



Department Of Education Clery Act Program Reviews: Common Themes

Institutions of higher education are constantly growing and evolving, often looking for new or more efficient ways to address campus safety within their communities. This document helps to break down one of the most valuable tools an institution can utilize to address campus safety needs: program reviews from the Department of Education (ED). These program review findings composed by the Department of Education are made accessible to the public and provide direct, clear insight into how institutions of all shapes and sizes struggled with complying with the Clery Act and how they addressed those challenges. This can be a helpful resource in developing best practices for Clery Act implementation.

This document, created through a content analysis of program reviews published since 2011, begins with a description of the Clery Act itself and an overview of the Department of Education's role in enforcement through program reviews. For each common compliance challenge, the **Clery Act Requirements** section breaks down required elements of the Clery Act. The **ED Recommended Action Steps** highlight specific actions that institutions took to address the findings – the same steps a campus multidisciplinary team can explore when addressing their own challenges or gaps.

Background:

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) requires all colleges and universities who receive Title IV funding to share information about crime on campus and their efforts to improve campus safety. The U.S. Department of Education enforces the Clery Act and the Department's Federal Student Aid office conducts program reviews to evaluate institutions' compliance with the Act.

There are a number of situations that may initiate a program review, including the receipt of a complaint, media events that raise concerns, identification of serious non-compliance during the institution's independent audit, or through a review selection process that may coincide with state reviews performed by the FBI's Criminal Justice Information Services (CJIS) Audit Unit.

Program reviews by the Department's Federal Student Aid office generally fall into one of two categories: 1.) a general program review of the institution's activities related to federal student aid programs, or 2.) a program review focused specifically on campus security.

Possible consequences of review findings include fines of up to \$35,000 per violation or limitation, suspension, or termination of the eligibility for student financial aid programs. **Not all program reviews result in findings of non-compliance, nor do all program reviews result in fines.**

Content analysis of past program reviews not only highlights common patterns for how institutions were non-compliant, but also identifies specific action areas institutions should consider when building or enhancing their own programs.

The Department of Education (ED) encourages institutions to be proactive rather than reactive. Internally identifying institutional compliance gaps provides the opportunity for the campus to address a problem before a program review or, more importantly, before it impacts the safety or security of a campus community member. It allows the institution to get the technical assistance it needs – from the Department of Education or other Clery Act experts – to address any areas of confusion.

The information below is broken out into topical areas and provides examples of review findings specific to each topic, the Clery Act requirements tied to that topical area, and action items to consider in relation to the findings.

Use program reviews as a source of information for Clery Compliance Teams to ensure institutions are asking the right questions, reexamining existing policies and procedures, and modeling a collaborative approach to compliance. They can also be used to garner additional support from campus leadership by providing concrete areas for development based on the experiences of other colleges and universities.

Challenge:

Collection And Sharing Of Clery Act Crime Statistics

Background:

Institutions are required to compile and publish Clery Act crime statistics, but many program reviews highlight examples where institutions did not appropriately classify specific Clery act crimes according to Clery Act definitions or statistics reported to the Department of Education did not match statistics within their annual security reports. It's also important to consider the sources of Clery Act reports - individuals required to report under the Act ("campus security authorities") and local law enforcement - as institutions must have effective processes for collecting reports in order to have accurate statistics.

Examples of Specific Findings:

- *Failure to Properly Classify and Disclose Crime Statistics*
- *Reporting Discrepancies in Crime Statistics Published in the ASR and Those Reported to Department's Campus Crime Statistics Database*
- *Improper Formatting & Disclosure of Crime Statistics*
- *Failure to Establish an Adequate System for Collecting Crime Statistics from All Required Sources & Misclassification of Crimes*

Clery Act Requirements

- Compile and publish statistics for the three most recent calendar years for specific Clery Act crimes that occur within Clery geography (see Geography below).

ED Recommended Action Steps

- Review or establish internal policies, procedures, internal controls, and training programs for disclosing statistics accurately and completely. Address potential gaps related to access and custody of records, flow of information, and communication processes.

Clery Act Requirements

- These crimes include murder/non-negligent manslaughter and manslaughter by negligence; sex offenses (rape, fondling, incest, and statutory rape); robbery; aggravated assault; burglary; motor vehicle theft; arson; hate crimes (any of the previously listed crimes plus simple assault, larceny- theft, intimidation, or destruction/damage/vandalism of property motivated by bias); arrests and referrals for liquor law violations, drug law violations, and illegal weapons possession; and domestic violence, dating violence, and stalking.

