

The Intersection of the Clery Act & Title IX

LOUISIANA BOARD OF REGENTS

August 16, 2017

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- The changing landscape
- Top 3 Clery Act Challenges
- Top 3 Title IX Challenges
- Discussion

- Explore the higher education regulatory compliance landscape
- Ensure we understand Clery Act and Title IX fundamental requirements
- Support a sense of urgency for critical issues

Compliance is important, but
prevention and response are
more important!

Nevertheless, You must
manage RISK.

A sea change –

- Renewed focus on sexual violence
- Activism by students, faculty, others
- Survivor courage
- Evolving legislation & guidance (Clery & TIX)
- REALITY – The world is FLAT
- Increasing enforcement of the Act



SEXUAL ASSAULT ON CAMPUS

A Frustrating Search for Justice

IMPACT



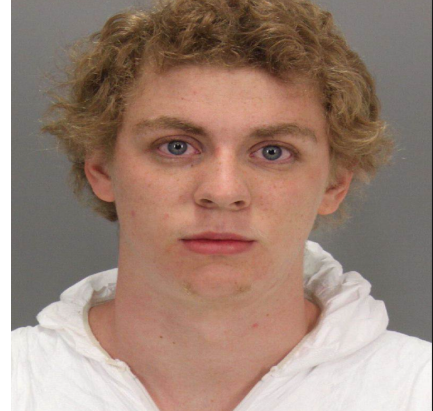
DEPRESSION AND SUICIDE BY THE NUMBERS

23% of students who committed suicide were treated at student counseling centers

Consequences of High-risk College Drinking

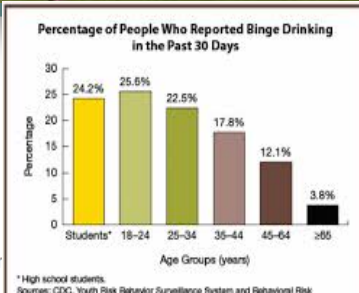
| Category | Count |
|-----------------|---------|
| DEATHS | 1,825 |
| SEXUAL ASSAULTS | 97,000 |
| INJURIES | 599,000 |
| ASSAULTS | 696,000 |

Source: Hingson, R., Zha, W., & Weitzman, E. (2009). Magnitude of and trends in alcohol-related mortality and morbidity among U.S. college students ages 18-24, 1998-2005. *Journal of Studies on Alcohol and Drugs*, Issue 16: 12-20.



USC Student Found Dead Days After Party

The student had not been seen for several days until his roommates found him in his bedroom



- ED Federal Student Aid Office, Clery Compliance Division, conducts reviews to evaluate compliance
 - A complaint is received
 - A media event raises certain concerns
 - An IHE's financial aid audit identifies serious non-compliance
 - ED OCR finds areas of Clery concern
- Don't comply with Clery out of fear but mind risk management. PSU vs. Univ. of Nebraska - Kearney

- From Tragedy comes Change!
- Jeanne Ann Clery was raped and murdered in her residence hall room at Lehigh University on April 5, 1986.
- Her family believed that prospective students had not been warned about crimes on campus
- The Clery family became ardent advocates for changes in campus crime reporting laws
- A lot has changed, and a lot hasn't



- Publish & distribute an ASR w/various policy statements, policies, procedures and statistics (No later than October 1, each year). Highly technical and strictly construed, for example, VT TW and exact electronic address
- Provide ASR to current students & employees AND inform prospective students & employees about it
- Submit crime statistics to ED
- Provide timely warnings and emergency notifications to the campus community
- Maintain a public, daily log of reported crimes
- Provide VAWA programming (on-going and initial)

- 1986: Jeanne Clery murdered at Lehigh University
- 1988: Pennsylvania Act 73
- 1990: Federal Crime Awareness & Campus Security Act
- 1992: Campus Sexual Assault Victims' Bill of Rights
- 1994: Campus Security Act Regulations
- 1998: Higher Education Act Amendments
- 1999: Clery Act Regulations Issued
- 2000: Campus Security Statistics Website
- 2002: Campus Sex Crimes Prevention Act
- 2005: ED's Clery Handbook Published
- 2008: Higher Education Opportunity Act 2008
- 2009: Final Campus Safety Regulations
- 2011: New Handbook for Campus Safety & Security Reporting
- 2013: VAWA Amendments to the Clery Act
- 2014: Not Alone Report; OCR Q&A; Final Regulations
- 2015: Clery Final Regulations in effect continuing OCR guidance
- 2016: Clery Compliance Handbook is published & Penn State FPRD released.

