

HUSCHBLACKWELL

# Common Clery ASR Mistakes and How to Avoid Them

Hayley Hanson  
Hayley.Hanson@huschblackwell.com

Ellen Armentrout  
Ellen.Armentrout@huschblackwell.com

July 27, 2023

1

HUSCHBLACKWELL

## Agenda

- Overarching Annual Security Report Requirements
- Common Mistakes and How to Avoid Them
- Interpretive Gray Areas and Other Questions
- Questions/Answers



2

# Overarching Annual Security Report Requirements

3

HUSCH BLACKWELL

## Overarching Annual Security Report Requirements





- ✓ Publish by October 1 each year
- 📊 Determine who gets the report
- 🔗 Distribute the report
- 📄 Include required policy statements
- 📈 Include three years of crime statistics
- 📁 Retain records associated with the report

4 7/24/2023

4

HUSCHBLACKWELL

## Why Clery Compliance Matters

-  More secure campus environment
-  Protect institutional reputation
-  Possible fines of over \$67,000 per violation
-  Possible continued oversight by ED if there are findings of noncompliance

5

5

---

## Common Mistakes and How to Avoid Them

6

## Publish the ASR by October 1



### Don't wait until the last minute!

- Start early (the statistics are from the previous three years!)
- Engage relevant stakeholders, preferably by way of a Clery Committee
- Anticipate bumps in the road
- Allow time for stakeholder review



7

7

## Publish the ASR by October 1 (cont.)



### Be sure to include all requirements

- All the required information must be included in one document
- Drug and Alcohol section is the only section where cross references/ links are allowed for compliance
  - Cross referenced document must contain all the compliance points
  - ED will still do a deep dive into D&A compliance during a Clery audit



8

8

## Multiple Campus Locations

### Be sure to meet the compliance points for each separate campus

- If you include all your separate campuses in one ASR, ensure that you include policy statements that are specific to your specific locations
- Building access and security, reporting obligations, trainings, timely warnings, etc.
- Consider issuing a separate ASR for each campus location to make it easier to ensure compliance obligations are met



9

9

## Who gets the report?



### Be sure to provide the report to *prospective* students and employees (as well as *current* students and employees)




- Include a notice, e.g., on the admissions page
- Include a notice, e.g., on the employment applications page




10

HUSCH BLACKWELL

## Common Report Distribution Issues

-  Not including information about how to obtain a hard copy
-  Not including a brief description of the contents
-  Not including the exact electronic address of the report



11



11

HUSCH BLACKWELL

## Required Policy Statements: General Safety and Security Policies

**Be sure to include all requirements regarding safety and security.**

- Specify arresting authority
- Identify whether there are any MOUs
- Specify that the institution staff will assist with making reports to police
- Describe how to make anonymous reports
- Explain confidential reporting and differences between reporting TIX and other types of behavior



12

12

## Required Policy Statements: General Safety and Security Policies



- Include information about security considerations in the maintenance of facilities
  - Lights, landscaping, etc.
- Include complete educational programming language
  - Type **and** frequency
  - Students **and** employees
  - Procedures **and** prevention



13

13

## Required Policy Statements: General Safety and Security Policies

- Include a statement about monitoring criminal activity at off-campus locations of recognized student organizations
  - If the institution has no RSOs with off-campus locations, that should be stated
- Include a statement that the institution will disclose to the alleged victim (or next of kin) of a crime of violence the report on the results of a disciplinary proceeding



14

14

## Required Policy Statements: Drugs and Alcohol

### Be sure to include:

- Language regarding **enforcing** underage drinking laws and federal and state drug laws
- All the required elements of the drug and alcohol program, either in the ASR or by cross-reference, including the biennial review
- Information for both **students** and **employees**



15

15

## Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking

Simply cutting and pasting the institution's Title IX policy into this section of the ASR will generally **not** meet the compliance requirements of this section.



