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The Clery Act and Postsecondary Institutions: Requirements and Enforcement

The federal government requires colleges and universities to implement several institutional policies aimed at ensuring the safety and security of their students. One key federal statute that applies to postsecondary institutions is the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), codified in Section 485(f) of the Higher Education Act (HEA). The Clery Act applies to all domestic institutions of higher education (IHEs) that participate in HEA Title IV federal student aid programs. The law requires covered IHEs to publish a report, by October 1 of each year, disclosing campus crime statistics and campus security policies. The Department of Education (ED) has promulgated regulations implementing the law.

Campus Crime Statistics

The Clery Act requires covered IHEs to publish an annual security report (ASR) containing campus crime statistics for the preceding three years. Covered IHEs must share the ASRs with current students and employees, as well as with any applicants for enrollment or employment upon request.

Incidents that a covered IHE must disclose in its ASR include various crimes that are reported to, or brought to the attentions of, campus security authorities or local police agencies, including murder, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, manslaughter, and arson. This includes reports of all alleged criminal incidents, rather than only crimes for which a finding of guilt has been made.

In addition, ASRs must include alleged criminal offenses reported to campus security or local police if the victim of any of the aforementioned crimes or a broader group of crimes (such as larceny-theft, simple assault, intimidation, destruction of property, or crimes involving bodily injury to a person) was selected based on race, gender, religion, national origin, sexual orientation, gender identity, ethnicity, or disability. The ASR must also include arrests (and referrals for campus disciplinary action) for liquor law violations and drug-related violations, as well as weapons possession. Finally, ASRs must include alleged incidents of domestic violence, dating violence, and stalking reported to campus security authorities or local police. The statistics that must be published under the Clery Act must not identify persons accused of crimes or the victims of crimes.

Covered IHEs may withhold, or later remove, reported crimes from their statistics in the “rare situation” where a sworn or commissioned law enforcement officer has investigated and formally determined that a crime report was false. IHEs must disclose in their ASR the total number

of crime reports that were “unfounded” during each of the previous three years.

ASRs must include incidents if they occur within “Clery geography,” which means on campus, on public property within or immediately adjacent to the school, or on certain “noncampus buildings or property,” including property owned or controlled by an officially recognized student organization, such as officially recognized sorority or fraternity-owned chapter houses.

In compiling the incidents for its crime report, an IHE must make a reasonable effort to collect statistics and is permitted to rely on information supplied by a local or state police agency. If an IHE makes a good-faith effort to do so, it is not to be held responsible for the failure of a local police agency to supply the necessary statistics.

If an IHE maintains a police or security department, then that department must keep a daily security log that records all crimes reported within its patrol jurisdiction, as well as within the IHE’s “Clery geography.” That log must be open to public inspection and include the date, time, location, and nature of each crime.

IHEs must also issue timely alerts to the campus community of crimes covered by the Clery Act that are reported to campus security or local police and that constitute a threat to students and employees. The alerts must withhold the names of victims as confidential.

Campus Security Policies

An IHE’s ASR must describe a number of school policies, including procedures available for students and others to report crimes (and how to do so on a voluntary and confidential basis) and the IHE’s policies concerning its response to these reports. The ASR must also include the titles of persons or organizations to whom students and employees should report criminal offenses; policies regarding security and access to campus facilities and residences and security considerations used in facilities maintenance; policies regarding law enforcement authority on campus and agreements with state and local law enforcement agencies; a description of programs geared toward informing employees and students of security procedures and the prevention of crimes; policies regarding the enforcement of underage drinking laws and the possession, use, or sale of illegal drugs; and a statement on where to find information about registered sex offenders.

ASRs must also include a statement of policies on immediate emergency response and evacuation procedures. IHEs that provide on-campus housing for students must

provide a policy statement on missing student notification procedures.

IHEs must develop and include in their ASR a statement of policy regarding programs to prevent and raise awareness of dating violence, sexual assault, domestic violence, and stalking. This statement shall include the definition of consent and a description of safe options for bystander intervention. Statements must include information regarding procedures victims should follow, including (1) the importance of preserving necessary evidence; (2) to whom an offense should be reported; and (3) a victim's options to notify law enforcement authorities, to be assisted in doing so by campus authorities, and to decline to notify authorities if the victim so chooses. Statements must indicate how the IHE will protect confidentiality, as well as available accommodations and protective measures.

