towards Compliance: The Clery Act and Student Affairs



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Jeanne Clery (1966-1986)



Raped and Murdered by a fellow student in her residence hall room on April 5, 1986 at Lehigh University.

• Joseph M. Henry was able to enter Jeanne's residence hall room through a series of residence hall doors propped open with pizza boxes.

• Joseph M. Henry was originally convicted and sentenced to death. Several years ago, the death penalty was overturned, and he is now serving life in prison.

Campus Security Act

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act requires that all institutions of higher education which receive federal financial assistance produce an annual security report which is distributed to all current students and employees and a summary of which is available to all prospective students and employees.

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act

- Originally passed in 1990 as part of the Student Right-to-Know and Campus Security Act.
- Amended in 1992 and 1998 by the Higher Education Amendments.
- Codified at 20 USC 1092f
- Regulations appear at 34 CFR 668.46
- The two most recent Final Rules were published in the Nov. 1, 1999 *Federal Register* (pp. 59060-59073) and Oct. 31, 2002 *Federal Register* (pp. 66519-66521).

Annual Security Report

The Annual Security Report Must Contain:

- Procedures to report crimes;
- Policies for responding to these reports of crimes;
- Policies for making timely warning reports to members of the campus community.
- The policies for collecting crime statistics.
- A list of the university officials to whom crimes should be reported.
- Security of and access to campus facilities;

Annual Security Report

The Annual Security Report Must Contain:

- Arrest authority of campus police;
- Policies to encourage prompt reporting of crimes;
- Policies, if any, to encourage pastoral counselors and professional counselors, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.
- Programs to inform about crime and take personal responsibility for safety;
- Programs on crime prevention.

Annual Security Report

- Policy on enforcement of underage drinking;
- Policy on enforcing drug laws;
- A description of drug and alcohol education programs;
- Policy for monitoring and recording criminal activity at off-campus locations of recognized student groups.

Annual Security Report

Sexual Assault Victim's Bill of Rights amended the Campus Security Act to require a policy statement to be added to the Security Report which includes:

- Educational programs to promote rape awareness;
- Procedures to follow if a sex offense occurs;
- Option to notify local law enforcement/will assist;
- Notice of victim services;
- Will change academic and living conditions if asked;
- Procedures for campus discipline/assistance/outcome
- Sanctions that may be imposed.

Victim Notification

FERPA was also amended in 1990 by the Clery Act to allow colleges & universities to inform the alleged victim of a "crime of violence" of the outcome of the student disciplinary proceeding against the alleged perpetrator. (§99.31) The amendments to the Student Right-to-Know and Campus Security Act in 1992 **require** colleges and universities to inform the victim of an alleged sexual assault of the final outcome of the disciplinary proceeding against the alleged perpetrator.

DOE Georgetown Letter

- Georgetown had a policy of not releasing the final results of disciplinary hearings to the victims of sexual assault, unless the victim signed a nonredisclosure agreement.
- The DOE ruled that a university "cannot require an alleged sexual assault victim to execute a non-disclosure agreement as a pre-condition to accessing judicial proceedings outcomes and sanction information under the Clery Act."
- "The Clery act does require access to outcomes and sections information without condition."

FPCO Letter on Redisclosure of Final Results

In circumstances where an institution makes a determination that the accused student committed a violation, this clearly provides for much greater disclosure than is permitted by § 99.31(a)(13). In addition, the redisclosure restrictions of § 99.33 do not apply [to the victim].

Source: Disclosure to Victims of Alleged Crimes of Violence (2003 letter in FERPA on-line library)

FPCO Letter on Redisclosure of Final Results

- On the other hand, § 99.31(a)(13) assures that an alleged victim can learn what the final results of a disciplinary proceeding were, even when the institution determines that the accused student did not violate its rules. When an institution discloses the final results, it must also inform the student that FERPA does not permit any redisclosure of this information.

Campus Sex Crimes Prevention Act (passed October 2000)

The Campus Sex Crime Prevention Act requires (starting in 2003) that states provide institutions with the names of all students and employees who are registered sex offenders and that institutions make this information available and include in the annual security report where this information can be obtained.

