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# Hospitals, Medical Centers, Student Health and the Clery Act

—


July 13, 2021

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## Agenda

1. Clery Compliance Overview
2. Clery Geography
3. Campus Security Authorities
4. Confidentiality Concerns
5. Looking Ahead



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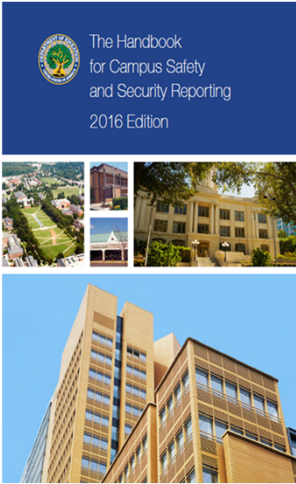
# Setting the Stage: Clery Compliance Overview

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## Clery Handbook

- “Nonbinding guidance”
- Published in 2016
- 265 pages
- 14 Sections, not including Appendices
- Filled with examples
- RESCINDED



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## FSA Clery Appendix



- “Nonbinding guidance”
- Electronic Announcement and Appendix
  - Announcement is 5 pages
  - Appendix is 13 pages
- Both published October 9, 2020
- “Rescission and Replacement” of 2016 Clery Handbook

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## Effective Dates

- Clery Handbook is rescinded, effective immediately
  - Will continue to be referenced in program review reports and final determinations for the years during which it was effective
  - **Still a safe harbor**
  - Perfectly acceptable to rely on its provisions for 2021 ASR
  - “The Department recognizes that many Clery practitioners have become accustomed to the [Clery Handbook] . . . and may continue to rely on it for direction.”



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## Effective Dates

- Appendix is “effective for the reporting year following publication.”
  - ***ASR posted in 2021, reflecting 2018, 2019, and 2020 statistics, is guided by the Appendix***



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## What does it mean, practically speaking, for schools with medical center affiliations?

- Less rigidity?
- More flexibility?
- More questions!
- More documentation!



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## Some things have stayed the same . . .

- Mandate remains to compile statistics
  - For Clery Act crimes
  - Reported to have occurred in the institution's Clery geography
  - Reported to a Campus Security Authority (CSA)



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## Clery Geography for Hospitals, Medical Centers, Student Health

# H-B

## Purpose of Clery Geography

- New appendix is clear all institutions must follow the Clery Statute and Regulations:
  - 20 USC § 1092(f)
  - 34 CFR § 668.46
- Too much information is just as detrimental as too little
- When in doubt, apply the plain meaning of the regulatory and statutory requirements



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# H-B

## Types of Clery Geography

- Campus Property
- Noncampus Buildings or Property
- Public Property (within the campus or immediately adjacent and accessible from campus)



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## Campus vs. Noncampus Property

Campus Property	Noncampus Property
Your institution owns or <b>controls</b> the site	Your institution owns or <b>controls</b> the site
<b>Building and property are within the same reasonably contiguous geographic area</b>	<b>Not reasonably contiguous to main campus</b>
Property is used in direct support of, or in a manner related to, the institution's educational purposes	Property is used in direct support of, or in a manner related to, the institution's educational purposes
	Frequently used by students

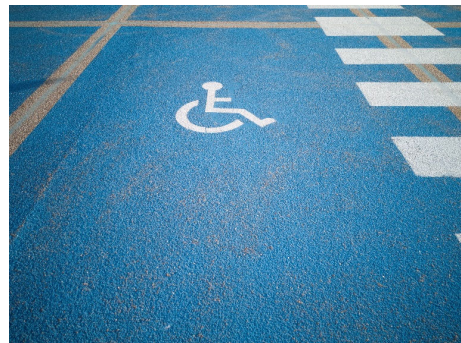
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## Public Property

- “all **public property** that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.”



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## Clery Geography and Title IX

- Title IX regulations extend to institution’s “education program or activity”
  - Requires assessment of location, event or circumstance in which the alleged conduct occurred
- Result may be initiation of the Title IX Sexual Harassment Grievance Procedure without accompanying Clery reporting



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## Appendix Eliminates Definitions

- Owned or Controlled by
- Directly Supports
- Eliminates any specific or measurable distance definition to “reasonably contiguous” (one mile rule is gone)
- Separate campus—an institution must comply with the requirements of this section for each separate campus.