ASRs must have a statement of policy that addresses the disciplinary procedures used to address incidents of alleged dating violence, domestic violence, stalking, and sexual assault. This statement includes the evidentiary standard used during any disciplinary hearing; possible sanctions or protective measures that may be imposed following a determination that the conduct occurred; that the "accuser and the accused" have the same opportunity to have others present during a disciplinary proceeding; that both accuser and accused will receive notice of the outcome of a proceeding and appeal procedures; and that such proceedings shall be fair, prompt, and impartial and be conducted by officials who have received training on the safety of alleged victims during the investigation and hearing process. Proceedings must be conducted in a way that provides equal access to the accuser and accused of any information used during a disciplinary meeting or hearing.

Enforcement and Technical Assistance

ED's Office of Federal Student Aid enforces the Clery Act and conducts reviews to evaluate compliance with the statute. ED selects IHEs for review by considering factors such as prior violations, complaints, and media reports.

In cases of noncompliance, ED has the authority to impose sanctions on IHEs for failing to adhere to Clery Act mandates. Sanctions may include fines, limitations on federal financial aid, or even suspension or termination of an IHE's eligibility to participate in federal student aid programs. ED may also enter into voluntary resolution agreements with IHEs found to be in violation, outlining corrective actions to address deficiencies and prevent future noncompliance.

As of January 25, 2024, the maximum fine per violation is \$69,733. The Clery Act fine amount is adjusted annually for inflation under the Federal Civil Penalties Inflation Adjustment Act Improvements Act. IHEs can accrue multiple maximum fines based on the number of confirmed violations. Prior to 2024, the largest Clery Act fine in history (\$4.5 million) was levied against Michigan State University in 2019 for systematically failing to prevent sexual abuse committed by Larry Nassar, a physician in the athletics department, as well as other violations involving a former dean. In 2023, Liberty University reported that ED

had preliminarily assessed a fine against it for alleged Clery Act violations pertaining to sexual assaults that would have set a new record (\$37.5 million). ED announced a settlement agreement on March 5, 2024, which acknowledged that Liberty had taken some remedial measures and made a commitment to improve its compliance. The settlement imposed a reduced fine of \$14 million, with Liberty pledging an additional \$2 million for Clery Act expenditures during a two-year period of post-review monitoring.

ED also provides technical assistance and guidance to IHEs to facilitate compliance with Clery Act requirements, including training sessions, webinars, and resources to aid in understanding and implementing the law's provisions. ED maintains the Campus Safety and Security Data Analysis Cutting Tool, an online resource that assists IHEs and the public in analyzing institutional data. The tool provides rapid customized reports for public inquiries relating to campus crime data.

Selected Bills in the 117th and 118th Congresses

In the 117th and 118th Congresses, legislation has been introduced that would amend the Clery Act to add provisions relating to sexual violence, antisemitic incidents, and assurances for individuals with disabilities. In the 117th Congress, the Campus Accountability and Safety Act (H.R. 9136/S. 5047) would have amended the Clery Act to require the reporting of additional information on campus sexual harassment, sexual assault, and other forms of sexual violence. It also would have authorized ED to administer grants of no more than \$500,000 to address and prevent domestic violence, dating violence, sexual assault, sexual harassment, and stalking on campus.

In the 118th Congress, the Ending Subsidies for Pro-Terrorist Activity on Campus Act (H.R. 6419/S. 3184) would amend the Clery Act to require IHEs to report on antisemitic incidents specifically, as incidents involving antisemitism are not reported separately from other hate crimes based on shared ancestry or ethnic characteristics, and to publish a detailed plan of action for combating antisemitism on campus. Each IHE would have to submit a report on these efforts, which would be compiled by ED in a report to Congress.

Also in the 118th Congress, the Safe Equitable Campus Resources and Education Act of 2023 (H.R. 2421/S. 1070) would amend the Clery Act to mandate more accessible ASR formats for individuals with disabilities, including those who are blind or deaf or have cognitive, intellectual, or communication disabilities. Under the proposals, ASRs would be required to include a description of policies to ensure that individuals with disabilities are included in emergency response and evacuation procedures, and that campus security personnel and others receive appropriate training for working with these individuals.

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