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CLERY IN LIGHT OF COVID-19:

What will change, and what will stay the same?

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Agenda

1. Coronavirus Considerations
2. Emergency Notifications /
Timely Warnings
3. Title IX and VAWA



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Clery Guidance...

CORONAVIRUS

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COVID-19 Guidance

ED issued guidance on April 3rd regarding Clery

- Must still issue emergency notifications
- Not interpreted to require regular, ongoing updates on COVID-19
- You do not need to proactively identify positive COVID-19 cases

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Emergency Notifications

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Emergency Notifications

An institution's ASR must include:

- The procedures the institution will use to immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus.
34 C.F.R. § 668.46(g)(1)
- If there is an immediate threat to the health or safety of students or employees occurring on campus, as described in paragraph (g)(1) of this section, an institution must follow its emergency notification procedures.
- ...the institution must provide adequate follow-up information to the community as needed.
34 C.F.R. § 668.46(e)(3)

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Examples from Clery Handbook

- Approaching forest fire
- Fire currently raging in a campus building
- Outbreak of meningitis, norovirus or other serious illness
- Approaching tornado, hurricane or other extreme weather condition
- Earthquake
- Gas leak
- Terrorist incident
- Armed intruder
- Bomb threat
- Civil unrest or rioting
- Explosion
- Nearby chemical or hazardous waste spill

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From the Regulations...

“An institution that follows its emergency notification procedures is not required to issue a timely warning based on the same circumstances.”




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	Timely Warnings	Emergency Notifications
Scope	Only required in the event of a Clery crime	In the event of any significant emergency or dangerous situations, which may include (but are not limited to) Clery crimes
When Issued	As soon as pertinent information is available about a reported Clery crime on Clery geography that represents an ongoing threat to the safety of students or employees	Immediately upon confirmation of a significant emergency or dangerous situation occurring on campus involving an immediate threat to the health or safety of students or employees
Geographic Scope	Anywhere on the institution's Clery geography	On an institution's campus only
ED's Examples of Appropriate Use	Rash of burglaries or motor vehicle thefts; multiple instances of date rape drugs being used; sexual assault or robbery where perpetrator is unknown/not immediately apprehended	Outbreak of serious illness; approaching significant weather event; bomb threat; etc.
To Whom Issued	All students and employees	Any segment of the campus population determined to be at risk
Purpose	To allow students and employees to protect themselves against a serious or continuing criminal threat; to aid in the prevention of similar crimes	To allow campus community members to protect themselves against an imminent threat to their health or safety

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Scenario

The Emergency Response Team at your school has received notification that an employee who has been on campus within the last 14 days has been diagnosed with COVID-19.

Should you send an emergency alert to campus?

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What should be included in an emergency notification regarding COVID-19?

Include:

- Confirmation of positive COVID-19 case
- Share steps taken to mitigate risk
- Explain steps campus community members should take to limit exposure
- Do not personally identify the person in your notice
- Discuss with legal counsel if you are facing a situation where there is a belief that a person should be identified in a notification



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Methods of Communication

- **From the Clery Handbook:**
 - The regulations don't require your institution to use a particular mode of communication
 - Consider developing overlapping means of communication in case one method fails
 - If any of the emergency notification services require the campus community to sign up, include specific information [in the ASR] on how to do this

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Methods of Communication (cont.)

- **From the Clery Handbook:**
 - Institutions must ensure that notifications and warnings can be transmitted quickly to all students and employees
 - Cannot rely solely on a text messaging system if all members of the campus community are not required to participate in that system
 - Relying [solely] on email would not be adequate for institutions that do not establish an email account for all students and employees (or require them to register an email address)

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Emergency Notification Texts Can Link to Longer Notifications

CAMPUS EMERGENCY ALERT –
FACULTY/STAFF/STUDENTS: Please check
your campus email for an important update.

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Emergency Notifications Can Include a Web Banner

Coronavirus Information and University Updates

The campus is currently closed in accordance with the state-wide stay-at-home order. The University is monitoring the evolving situation and continued spread of the coronavirus, COVID-19.

Important links:

[CDC Website](#)

[Campus COVID-19 Response and University Updates](#)

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Timely Warnings

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An institution must, in a manner that is timely and that withholds as confidential the names and other identifying information of victims . . . and that will aid in the prevention of similar crimes, report to the campus community on [certain] crimes.

34 C.F.R. § 668.46(e)

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Threat Analysis (non-exhaustive list)

- Has the perpetrator been apprehended?
- How much time has passed between the incident and the report?
- Were there multiple perpetrators working together?
- Was the incident violent in nature?
- Were date rape drugs or other substances used to facilitate the crime?
- Was a weapon used during the commission of the crime?
- Does the incident appear to be an isolated incident with a specifically targeted victim(s)?
- Is there a pattern of similar incidents?
 - Such as the same or similar crimes occurring in a short period of time; a particular group being targeted on multiple occasions; etc.
 - Ex: Unknown person(s) engaging in a series of burglaries in the dorms
- Are there other aggravating circumstances or predatory behaviors at issue suggesting that an ongoing danger exists?
- Are there enough details available to determine whether an ongoing danger exists?

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Some Things to be Aware of . . .

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H-B

Department of Education Response on Clery



What can we expect from the Department of Education regarding strict enforcement of crime log requirements?

