



TOPIC:

SAFETY, MISSING STUDENTS AND FIRE REPORTING REQUIREMENTS OF THE HIGHER EDUCATION OPPORTUNITY ACT

INTRODUCTION:

The Higher Education Opportunity Act of 2008 [\[1\]](#) and its accompanying regulations [\[2\]](#) establish new requirements for colleges in the areas of personal safety and crime reporting, fire safety and reporting, and missing students. The law and regulations require certain changes to the Annual Security Report [\[3\]](#), as well as the creation or amendment of policies and procedures. In addition, for the first time, colleges must issue an Annual Fire Report. This NACUANOTE will discuss the steps each college or university must take to comply with the statute and regulations which took effect on July 1, 2010.

DISCUSSION:

Changes to the Clery Act

Hate Crime Reporting [\[4\]](#)

The HEOA and its accompanying regulations add four new crimes to the annual reporting requirements that must be submitted to the U.S. Department of Education (Department) (usually in or around August or September) and published in the Annual Security Report (ASR). The four new crimes are:

- larceny-theft;
- simple assault;
- intimidation; and
- damage/vandalism of property.

These crimes are only reportable when committed in the context of a hate crime. If they are not committed in the context of a hate crime, they are not reportable. As with other Clery Act reportable crimes, the definitions mirror those in the Federal Bureau of Investigation's Uniform Crime Reporting guidelines. Specific guidance about hate crime reporting may be found in the "Hate Crime Data Collection Guidelines [\[5\]](#)." As before, the regulations require that campuses report all other Clery crimes that occur in the context of hate crimes as well as those hate crimes which result in bodily injury.

Since hate crimes are rare on college campuses when compared to other crimes, the Department has stated that they are the only crimes in the ASR that may be reported either in the traditional tabular format, or in a narrative format [\[6\]](#).

For the four newly reportable hate crimes, the 2010 ASR (to be completed on or before October 1, 2010) need include only those crimes that occur in 2009. The 2011 ASR will report on such hate crimes that occur in 2009 and 2010, and the 2012 ASR will be the first to require the traditional three years of rolling reporting on all hate crimes, including those already required and those newly required.

New Security and Emergency Response Policies and Procedures [\[7\]](#)

The new regulations require that colleges enact and catalog certain policy changes relating to emergency notifications [\[8\]](#) in the 2009 Annual Security Report (ASR) to be issued on or before

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describe each on-campus student housing facility;
report the number of fire drills conducted during the reporting year;
list the campus policies or rules on portable electronic appliances, smoking, and open flames in a student housing facility;
list the campus procedures for evacuating student housing in the event of a fire;
list the policies regarding fire safety education and training programs provided to the student and employees (including the procedures that students and employees should follow in the case of a fire);
list the titles of each person or organization to which students and employees should report that a fire occurred; and
list plans for future improvements in fire safety, if any.

As with the missing persons policy

Publishing the Annual Safety and Fire Reports

Department of Education regulations and commentary recommend that both the Clery Annual Safety Report and the Annual Fire Report be distributed to the campus community in a single document. A college may distribute the reports in separate documents provided that each document references the existence of the other document and provides information on how one can locate and access the other document.

These ASR and Annual Fire Reports may be sent to the campus community by means of postal mail, a postcard with a printed link to the report(s) on the Internet, or by an e-mail with a direct link to the report(s). Practically, most campuses today send e-mails to all members of the campus community. This e-mail should cover the report(s) alone, and should not place the report(s) within a laundry list of other information. The link should be a “high-level” link (as a rule of thumb, if the link is so long that a reasonable person would never type it in to a browser if found on a piece of paper, then it probably does not meet federal requirements). Finally, colleges should also make the report(s) available to prospective faculty and staff (including a statement of the availability of the report(s), a description of the contents of the report(s), and an opportunity to request a copy of the report(s)). In addition, campuses should place links to the report(s) on the Admissions and Human Resources Web pages.

