

Campus Safety[®]

ONLINE SUMMIT

The Impact of the New Clery Act Appendix on College Campuses

Jonathan M. Kassa

Education Services Advisor

Michael J. Webster

Director for Regulatory Compliance,
Margolis Healy



Jonathan M. Kassa

- Co-founder, Grand River Solutions
- Prior: Director of Higher Education at Allied Universal, senior leadership at Margolis Healy and past executive director of Clery Center
- Guided Development of Campus SaVE Act (adopted into VAWA), served in the Clery Act Negotiated Rulemaking session that included Emergency Notification and other amendments to Clery
- Elected school board director in PA, chairing safe schools committee, also serving on Network of Victim Assistance, Bucks County



Michael J. Webster

- Director for Regulatory Compliance, Margolis Healy
- Vast experience advising a diverse spectrum of IHEs in Clery Act
- Served as Director of Campus Safety at McDaniel College
- Government Relations Chair for IACLEA, participated in all three Negotiated Rulemaking sessions hosted by the US Department of Education for the Clery Act
- Content reviewer for 2005 and 2011 versions of the Clery Handbook.
- Most recently author of the comprehensive Margolis Healy resource “Common Clery Challenges”



About this Session

With the Department 's October 2020 notice to rescind the 2016 Clery Handbook and replace it with a "simplified" Appendix, already overwhelmed institutions of higher education across the country must assess whether this action brings more clarity, confusion, or something in-between.

- A guided discussion across the key features of the notice and its implications for institution-wide Clery compliance and risk management.
- Learn the key takeaways campus leadership must understand for current operations, plus areas of caution, and even hope, to consider in future Clery compliance strategy development.

Overview of Recision and Release of Appendix

Background

- 256 page 2016 Clery Handbook rescinded and replaced by 13 page Appendix to the Federal Student Aid Handbook
- Addresses Departmental overreach and sub-regulatory language
- Appendix is non-binding
- 2016 Handbook to be archived, will be used for 2020 ASR and prior

General Approach

Clery Act Requirements - Back to Basics

- Collect, classify, and count crime reports and statistics
- Issue campus alerts and warning notices
- Publish an Annual Security Report (Due date: October 1)
- Disclose missing student notification procedures, when applicable
- Submit crime and fire statistics to the Department, when applicable
- Disclose procedures for institutional disciplinary actions
- Provide educational programs and campaigns
- Keep a daily crime log, when applicable
- Disclose fire safety information, when applicable

General Approach

Guiding Language

“Consistent with the statutory and regulatory framework, and interpretive principles, the Department will continue to apply the plain meaning of terms contained within each Clery requirement. ***The Department will accept an institution’s reasonable interpretation of terms as long as those terms are defined clearly to individuals who review the campus’ Clery Act reports.*** In the event that the Department believes that more specific definitions are required, it will engage in future negotiated rulemaking to ensure that institutions and the public have an opportunity to comment on those definitions. [emphasis added]

This Appendix provides simple, plain-language explanations of Clery Act requirements found in, and adherent to, relevant statutory and regulatory authority. (p1, Appendix)

Reinforcing Statutory Language

Clarity and Deference

- **Clery Crimes:** Refers to specific regulatory definitions for crimes instead of the expanded guidance definitions found in the Clery Handbook.
- **Campus Security Authorities 34 CFR 668.46(a):** Reinforces the regulatory definition of Campus Security Authority, the Department “defer to an institution’s designation of CSAs as authoritative” with an emphasis on “reasonable” determination.

Clery Geography

- 1) Consistent with the regulatory framework, institutions should determine which buildings, facilities, parking lots, and real estate are included in the definition of the “campus.”
- 2) Too much information can be just as detrimental as too little information.
- 3) When in doubt, apply the plain meaning of regulatory and statutory requirements. (p4, Appendix)

Clery Geography and Title IX

Clery Geography and Title IX – Under Title IX, an institution’s obligations to address sexual harassment in a recipient’s “education program or activity” is a separate inquiry from an institution of higher education’s obligations with respect to Clery Geography. While the two concepts may overlap, they are not coterminous and the two laws (Clery Act and Title IX) serve separate purposes and have separate obligations for entities covered by both laws.

... The 2020 Title IX regulations do not impose a geographical limit on an institution’s responsibilities, with the exception of the limitation of Title IX’s scope to incidents that occur “against a person in the United States.”
(p6, Appendix)

Emergency Response & Timely Warnings - 34 CFR 668.46(g)

	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

Future Considerations

- More discretion for Institutions of Higher Education?
- Is this a scaling-back of the Department's Clery enforcement?
- Trends and crystal ball predictions as we head into 2021?

Reminders

- Resources for download are located on the left side of webinar screen.
- Upon submission of survey that will appear at the end of this session, you will receive a Certificate of Attendance via email.
- On-demand viewing will be available 15 minutes after conclusion of the session.
- Be sure to share on Social Media #CSOS @CampusSafetyMag
- Be sure to visit our sponsor profile pages and enter to WIN some great raffle prizes!

Contact Info

Jonathan Kassa, MPA

Education Services Advisor

jonathan@grandriversolutions.com

267-210-7146

<https://www.linkedin.com/in/jonathankassa>

Michael N. Webster

Director for Regulatory Compliance

mwebster@margolishealy.com

717-353-9070

<https://www.margolishealy.com/>

Campus Safety

CONFERENCE 2021

SAVE THE DATE

WEST: LAS VEGAS, NV | JUNE 14-16, 2021

EAST: BETHESDA, MD | JULY 11-13, 2021

TEXAS: SAN ANTONIO, TX | JULY 21-23, 2021