Will the October 1 ASR deadline be extended given the circumstances?

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ASR Deadline Extended

The Department of Education:

- ✓ Extended the deadline to complete 2019 ASR
- ✓ Deadline is December 31, 2020
- ✓ All elements of ASR still required



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New Proposed Legislation



Clery Compliance Officer Designation Act of 2020 – introduced in early March

Directs schools to designate specific staff to ensure the accurate and timely reporting of sexual violence and other crimes on college and university campuses

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Title IX/VAWA

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Dating Violence, Domestic Violence,
Sexual Assault, and Stalking

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Overview

- Regulations took effect in 2015
- Expands on the sexual assault content of the Clery Act with specific requirements related to dating violence, domestic violence, sexual assault, and stalking
- Many institutions still struggle with these requirements



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Scenario

The person preparing your institution's ASR is feeling pressed as the deadline approaches. He comes to you and says, "I think, to save time and for the sake of completeness, I'll just include our entire Title IX/Sexual Harassment Policy in our Clery Report in the VAWA Section. And since this is our 2019 ASR, my plan is to include the policy that was in effect in 2019."

How do you respond?

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Current year policies . . .

- Remember, your ASR must contain current policy statement as of the date of publication
- According to the Clery Handbook, "Regardless of which policy you're addressing there are some general guidelines to keep in mind: Your statements or descriptions of policies must accurately reflect your institution's **current procedures and practices.**" (pp. 7-1, emphasis in original)

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Why is including the entire policy not a good idea?

- Common mistake
 - Using Title IX/Sexual Misconduct Policy to satisfy VAWA's ASR requirements
- Inevitably leads to including too much information in some areas and not enough in others

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Statements on Educational Programming

Description of educational programming (PPAP & OPAC) for students and employees, which must include:

- A statement that the institution prohibits the VAWA offenses
- Definitions of the VAWA offenses in applicable jurisdiction
- Definition of consent (as it relates to sexual activity) in applicable jurisdiction
- Description of safe and positive options for bystander intervention
- Information on risk reduction

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Example: Missouri Statutes (for VAWA definitions)

- Domestic Violence
- Domestic Assault (1st-4th degrees)
- Stalking (1st-2nd degrees)
- Sexual Assault
- Rape (1st-2nd degrees)
- Incest
- Statutory Rape (1st-2nd degrees)
- Sodomy (1st-2nd degrees)
- Statutory Sodomy (1st-2nd degrees)
- Child Molestation (1st-4th degrees)
- Sexual Misconduct Involving a Child
- Sexual Misconduct (1st-2nd degrees)
- Sexual Abuse (1st-2nd degrees)
- Consent

The institution has determined, based on good faith research, that Missouri law does not define the term dating violence.

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Procedures Victims Should Follow



- Importance of preserving evidence
- How and to whom the alleged offense should be reported
- Options to:
 - Contact law enforcement
 - Be assisted by the institution in contacting law enforcement
 - Decline to notify law enforcement
- Rights of victims and the institution's responsibilities for legal protection orders and those issued by the institution

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Institutional Procedures for VAWA Offenses

Description of procedures when VAWA offense alleged, including:

- Each disciplinary proceeding used to resolve a complaint
- The standard of evidence used in the proceeding
- All possible sanctions following the results
- Range of protective measures available to a victim
- Provisions to ensure proceeding is prompt, fair and impartial
- Conducted by officials who receive annual training
- Equal opportunities for both parties to have others present, including an advisor of their choice
- Simultaneous notification of outcome



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Other VAWA Statements

- Campus and community resources
 - Counseling; health; mental health
 - Victim advocacy; legal assistance; visa and immigration assistance
 - Student financial aid
- Options to change academic, living, transportation and working situations
- Confidentiality
 - Maintain as confidential any accommodations or protective measures, to the extent doing so will not impair the institution's ability to provide them
 - How the institution will complete publicly available recordkeeping, including Clery Act reporting, without inclusion of personally identifying information
- Institution will provide written explanation of rights and options

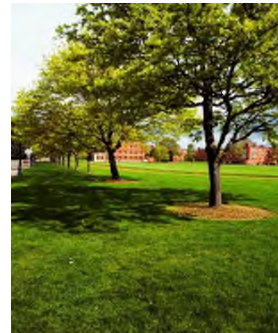
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Written Explanation of Rights & Options

- Must be provided to any student or employee who reports being a victim of a VAWA offense
- Must be a prepared, standardized and written set of materials that details victims' rights and options
- Must include information listed on previous slides (e.g., procedures victims should follow, institutional procedures, confidentiality, resources, etc.)



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Title IX Considerations

- Jurisdiction outside of the United States
 - Title IX does not apply
 - Non-campus property vs. Separate campus
 - Conduct policies
 - Must still satisfy all VAWA requirements

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What are supportive measures?






- Non-disciplinary, non-punitive supports and accommodations designed to preserve access to education programs and activities
- Reasonably available without fee or charge
- Without unreasonably burdening the other party

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Examples of supportive measures

-  Counseling
-  Academic accommodations
-  Housing accommodations
-  Security escorts
-  Leave of absence
-  Increased security or monitoring
-  Modified work schedules
-  Mutual no-contact order where implicated by facts

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Questions?

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CLERY

Compliance Toolset

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