- An IHE “lacks the ability and/or willingness and/or capacity to properly administer the Title IV Federal student financial aid programs” *
- Omissions and/or inadequacies in ASR Policy Statements; failing to develop or include “numerous required statements of policy, procedure, practice, and programs” in its ASRs*
- Failure to comply with Timely Warning requirements *

- Violations related to Classification of Reported Crimes and Disclosure of **Crime Statistics**,*
(including over-reporting)
- Problems with the Daily Crime Log *
- Procedural deficiencies with Sexual Assault Policies
- Clery Geographic boundaries not defined/defined inaccurately
- Failure to comply with ER&E provisions *

- Part of Violence Against Women Reauthorization Act (“VAWRA”) of 2013
- Amends HEA “to improve education and prevention related to campus sexual violence, domestic violence, dating violence, and stalking”
- Effective March, 2014/October, 2014 ASR

- Clery now proscribes standards for investigation and conduct of both student and employee discipline proceedings in domestic violence, dating violence, sexual assault, and stalking cases.

- Policy must include a “statement of the standard of evidence” used (OCR directs a “preponderance of the evidence”).
- Officials who conduct the proceeding must receive annual training (how to investigate and conduct hearings in a manner that “protects the safety of victims” and “promotes accountability”).
- Policy must identify “sanctions or protective measures” the institution may impose following a final determination of rape, acquaintance rape, domestic violence, dating violence, sexual assault or stalking.

- Both parties are entitled to the same opportunities during disciplinary proceedings, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice (and others as the IHE determines).
- Must notify both “simultaneously” and “in writing” of the outcome of the proceeding; appeal procedures; any change to the result before it becomes final, and when the result becomes final.
- Policy must address how victims' confidentiality will be protected, including record-keeping that excludes personally-identifiable information on victims.

- Institution must provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, and other services available for victims, both within the institution and in the community.
- This applies to incident occurring off-campus, as well.

- Co-existing response requirements
 - Responsible Employee
 - Campus Security Authority
 - Mandatory Reporter of suspected child abuse
 - State requirements & challenges
- Centralized reporting & review processes

- Investigator skillset
- Timelines
- Concurrent criminal & TIX investigation
- Employees are often the forgotten or under-attended population

1. Formally appoint a full time (or nearly full time) Clery Act compliance coordinator & a formal committee
 - Processes, on-going data gathering and campus collaboration, demand focus
 - Coordinator leads Clery Act committee
 - Formally chartered group of administrators should guide the institution's Clery compliance activities.

2. Review your required policies

- Ensure policies and policy statements are updated and represent your current practices
- Review at least annually (by Clery Committee and stakeholders).
- Emphasis on policies governing Timely Warning Reports, Campus Sexual Assault, Domestic/ Intimate Partner Violence & Stalking Prevention Programs, Emergency Notifications and Missing Students

3. Identify and train your campus security authorities

- Use org. chart to identify those officials who have significant responsibilities for students and campus activities. Deans, directors, and coaches are a start.
- You likely have hundreds, possibly thousands
- Conduct in-person training for Tier 1 CSAs, (those likely to receive reports of crime). On line for others.

4. Audit your Clery data and reconcile monthly

- Flowchart your process for collecting data from required sources
- Consider offices that have disciplinary systems that you're not aware of and ensure clarity on what has to be reported
- Provide necessary forms to facilitate data collection
- Monthly data reconciliation amongst offices

5. Identify and track all of your safety awareness, crime prevention and primary prevention programs

- Give credit where credit is due; many ASRs omit the programs offered by other campus departments.
- Maintain an inventory of all campus programs and update as needed.
- Ensure you DESCRIBE type and **frequency** of all programs in your ASR.

6. Stay abreast of the guidance

- Regulations **INCLUDING THE PREAMBLE** and Handbook are at <https://www2.ed.gov/admins/lead/safety/campus.html>
- HEA is being reauthorized in the current Congress. Tend to the conversation in professional organizations and work with your Congressional delegation.

- Institutions must investigate complaints adequately, reliably, and impartially (Clery requires “prompt, fair and impartial”)
- Must adopt and publish grievance procedures that provide for a prompt and equitable resolution of complaints
- Undertake education and prevention efforts aimed at students and employees

- Approaching TIX and Clery in a Vacuum
 - Much of DCL guidance is codified in Clery
 - Your TIX Coordinator is a CSA
 - Many complaints filed w/TIX office are Clery Act crimes and MAY trigger Clery responses
 - During a PR, considerable focus on TIX

- Concurrent Investigations
 - Interference with a criminal investigation
 - Sharing of information amongst colleagues
 - TIX timelines (~60 days)
 - MOUs and the prospect of Cooperative investigations

- Reconciling TIX v. Clery requirements
 - Notice of Rights & Options
 - Confidentiality of records
 - Absolute right to and *NOT TO* notify law enforcement
 - Responsibilities of *Responsible Employees*
 - Others?

- Several significant challenges
- They require open communication and acknowledgment
- Collaboration and coordination is a MUST
- You have to be an important VOICE at the table

- Identify your team
- Assess your culture
- Assess your policies
- Train officials involved in processes
- Develop support services
- Review prior cases

Q&A

Thank You!

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