16

7/24/2023

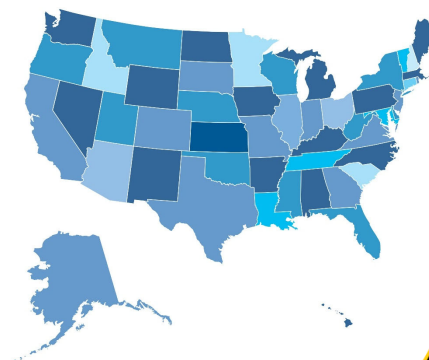
16



## Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking

### Include the current state laws for the relevant jurisdiction:

- Requirement: Include in the ASR the definitions of dating violence, domestic violence, sexual assault, stalking, and consent (with regard to sexual activity) in the applicable jurisdiction
- These are not Clery definitions; these are state law definitions
- The institution must confirm each year that they are accurate (as these laws are subject to change)
- If your institution has campuses in more than one state, the ASR must include state laws for each separate campus



17

17

## Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking



### Be sure to include complete information regarding the PPAP and OPAC

- Primary Prevention and Awareness Programs
  - Incoming **students** and new **employees**
  - Intended to stop dating violence, domestic violence, sexual assault, and stalking before they occur
- Ongoing Prevention and Awareness Campaigns
  - Sustained over time
  - Increased understanding



18

18

## Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking



Be sure to include information regarding no contact orders.

- Regulatory requirement to include “the rights of victims and the institution’s responsibilities for orders of protection, ‘no-contact’ orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution”



19

19

## Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking

Be sure to include statements about available resources for:

- Counseling
- Health
- Mental Health
- Victim advocacy
- Legal assistance
- Visa and immigration assistance
- **Student financial aid**
- Other victim services



20

20

## Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking

### Be sure to include the language about the confidentiality of accommodations and protective measures:

The institution will maintain as confidential any accommodations or protective measures provided a victim to the extent that maintaining confidentiality would not impair the institution's ability to provide them. However, there may be times when certain information must be disclosed to a third party in order to implement the accommodation or protective measure. Such decisions will be made by the institution in light of the surrounding circumstances, and disclosures of this nature will be limited so that only the information necessary to implement the accommodation or protective measure is provided. In the event it is necessary to disclose information about a victim in order to provide an accommodation or protective order, the institution will inform the victim of that necessity prior to the disclosure, including which information will be shared, with whom it will be shared and why.



21

21

## Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking

### Be sure to include all elements of Disciplinary Proceedings:

- Steps
- Anticipated timelines
- Decision-making process
- How to file a complaint
- Standard of evidence
- How the institution determines which type of proceeding to use for allegations of dating violence, domestic violence, sexual assault, or stalking



22

22

## Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking

### Be sure to include all relevant procedures:

- Informal resolution, student handbooks, employee handbooks, non-Title IX sexual misconduct policies, etc.
- Oftentimes the Title IX policy will refer to other policies; those other policies may need to be included
- Relevant timelines
- Appeal procedures



23

23

## Required Policy Statements: Dating Violence, Domestic Violence, Sexual Assault, and Stalking

### Be sure to include all potential sanctions:

- Regulatory language says that all sanctions must be included (whereas only the range of protective measures must be included)
- We recommend against using language like, “including but not limited to”



24

24

## Required Policy Statements: Timely Warnings and Emergency Response

### Be sure to differentiate between Timely Warnings and Emergency Response

- Include language setting forth the standard for when a Timely Warning will be issued (serious or continuing threat to the members of the campus community) and
- When Emergency Response will kick in (significant emergency or dangerous situation occurring on campus involving an immediate threat to the health or safety of members of the campus community)



25

25

## Required Policy Statements: Timely Warnings and Emergency Response

### Be sure to include the process the institution will use to:

- Confirm there is a significant emergency
- Determine the appropriate segment of the campus community to receive a notification
- Determine the content of the notification
- Initiate the notification system

### Institutions must also:

- Include the titles of those responsible for carrying out the above
- Include a statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.



26

26

## Required Policy Statements: Timely Warnings and Emergency Response



### Don't forget to include:

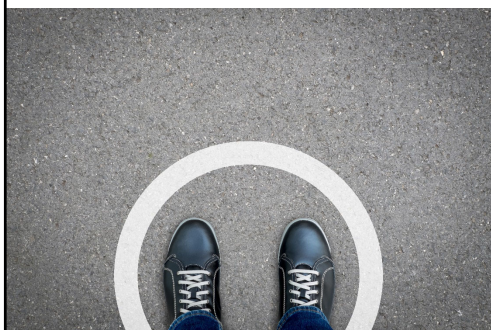
- Methods for notifying the campus (including the larger community)
- How to sign up to receive alerts
- Information about testing and documentation of testing



27

27

## Required Policy Statements: Missing Students



### Be sure to:

- Distinguish between a standard emergency contact and a missing student contact
- Provide information regarding how to designate a missing student contact
- Include a statement that the information will be kept confidential
- Specify that the institution will also contact the parents of unemancipated minors



