

COVID-19 and Clery Act Considerations for Institutions of Higher Education

As campuses navigate their responses to the on-going COVID-19 pandemic, we want to highlight issues you should consider regarding your Clery Act Obligations. These notes reflect our research and conversations with representatives of the U.S. Department of Education's Clery Act Compliance Division (ED).

1. Emergency Notification (EN)

a. *When is an emergency notification (EN) necessary?*

Under the Clery Act, institutions are required to immediately notify the campus community [generally includes students, employees, visitors and the "larger community" see 34 CFR 668.46(g)(5)]¹ upon confirmation of a significant emergency or dangerous situation occurring on the campus that involves an immediate threat to the health or safety of students or employees. An "immediate" threat as used here includes an imminent or impending threat, such as an approaching forest fire, or a fire currently raging in one of your buildings.

Some other examples of significant emergencies or dangerous situations are:

- *outbreak of meningitis, norovirus or other serious illness; (Handbook p. 6-2)*

b. *While the Clery Act requires ENs for situations "on campus" (Handbook p. 6-16), you may have a policy that addresses:*

- *Emergency notifications for incidents at non-campus² buildings or properties;*
- *Notification of emergencies at off campus locations, not required by the Act.³*

c. *Initial vs. subsequent COVID-19 confirmations:*

- **Initial Confirmations:** Based upon ED guidance during past outbreaks, we extend that logic and advise that after the initial EN, subsequent COVID-19 confirmations do not *necessarily* create a need for an additional Emergency Notification (as defined by the Clery Act). Rather, the expectation is that the IHEs would disclose additional and

¹From Handbook p. 6-1 relative to "campus community" it notes, "and that you have considered how you will inform the campus community and other individuals, such as parents and guardians, in the event of an emergency"

²The Handbook (pp. 2-18 – 2-26) contains a detailed explanation of Clery Act geography.

³The Handbook (p. 6-3) notes that if "your IHE has a policy for such notices you must follow that policy." We address policy revision later in this summary.

appropriate information through their established channels (i.e., web page dedicated to institutional COVID-19 response or routine updates distributed through other means).

- Subsequent Confirmations Indicating a Potential Significant Exposure: Consistent with long-standing ED guidance, we have confirmed with that institutions should analyze each report on a case-by-case basis, and that a report indicating a potential “hot spot,” cluster, or other significant factors should trigger additional *analysis* that could lead to a follow-up notification. We suggest that institutions reference the initial EN in any subsequent notifications.

d. IHEs with Teaching Hospitals or Medical Centers - Patient vs. medical student/resident.

- A patient, employee or student, in fact, any member of the campus community (broadly defined to include visitors, third parties, etc.) confirmed with COVID-19 would create this “*immediate threat*” necessitating an EN.
- Again, as stated above and consistent with long-standing ED guidance, institutions must analyze each report on a case-by-case basis to determine whether it should issue additional notices.

2. Geography

- a. Noncampus is a complex and nuanced set of locations that an IHE uses and is commonly located more than a mile from the main campus. As noted in footnote 3, ED devotes considerable attention describing all noncampus properties. As we have noted, while the EN requirements do not apply to noncampus properties, your policy may include provisions for issuing emergency notification beyond those required by the Act.*
- b. Institution-associated hospitals and/or medical centers that are controlled by your institution and reasonably contiguous with your campus should be included as part of your campus (On-Campus Clery Geography). Beyond formal legal arrangements, other factors that are considered in determining whether, for Clery Act purposes, the institution controls a hospital or medical center include overlapping faculty/doctors, overlapping boards of directors or officers, use of the hospital or medical center as part of the institution’s educational program, geographic proximity, an ongoing relationship between the institution and the hospital, and whether students consider the hospital or medical center to be part of the campus.*

c. Institutions With More Than One Campus⁴

If your institution has more than one campus, each campus must comply independently with all Clery Act and the fire safety-related HEA requirements described in this handbook, including publishing its own annual security report as discussed in Chapter 9 (or your institution may publish and distribute to students and employees a single annual security report as long as it clearly differentiates each campus's policies and statistics). For the purpose of these requirements, consider an additional location a separate campus if it meets all of the following criteria:

- *Your institution owns or controls the site;*
- *It is not reasonably geographically contiguous with the main campus;*
- *It has an organized program of study; and,*
- *There is at least one person on site acting in an administrative capacity.*

An organized program of study means that the location offers courses in educational programs leading to a degree, certificate, or other recognized credential. (Handbook p. 2-6)

- d. If an IHE provides "surge capacity" in support of local COVID-19 response like public health or public safety efforts (i.e. testing centers or additional hospital treatment areas, or shelters), the Clery Act applies to the IHE. Institutions should ensure these "mutual aid" efforts consider Clery Act requirements. For example, local law enforcement or security staff members provided by the local hospital using the campus might be CSAs *if the location*

⁴Handbook p. 2-7 *Examples of separate campuses* Branch campus definition citation 34 CFR 600.2

• **Branch:** A branch campus is always a separate campus. **Branch campus** is a specific Department designation. It is defined as a location of an institution that is geographically apart and independent of the main campus of the institution. A location of an institution is considered independent of the main campus if the location is permanent in nature, offers courses in educational programs leading to a degree or other recognized educational credential, has its own faculty and administrative or supervisory organization, and has its own budgetary and hiring authority.

• **School:** A school is a division of an institution that is organized to give instruction of a defined type, such as a school of business, law, medicine, or nursing. A school may be, but is not always, a separate campus. For example, if your institution has a school of law that is reasonably geographically contiguous with the main campus, include it as part of your main campus. If the school of law has an organized program of study and administrative personnel on-site, and is not reasonably contiguous to the main campus, treat it as a separate campus. Note that if you have a beauty school or technology school, etc., with multiple locations that each function as a main campus, each campus must comply independently with the Clery Act's requirements.

is frequently used by students (Handbook p. 2-2), As we noted earlier, Emergency Notification requirements remain in effect for these locations.

3. Campus Security Authorities

- a. As noted above, all Clery Act obligations apply to “separate” campuses, including the requirement to identify CSAs and require them to report applicable crimes to the institution, as outlined in institutional policies.
- b. As IHEs implement broad closures similar to holiday shutdowns, with essential staff and exceptionally small populations, Clery Act obligations remain in effect. As of this time, CSAs must forward reports of crimes as institutional policies dictate. We do not expect ED will dilute these requirements based upon the COVID-19 pandemic.

4. Additional Considerations

- a. We highly encourage higher education administrators to stay connected with institutional, local, and county public health officials and follow the guidance issued by the Centers for Disease Control and Prevention (<https://www.cdc.gov/coronavirus/2019-nCoV/index.html>).
- b. If an IHE revises its Clery Act required policies, it must republish the current ASR or AFSR. The Handbook provides guidance for this process on pp. 9-10 – 9-11. Policies you may have revised given the current pandemic include:
 - Emergency response and evacuation (i.e. you may want to adapt your policy for “segmenting” the notification as the Handbook discusses on p. 6-9)⁵;
- c. Daily crime log requirements remain in effect and we do not expect changes to these on-going requirements.
- d. In recent conversation with the Department we have confirmed that where institutions are unable to undertake annual tests of their Emergency Response and Evacuation requirements [34 CFR 668.46(g)(6) and Handbook pp. 6-9 – 6-10), they recommend that institutions carefully document their inability to meet this, and any other requirement, due to the on-going situation.

⁵Ibid