Federal Register, Final Rule **October 31, 2002**

Sec. 668.46 Institutional security policies and crime statistics.

Beginning with the annual security report distributed by October 1, 2003, a statement advising the campus community where law enforcement agency information provided by a State under section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(j)), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address. (pp. 66519-66521)

Crime Statistics

The Annual Security Report must include the statistics three most recent calendar years concerning the occurrence on campus, in or on noncampus buildings or property, and on public property of the following crimes that are reported to local police agencies or to a campus security authority:

Crime Statistics

1. Criminal homicide:
 - (A) Murder and nonnegligent manslaughter.
 - (B) Negligent manslaughter (beginning with 1999)
2. Sex offenses:
 - (A) Forcible sex offenses
 - (B) Nonforcible sex offenses
3. Robbery
4. Aggravated assault
5. Burglary
6. Motor vehicle theft
7. Arson (beginning with 1999)

Crime Statistics

Arrests for liquor law violations, drug law violations, and illegal weapons possession.

Statistics for persons (includes both students and employees) who were not arrested but were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession (beginning with 1999).

Campus Security Act Correction

Referred for campus disciplinary action: The referral of any **person** (formerly student) to any campus official who initiates a disciplinary action **of which a record** is kept and which may result in the imposition of a sanction.

Federal Register, October 31, 2002, pp. 66519-66521.

Hate Crimes

An institution must report, by category of prejudice, any crime it reports pursuant to paragraphs (c)(1)(i) through (vii) of this section [this refers to criminal homicide, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson], and any other crime involving bodily injury reported to local police agencies or to a campus security authority, that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability.

Campus Security Act

Crimes (including Hate Crimes) shall be reported in separate categories for:

- A. On campus.
- B. Of the crimes on campus, the number of crimes that took place in dormitories or other residential facilities for students on campus
- C. In or on a noncampus building or property
- D. On public property

Defining Campus

- (1) 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; and
- (2) Any building or property that is within or reasonably contiguous to the area identified in paragraph (1) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

Noncampus Building or Property

- (1) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or
- (2) 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.

Public Property

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

Campus Security Authority

- (1) A campus police department 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 a campus security department under paragraph (1) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.

Campus Security Authority

- (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. If such an official is a pastoral or professional counselor, the official is not considered a campus security authority when acting as a pastoral or professional counselor.

Timely Warning

“An institution must make a timely warning to the campus community of the following crimes reported to a campus security authority or local police, **if the institution believes a crime represents a threat to students and employees**”

LaSalle University

- LaSalle was determined to have failed to meet the timely warning requirement in a sexual assault case, even though the accused students had been interim suspended.
- “We do not agree that suspending the students achieves this requirement [alerting the community to potential threats and preventing similar crimes]. The potential of a serious threat continued and should have been disseminated to the campus community.”



www.securityoncampus.org
Security On Campus, Inc.

Virginia Tech Timely Warning Complaint

In August 2007, Security on Campus filed a complaint with the U.S. Department of Education alleging that Virginia Tech violated the Clery Act on April 16, 2007.

- “We are outraged that, as the new school year begins, there has been no acknowledgement that the campus should have been warned faster,” said Connie Clery, SOC’s co-founder and mother of the murdered college student for whom the Jeanne Clery Act is named. “We are therefore asking that the U.S. Department of Education fully investigate Virginia Tech’s policies to make sure that students and employees on campus are protected in the future.”

Annual Security Report

- (e) Annual security report. (1) Enrolled students and current employees--annual security report. By **October 1** of each year, an institution must distribute, to all enrolled students and current employees, its annual security report described in Sec. 668.46(b), through appropriate publications and mailings, including—
- (i) Direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail;
 - (ii) A publication or publications provided directly to each individual; or
 - (iii) Posting on an Internet website or an Intranet website, subject certain restrictions.

Annual Security Report

Notice to enrolled students. (1) An institution annually must distribute to all enrolled students a notice of the availability of the information required to be disclosed pursuant by the Campus Security Act. The notice must list and briefly describe the information and tell the student how to obtain the information.