CONCLUSION:

Federal law and regulation require several changes in the areas of safety and fire reporting. In the near future, the Department will be updating the Handbook for Campus Crime Reporting [\[24\]](#) to reflect the changes to crime, safety and fire reporting described above.

Colleges will need to establish or amend policies and procedures to ensure that the information described above is collected and included in the 2009 ASR and Annual Fire Report, which campuses must issue before October 1, 2010.

FOOTNOTES:

FN1. See Public Law 110-315 (8/14/08).

FN2. See Department of Education General and Non-Loan Programmatic Issues; [Proposed Rule, 74 Fed. Reg. 42380](#) (Aug. 21, 2009) (to be codified at 34 CFR Parts 600, 668, 675 et al.). See also Department of Education General and Non-Loan Programmatic Issues; [Final Rule, 74 Fed. Reg. 55902, 55926](#) (Oct. 29, 2009) (to be codified at 34 CFR Parts 600, 668, 675 et al.).

FN3. For the purposes of this NACUA Note, the year of the Annual Security Report or Annual Fire Report is the year in which the report is issued. For instance, the 2010 Annual Security Report will be issued on or before October 1, 2010 and will include (with some exceptions detailed elsewhere in this memo) statistics for the 2009, 2008, and 2007 calendar years.

FN4. See 34 CFR § 668.46 (c)(3).

FN5. See [HATE CRIME DATA COLLECTION GUIDELINES](#).

FN6. See [THE HANDBOOK FOR CAMPUS CRIME REPORTING](#), p. 84.

FN7. See 34 CFR § 668.46 (g).

FN8. For information on the distinction between emergency notifications and timely warnings, please see ["Distinction Between Timely Warnings and Emergency Notifications"](#) of this Note below.

FN9. See 34 CFR § 668.46 (e). It should be noted that the timely warning requirement under Clery was limited to warnings about Clery crimes. See [THE HANDBOOK FOR CAMPUS CRIME REPORTING](#), p. 4. The emergency notification requirement is a broader requirement related to all emergencies, not just Clery reportable crimes. See Department of Education General and Non-Loan Programmatic Issues; [Proposed Rule, 74 Fed. Reg. 42380, 42396](#) (Aug. 21, 2009) (to be codified at 34 CFR Parts 600, 668, 675 et al.).

FN10. See ["New Security and Emergency Response Policies and Procedures"](#) of this Note above.

FN11. See 20 USC § 2092 (f)(1)(C).

FN12. See 34 CFR § 668.46 (b)(4).

FN13. See 34 CFR § 668.46 (h).

FN14. The Department of Education uses the following definition for on-campus student housing facility: any student housing facility that is owned or controlled by the institution, or is located on property that is owned or controlled by the institution, and is within the reasonably contiguous geographic area that makes up the campus.

FN15. Nothing in the regulations would lead to the conclusion that this requirement is satisfied by currently collected emergency contact data. It would seem that, under the regulations, campuses may collect this specific information during their regular request for emergency contact information, but should specify that the student should provide a confidential contact for this specific purpose. The format could be a simple question asking the on-campus residential student to list the name and contact information for a person or persons whom the institution should contact in the event the student is reported missing for more than twenty four hours. Such a request for contact information is sure to meet the requirements of the statute and regulation.

FN16. The Department of Education views the provision of such confidential contact information as an implicit waiver of FERPA for the specific purpose of law enforcement personnel contacting the listed confidential contact under these specific circumstances.

FN17. See Department of Education Final Rule, *supra* Note 2.

FN18. See 34 CFR § 668.49.

FN19. See ["Missing Student Procedure"](#) of this Note above.

FN20. The Department of Education uses the following definition for on-campus student housing facility: any student housing facility that is owned or controlled by the institution, or is located on property that is owned or controlled by the institution, and is within the reasonably contiguous geographic area that makes up the campus.

FN21. The Proposed Regulations, *supra*, Note 2, issued by the Department of Education on August 21, 2009 discuss the definition of fire in a passage that is worthy of review:

"The committee discussed the definition of fire at length. Generally, the negotiators agreed that the critical elements of a reportable fire are that it occurs in a place not intended to contain the fire

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