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## Student Health Centers

- Vast majority of the time these will be on campus
- Clery crimes that take place at student health centers are thus reported as having taken place on campus property
- Incidents that occur at health facilities that are not on campus property do not need to be reported in the ASR

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## Scenario

A private nursing school has an agreement with an outpatient surgical facility across town to send nursing students to the surgical facility for clinical training. As part of their training, students are required to listen to patients' heartbeats. While Nursing Student A is listening to a particular patient's heartbeat, the patient gropes her breast.

Is this a Clery reportable incident?

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## Why is this not Clery geography?

- Not reasonably contiguous to main campus
- Used in support of institution's educational purposes, *but*
- The institution does not have *ownership or control* of the property.
  - The agreement between the institution and the facility simply allows patients to do their clinical work at the facility.
  - There is no lease agreement between the two entities.

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## Scenario

The University has a physical therapy program, and as part of the program, the students are trained by physical therapists at a facility five miles away owned by a private contractor. The University has a written agreement with the contractor to use a classroom on the fourth floor free of charge from 5:00 to 8:00 p.m. each evening.

While a student is in a therapy room on the first floor experimenting with a piece of equipment on his own, someone comes into the room and steals the student's wallet at gunpoint. That same perpetrator then goes into the classroom on the second floor while class is in session, brandishing his weapon, and steals a student's laptop.

Are both incidents reportable?

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## Why is only one incident reported?

- The incident that occurred in the equipment room did not take place on Clery geography because there was no ownership or control of the equipment room
- The incident that occurred in the classroom took place on *noncampus* property
  - Not reasonably contiguous to campus
  - Used in a manner related to institution's educational purposes
  - Frequently used by students
  - Agreement for use of space is evidence of ownership or control

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## Scenario

An institution has a medical school situated within a hospital approximately three miles from the main campus. The institution rents the entire third floor of the hospital for institutional use, and the bulk of the medical school classes take place there and employees report to work there.

The medical school registrar is attacked with a crowbar on her way to her car in the public parking lot outside of the hospital one Tuesday evening after work.

Is this incident reportable for Clery purposes?

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## Why is this incident reportable?

- The incident took place on the institution’s “public property”
  - The third floor of the hospital is likely a “branch campus” for Clery purposes
  - The parking lot is “public property” because it is adjacent to a facility owned or controlled by the institution and used in direct support of the institution’s educational purposes

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## Scenario

A University and its affiliated hospital sit on the same city block. Many of the University medical school faculty also work at the hospital, and the two institutions share a handful of board members. Students from the medical school undergo clinical training at the hospital pursuant to an unwritten understanding between the institutions.

A University student, while undergoing clinical training at the hospital, sexually assaults a patient.

Does this University have an obligation to report this incident under Clery?

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## Analysis

- Is the hospital campus property?
  - Clearly reasonably contiguous (thus not a separate campus or noncampus property)
    - Is it owned or controlled by the institution; and
    - Used by the institution in direct support of, or in a manner related to, the institution's educational purposes?
  - OR*
  - Is it owned by the institution but controlled by another person;
  - Frequently used by students; and
  - Does it support institutional purposes?

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## Best answer . . .

- Because the Appendix is silent, and
- Because the Clery Handbook is still considered a safe harbor
- We recommend reporting the incident in your ASR, on the theory that the relationship between the University and hospital exhibits some level of “control” by the University.

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## What about Title IX?

- Would this be reportable under Title IX?
  - Sexual harassment? *Yes.*
  - Within the University's education programs or activities? *Yes.*
  - Committed by a student? *Yes.*
  - This would be reportable under Title IX.

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## Decision Points on Geography

- Best practice to have a map outlining campus geography
- Understand the relationship that the institution has with hospitals and medical centers
- Document determinations of separate campus or noncampus property
- Analyze the specific facts
- Document each decision made



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## Campus Security Authorities and Hospitals, Medical Centers, Student Health

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## Campus Security Authorities (CSAs)

1. A campus police 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 security department (e.g., an individual who is responsible for monitoring the entrance into institutional property)
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

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## FSA Appendix and CSAs

*“The Department will defer to an institution’s designation of CSAs as authoritative and provide any technical assistance necessary to work with institutions to help ensure proper identification and notification of CSAs consistent with the regulations.”*

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## Scenario

A security guard at the hospital where University medical students take classes and do their clinical training reports to the medical school administrator who sits on-site at the hospital that he saw Medical Student A slap her boyfriend across the face as we walked pass their classroom.