Annual Security Report

- An institution that discloses information to enrolled students as required under the Campus Security Act by posting the information on an Internet website or an Intranet website must include in the notice --
- (i) The exact electronic address at which the information is posted; and
 - (ii) A statement that the institution will provide a paper copy of the information on request.

Annual Security Report

A copy of [name of institution]'s 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 alcohol and drug use, crime prevention, the reporting of crimes, sexual assault, and other matters. You can obtain a copy of this report by contacting [name of office] or by accessing the following website [address of website]. (p. 43583)

Record Retention and the Campus Security Act

- Institutions must maintain retain records to substantiate the information released under the Campus Security Act for 3 calendar years after the final disclosure (34 CFR 668.24). This effectively means 7 years because a crime occurred and reported in January 2004 would be included in the 2005, 2006, and 2007 annual security reports and would have to be maintained for 3 years after the last disclosure.

The Handbook for Campus Crime Reporting



U.S. DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION
2006

New Resources

Additional Clery Act Resource

Handbook for Campus Crime Reporting. (2005)
<http://www.ed.gov/admins/lead/safety/handbook.pdf>
<http://www.ed.gov/admins/lead/safety/handbook.doc>

This handbook was developed by the U.S. Department of Education to present step-by-step procedures, examples, and references for higher education institutions to follow in meeting the Clery Act requirements.

Enforcement of the Campus Security Act

Penalties

Upon a determination... that an institution of higher education has **substantially misrepresented** the number, location, or nature of required to be report under this subsection, the Secretary shall impose a civil penalty upon the institution...

The Secretary may impose a civil penalty upon such institution of not to exceed **\$27,500** (raised from \$25,000 effective November 18, 2002) **for each violation or misrepresentation.**

Any civil penalty may be compromised by the Secretary.
20 USC 1094(c)(3)(B)



Eastern Michigan Clery Act Violations

Key Documents:

Notification of Fine Letter (Dec. 14, 2007)

Final Program Review Determination (Nov. 14, 2007)

Program Review Report (June 27, 2007)

Eastern Michigan Clery Act Violations

1. Failure to Provide "Timely Warning" In Response to Homicide Investigation of On-campus Student Death
2. Lack of Administrative Capability
 - Serious and systemic lack of capability
 - Required training for institutional personnel
3. Lack of Timely Warning Policy
4. Failure to Properly Disclose Crime Statistics
 - A. Failure to accurately report sexual assaults
 - B. Failure to properly report Alcohol, Drug, and Illegal Weapons Possession Violations
 - C. Failure to properly report referrals for disciplinary action for Alcohol, Drug, and Illegal Weapons Possession Violations
 - Required to submit Independent Statistical Validation.

Eastern Michigan Clery Act Violations

5. Lack of Adequate Policy Statements
 - How the statistics are prepared
 - Policies regarding sexual assault
 - Sex Offender Information
6. Failure to Report All Required Statistics Occurring on Public Property and in Non-Campus Buildings or Property
 - Failure to include statistics from the Ypsilanti City Police and demonstrate efforts to obtain them.
 - Failure to include statistics for some off-campus student organizations.
7. Failure to Properly Maintain Crime Log
 - Failure to update Campus Crime Log with disposition information.

\$357,500 Fine Break Down

✓ Failure to provide timely warning	\$27,500
✓ Lack of administrative capability	\$27,500
✓ Failure to have timely warning policy	\$27,500
✓ Failure to properly disclose statistics (2003, 2004, & 2005)	\$82,500
✓ Failure to provide ASR policy statements (2003, 2004, & 2005)	\$82,500
✓ Failure to report all statistics for public property and non-campus buildings (2003, 2004, & 2005)	\$82,500
✓ Failure to properly maintain crime log	\$27,500

Internet Resources

- **Campus Security Info**
www.ed.gov/offices/OPE/PPI/security.html
- **Thomas: Library of Congress**
<http://thomas.loc.gov>
- **Department of Education**
www.ed.gov
- **Information for Financial Aid Professionals**
<http://ifap.ed.gov>
- **United States Code**
www4.law.cornell.edu/uscode/
- **Campus Legal Information Clearinghouse**
<http://counsel.cua.edu>

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For additional resources, visit:

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