28

28

## Required Policy Statements: Fire Safety

### Be sure to:

- Include the street address of each on-campus housing location
- Include contact information for reporting fires that have already occurred
- For each facility, include: number of fires, cause, number of persons receiving medical treatment, number of deaths, value of property damage
- Include plans for future improvements in fire safety, **or say that there are none**



29

29

## Crime Statistics

### Be sure to:

- Use current terminology for sex offenses (rape, fondling, incest, and statutory rape – not sex offenses-forcible and sex offenses-non-forcible)
- Make sure arrests and disciplinary referrals are disclosed separately
- Hate crimes that occur that are also primary criminal offenses must be disclosed as both hate crimes and regular crime statistics
- Make sure hate crime disclosures include biases
- Publish three years of statistics
- Make sure statistics are disclosed by type of Clery geography (on campus, public property, noncampus property, and on-campus student housing facilities)
- Dual report on-campus and on-campus housing statistics
- Appropriately record unfounded crimes (only sworn or commissioned law enforcement can determine that a crime is unfounded)



30

30

## Correcting the Annual Security Report



- From the Clery Handbook:
  - Must update your ASR if you make corrections to your statistics or changes to safety and security policies
  - Add a note to the ASR explaining the change
  - Once revised, must redistribute
- FSA Appendix and Clery regulations are silent regarding corrections
- Start planning what your institution will do about its ASR once the new Title IX regulations come out (potentially resulting in changes to disciplinary procedures regarding VAWA crimes)



31

## Interpretive Gray Areas and Other Questions

32



## Campus Geography – Non-Campus Building or Property

- Any building or property owned or controlled by a student organization that is officially recognized by the institution;
- Any building or property:
  - Owned or controlled by an institution;
  - Used in direct support of, or in relation to, the institution’s educational purposes;
  - Frequently used by students; and
  - Not within the same reasonably contiguous geographic area of the institution



## Campus Geography – Trips



- Clery Handbook – Filled with guidance
  - Repeated one-night stays
  - Short-stay “away” trips
- FSA Appendix: “The Appendix has also addressed the issues identified in the above-referenced Senate Report regarding reporting crimes that occur during institution sponsored stay-away trips and similar mandates placed upon trips to international destinations, that require institutions to obtain crimes statistics from foreign law enforcement agencies.”

## Campus Geography – Separate Campus

- From the Clery Handbook:
  - Ownership/control
  - Not reasonably contiguous
  - Organized program of study
  - At least one person on site acting in an administrative capacity
- FSA Appendix: “If an additional location, branch campus, school within the institution, or an administrative location is not within a reasonably contiguous area, such location would be considered a separate campus for reporting purposes.”

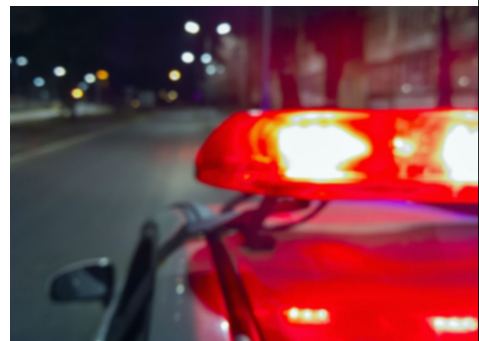


35

## Campus Security Authorities

The regulations define a CSA as:

- Campus police or security department
- Individual(s) responsible for campus security (not including campus police or security)
- Individual or organization to which student and employees are instructed to report criminal offenses
- 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



36

HUSCH BLACKWELL

## Campus Security Authorities

**Clery Handbook:**  
Expanded the definition to include “any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.”





**FSA Appendix:**  
“The Department will defer to an institution's designation of CSAs as authoritative . . . [I]nstitutions should focus on the ‘significant responsibilities’ of an employee when determining whether that employee is a CSA.”