ED Recommended Action Steps

- Properly classify all Clery-reportable incidents reported to campus police or a campus security authority using Clery Act crime definitions.
- Ensure that information for all the Clery Act crime categories is collected by the institution and disclosed.
- Establish an internal review process for crime statistics.
- Consider whether existing records management systems facilitate effective Clery information-sharing.

Clery Act Requirements

- These statistics must be reported to the Department of Education and disclosed in the institution's annual security report (see Annual Security Report below).

ED Recommended Action Steps

- Include complete list of required crime statistics for the previous three years within the institution's annual security report.
- Submit statistics included within the institution's annual security report to the Department of Education's online campus crime statistics database, the Campus Safety and Security Data Analysis Cutting Tool (CSSDACT). Review statistics before submitting to ensure that the same statistics are reflected both in the annual security report and the CSSDACT submission.
- Retain all Clery Act records for at least 7 years, including campus police or campus public safety records and reports from campus security authorities.

Clery Act Requirements

- Count all statistics reported to “campus security authorities” or local law enforcement.
- Campus security authorities include a campus police or security department of an institution, any individual or individuals who have responsibility for campus security but who do not constitute a campus police or security department, 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, and any official of an institution who has significant responsibility for student and campus activities.

ED Recommended Action Steps

- Provide notification and training to campus security authorities on their role and responsibilities. Provide training on crime classification for individuals collecting and reviewing crime statistics.
- Revise reporting forms to include necessary data fields to facilitate necessary information-sharing. Use or develop quick reference guides for campus security authorities.
- Provide information and training on writing detailed incident reports to applicable CSAs.

Challenge: Identifying Clery Geography

Background:

Clery Act reporting is tied to specific Clery Act geography – on-campus buildings and property, on-campus student housing, public property, and noncampus buildings and property. Understanding what buildings and property the institution owns or controls is a critical first step to Clery compliance because all reporting is tied to this geography. In some program reviews, some institutions didn’t identify certain locations they owned or controlled as within their Clery geography or didn’t collect statistics for those specific sites.

Examples of Specific Findings:

- *Failure to Properly Define the Campus & Report Crime Statistics*
- *Failure to Obtain Crime Statistics for Additional Locations*

Clery Act Requirements

- For the purposes of collecting statistics for Clery Act crimes (see Clery Act Crime Statistics above) for submission to the Department of Education and inclusion in the institution’s annual security report, Clery geography includes:
 - » On-campus property: any building or property owned or controlled by an institution within the same reasonably contiguous area and used by the institution in direct support of, or in a manner related to, the institution’s educational purposes, including residence halls; and any building or property that is within or reasonably contiguous to the area defined above that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor)
 - » Noncampus building or property: any building owned or controlled by a student organization that is officially recognized by the institution; or any building or property owned or controlled by an institution that is used in direct support of, or in relation to, the institution’s educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution
 - » Public property within or immediately adjacent to and accessible from campus
- For the purposes of maintaining the crime log, Clery geography includes areas within the patrol jurisdiction of the campus police or the campus security department.

ED Recommended Action Steps

- Identify all properties the institution owns or controls. This should include formal or informal written agreements for use of space.
- Identify all properties owned or controlled by student organizations officially recognized by the institution.
- Create a campus list or map identifying Clery geography by category: “on-campus,” “on-campus student housing,” “noncampus”, and “public property.” Update the list or map if or when geography changes (for example, if the institution gains control of an additional location that is used for educational purposes.)
- Develop procedures for collecting statistics from campus security authorities and local law enforcement for all Clery-reportable incidents occurring within Clery geography (see Crime Statistics section above).

Challenge:

Compilation And Distribution Of The Annual Security Report With Accurate And Complete Policy Statements

Background:

Institutions must publish and disseminate an annual security report (ASR) by October 1 of each year. This report captures the institution's Clery Act crime statistics as well as policy statements describing key elements of the institution's campus safety and security policies. Often times gaps reflected within program reviews tie to lack of information - for example, an institution that doesn't have specific required policies in place or doesn't adequately describe the existing required policies within the ASR. Other times, the findings were related to how the report was shared – an institution did not publish an ASR, the information existed on the campus in many different areas but was not compiled into one comprehensive report, or the ASR wasn't shared by the October 1 deadline.