What should the medical school administrator do next?

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# H-B

## Best Practices

- Designate an individual or office to designate, coordinate and oversee CSAs
- Identify at least one CSA at each separate campus
- Make sure CSAs know they have been designated as such
- Train all of the CSAs
- Identify a procedure to report crimes, including crimes on separate campuses and noncampus property – how, what, and when
- Keep all documentation of reported crimes from CSAs



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# B - H-B

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## Confidentiality Concerns for Hospitals, Medical Centers, Student Health under Clery

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## HIPAA

- The Health Insurance Portability and Accountability Act (HIPAA) protects protected health information (PHI)
  - Individually identifiable information relating to the past, present, or future health status of an individual that is created, collected, or transmitted, or maintained by a HIPAA-covered entity in relation to the provision of healthcare, payment for healthcare services, or use in healthcare operations.

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## Student Health (and EAPs)

- Clery reports can be made anonymously
  - The ASR must include institutional policies and procedures for victims or witnesses to report Clery Act crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.
- Pastoral and professional counselors are not CSAs with reporting obligations
  - An ASR must describe an institution's procedures, if any, that encourage pastoral and professional counselors, if and when they deem appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential bases for inclusion in the annual disclosure of crime statistics.

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## Hospitals and Medical Centers

- Clery-reportable incidents likely do not involve PHI
- Incidents can be reported anonymously
- Protecting confidentiality generally will not serve as an impediment to Clery compliance
- Institutions should reassure affiliated hospitals and medical centers that sharing this information does not violate HIPAA or other privacy policies

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## Scenario

A patient arrives at a hospital's emergency room experiencing mental health issues, runs out of the emergency room and attacks someone in a parking lot that is shared by the hospital and the institution. This is witnessed by a hospital security guard. What should happen next?

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## Fact-specific analysis

- Is the security guard a CSA?
- If so, does she know that she is, and has she been appropriately trained?
- If she is a CSA, she must report the attack to the *institution*, not just the hospital.
  - The fact that a patient was involved does not implicate PHI.
- The institution then needs to determine if the event is reportable.
- If she is not a CSA, what happens next?

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## Best practices

- Ensure that those working at the hospital/medical center understand their Clery obligations
  - It is essential that they understand how the location is understood for Clery purposes and what their reporting obligations are, if any
- Impress upon hospital/medical center staff the importance of sharing Clery information, even if it's not necessarily a regulatory obligation
- Ensure that the institution follow up with the hospital/medical center staff about what happens with their reports
- Convey that sharing information likely does not implicate confidential information

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## Timely Warnings

- Institutions must understand that they may be required to issue a timely warning for an event that takes place at a hospital or medical center
  - Was there a Clery crime?
  - On Clery geography?
  - Reported to a CSA?
  - Representing an ongoing threat to students and employees?
  - If so, then a timely warning must be issued *as soon as information is available*.
- Institutions should make clear to hospitals and medical centers that a timely warning must withhold as confidential the names and other identifying information of victims, and thus there are not concerns about reporting events to institutions in that regard

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## FERPA

- Hospital or medical center employees may be considered school officials for purposes of FERPA if they:
  - Perform an institutional service or function for which the institution would otherwise use employees;
  - Are under the direct control of the institution with respect to the use and maintenance of education records; and
  - Are subject to the requirements governing the use and redisclosure of personally identifiable information from education records
- This may allow institutions to share student information with certain hospital personnel, but likely will not impact the institution's Clery reporting obligations.

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# Looking Ahead


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## Annual Security Report

**The Department of Education:**

- ✓ The ASR deadline is October 1, 2021
- ✓ All elements of ASR still required



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## Current year policies . . .

- Remember, your ASR must contain **current year policy statements** as of the date of publication



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## Your Clery geography includes more than your main campus!

- Be sure to determine whether the hospitals or medical centers with which you're affiliated are considered Clery geography:
  - Main campus?
  - Separate campus?
  - Noncampus?
- Designate and train CSAs appropriately
- Work with the hospitals and medical centers so that they understand your Clery obligations and theirs
- Reassure them that confidentiality is likely not a concern

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## Questions?

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## Join Us for Our Next Demo

**Clery Compliance Toolset Demonstration**

**Monday, July 19**

**12:00-12:30 PM CDT**

**Questions?**

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