37 7/24/2023

37

HUSCH BLACKWELL

## Recommendations for Determining CSAs

-  Be consistent with designations. E.g., look for similarities of positions among departments and categorize those employees the same way.
-  Document your CSA decisions
-  Once determined, include all CSAs in any CSA-related correspondence
-  Strongly consider providing CSA training


38 7/24/2023

38

HUSCH BLACKWELL

## CSAs and Confidential Reports

- Pastoral and professional counselors, when acting in their capacities as such, are **not** considered CSAs – no obligation to report
- What about victim advocates? Title IX coordinator?
  - If these positions are CSAs at the institution, they have an obligation to **report** and they must do so in a **timely fashion** for the institution to meet its compliance obligations
    - Timely warnings/emergency notifications
    - Crime log reporting
    - ASR reporting
  - Note that the Clery Handbook (rescinded) says that reports can be made **without** personally identifying information






39 7/24/2023

39

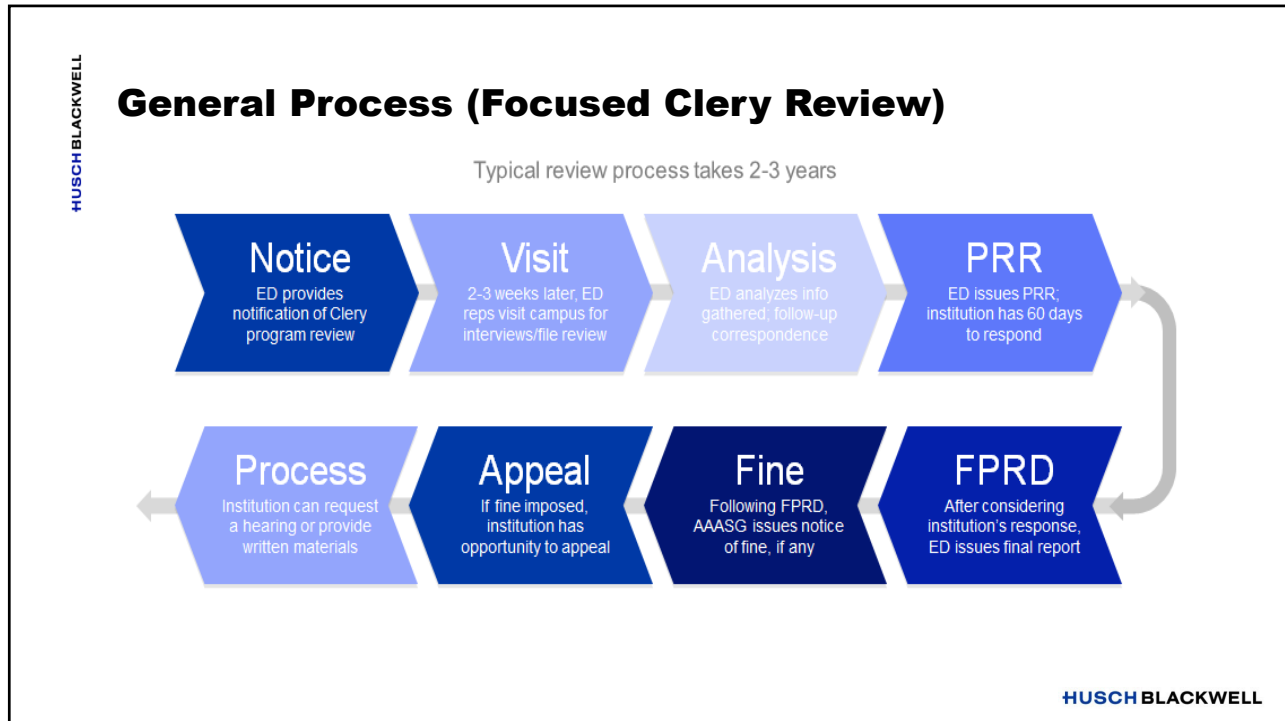
HUSCH BLACKWELL

## What will happen if your institution gets audited?

-  Has your institution been in the news recently?
-  Do you have any disgruntled students or employees who may be reaching out to ED?
-  Are you due for a Title IV review?

40 7/24/2023

40



41

**HUSCH BLACKWELL**

### Upcoming Software Demos: Clery Compliance Toolset



- Designed by higher education attorneys based on the Department of Education Clery Act regulations.
- Develop policies and procedures, log incidents, and generate your Annual Security Report (ASR). Optional “red flag” review by higher ed attorney.
- Contact Anastasia Caffrey, Clery Compliance Program Manager at [Anastasia.Caffrey@HuschBlackwell.com](mailto:Anastasia.Caffrey@HuschBlackwell.com) with questions.
- Scan the QR code to register for our next upcoming Toolset demo:

Friday, July 28  
12:00 p.m. Central

or

Tuesday, August 8  
12:00 p.m. Central



**HUSCH BLACKWELL**

42 7/24/2023

42



**Questions**

© 2023 Husch Blackwell LLP

43



**HUSCH BLACKWELL**

© 2023 HUSCH BLACKWELL LLP

44