



## Clery Act Campus Crime Reporting Handbook Rescinded – What Does it Mean?

Authored by [Kim Pacelli, M.Ed., J.D.](#), Partner, TNG & Advisory Board, ATIXA

Last week the U.S. Department of Education (ED) announced the rescission and replacement of the 2016 Clery Handbook with a new "[Clery Act Appendix for the Federal Student Aid \(FSA\) Handbook](#)." ED determined that much of the content of the 2016 Handbook, which was intended to assist institutions in implementing the requirements of the Clery Act, had expanded beyond the scope of the original statute and regulations (20 U.S.C. 1092; 34 CFR 668.41 and 668.46).

Described as part of the Department's efforts to reduce regulatory and administrative burden, ED's new Clery Act Appendix is intended to be a more straightforward approach. It hews precisely to the requirements either articulated in the statute or the regulations. The 2016 Handbook will remain available as an archived document and may factor into program reviews and audits for prior reporting years.

Because the VAWA Section 304 amendments to the Clery Act are codified by federal regulations, this announcement is not a huge shift in terms of Clery Act compliance for higher education practitioners related to the procedural requirements that apply to sexual assault, stalking, dating violence, and domestic violence, which all remain (remember that the Clery Act does not apply to K-12 schools).

The Annual Security Report (ASR) statements must include all of the same Section 304 policy statements as before. Campus procedures need to include all of the same elements as before (of course, many of these are also codified in the Title IX regulations, too), and victims must be reminded of the importance of preserving evidence and provided with information about reporting to law enforcement and obtaining protective orders from the institution or in the courts. Timely warnings remain, too, when the institution receives a report of a crime that is considered to represent an ongoing threat to students and employees, though prior Handbook and Clery Help Desk positions about off-campus threats and timely warnings for all sexual assaults are likely to be pulled back.

Title IX administrators *can* expect to see some shifts in other broader Clery Act compliance issues that impact their work, too.

- Crime definitions – ED has deleted all of the Clery crime definitions that formerly appeared in Chapter 3 of the Handbook, defaulting to the precise definitions in the [federal regulation](#). This will result in the definitions used for purposes of compiling campus crime data matching the new Title IX definitions of "sexual harassment" under 34 C.F.R. 106.30 for sexual assault, stalking, dating violence, and domestic violence.
- Campus Security Authority ("CSA") definition – Gone is the extensive explanatory guidance and lists of example positions on who should be considered a CSA. What remains is the four-part definition in the regulation, to include campus security/police department personnel, individuals identified in institutional security policies, and individuals with security-related responsibilities, and individuals with "significant responsibility for student and campus activities." ED plans to "defer to an institution's designation of CSAs as authoritative," and the exception for a pastoral or professional counselor, which is in the regulation itself, remains. Basically, the new guidance allows institution much more flexibility in making these designations, as long as the designations are made in the spirit of "significant responsibility." Institutions also have the flexibility, on a case-by-case basis, to decide *not* to apply the reporting obligation to a specific individual, which can help many institutions to sync the CSA

designations with any designated “confidential employees” without the prior constraint that the exclusion only technically could apply to professional and pastoral counselors.

- Clery geography – ED has attempted to simplify the “geography” rules substantially. The appendix takes an approach that hews directly to the regulatory framework of three categories of locations: 1) on-campus, 2) non-campus building or property, and 3) public property. Each of these categories are defined in the regulations (and in the appendix), but ED’s approach here is to move away from additional explanatory guidance that had the effect of complicating the analysis or causing institutions to be overly inclusive of statistics that should not really be attributed to the campus. Some of the more complex and seeming-esoteric “Clery geography” concepts disappear. For example, the handbook’s recommendation to define adjacent public property to include the “sidewalk, street, sidewalk” does not appear in the statute or regs, so therefore is no longer a part of the “public property” definition. The appendix also essentially eliminates the need to report crimes that occur on institutional-sponsored overnight trips, which was a large source of confusion (not to mention a data-collection headache). Defaulting to an assumption that an incident occurred on campus when the location is not known is also not within the statute or regulations.

Note that these changes apply prospectively, so none of the changes in the Appendix apply to the next ASR and reporting deadline, which has been moved to December 31, 2020 because of COVID-19. They take effect November 4<sup>th</sup>.

Time will tell whether ED’s changes streamline Clery Act compliance for institutions or whether the common questions contained within the Clery regulations – that led to the creation of the Handbook in the first place – will continue to persist. In its announcement ED has promised to offer technical assistance to institutions in meeting their obligations under Clery. ATIXA’s experts are always glad to help, too!

Just a reminder. The election is coming. The current administration will keep these changes, but if the administration changes, it is likely that some form of the Handbook or a revised Handbook would be reinstated. Stay tuned, because these changes may never take effect depending on the outcome of the election.

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