Examples of Specific Findings:

- *Failure to Publish and Distribute the Annual Security Report*
- *Crime Awareness Requirements Not Met*
- *Lack of Adequate Policy Statements*
- *Annual Security Report Not Prepared and Distributed as a Single Comprehensive Document*

Clery Act Requirements

- Prepare an annual security report reflecting current policies that contains, at a minimum:
 - » Campus crime statistics (see Clery Act Crime Statistics above)
 - » A statement of policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus
 - » A statement of policies concerning security of and access to campus facilities, including campus considerations used in the maintenance of campus facilities
 - » A statement of policies concerning campus law enforcement
 - » A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others
 - » A description of programs designed to inform students and employees about the prevention of crimes
 - » A statement of policy concerning the monitoring and recording through local police agencies of criminal activity by students at noncampus locations of student organizations officially recognized by the institution, including student organizations with noncampus housing facilities
 - » A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of state underage drinking laws
 - » A description of any drug or alcohol-abuse education programs as required under the Drug-Free Schools and Communities Act of 1989 (see Drug-Free Schools and Communities Act below)
 - » A statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking and of procedures that the institution will follow when one of these crimes is reported
 - » A statement advising the campus community where law enforcement agency information provided by a State under section 121 of the Adam Walsh Child Protection and Safety Act of 2006 concerning registered sex offenders may be obtained
 - » A statement of policy regarding emergency response and evacuation procedures
 - » A statement of policy regarding missing student notification

ED Recommended Action Steps

- Annually develop an annual security report that contains all the required statistics and policy statements within a single comprehensive document.
- Review each policy statement and the specific components that comprise each statement to ensure they reflect all required elements and align with existing campus policies. Review statistical categories to ensure the annual security report reflects all Clery Act crimes for the previous three years that occurred within Clery geography and were reported to a campus security authority or local law enforcement.
- Review and revise policies and procedures for annual security report distribution. These policies should specify how the institution distributes the annual security report, including how the institution provides the report to current students and employees and how the institution notifies prospective students and employees of its availability. Distribute ASRs by October 1 of each year.

Clery Act Requirements

- Distribute the annual security report to all current students and employees.
- Inform prospective students and employees about the availability of the report.

ED Recommended Action Steps

- Test any technology the institution will use for distribution to ensure it is operational by October 1.
- Test website links to ensure they work.

Challenge: Maintaining A Daily Crime Log

Background:

Institutions with campus police or security departments must maintain a daily crime log with specific information on crimes occurring within Clery geography and the institution's patrol jurisdiction. An institution can be out of compliance by not maintaining a log (if they have police or security on campus) or by missing specific crime log elements.

Examples of Specific Findings:

- *Failure to Maintain an Accurate & Complete Daily Crime Log*

Clery Act Requirements

- Clery Act crime log requirements only apply to institutions that maintain campus police or campus security departments.

ED Recommended Action Steps

- Determine whether the institution has a campus police or security department. This includes contracted private security or agreements with municipal, county, or state law enforcement agencies for security services.

Clery Act Requirements

- Maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred within Clery geography and that is reported to the campus police or campus security department.

ED Recommended Action Steps

- If the institution has a campus police or security department, maintain a written, easily understood crime log that records, by the date the crime was reported, any crime that occurred on campus, in a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or security department.

Clery Act Requirements

- The log must include the nature, date, time, and general location of each crime and the disposition of the complaint, if known.
- Institutions must make an entry or an addition to an entry to the log within two business days of the report of the information to the campus police or the campus security department unless the disclosure is prohibited by law or would jeopardize the confidentiality of the victim.
- Information may be withheld if there is clear and convincing evidence that the release of the information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence. The withheld information must be disclosed once the adverse effect is no longer likely to occur. Only the information that would cause the adverse effects may be withheld.

ED Recommended Action Steps

- Review the log to ensure it includes information for each reported crime (including the nature, date, time and general location of each crime and the disposition of the complaint, if known) and that the institutions adds any additions to the crime log within two business days of the crime report.
- Review the log to ensure it includes all reported crime, not just Clery Act crimes.

Clery Act Requirements

- Make the crime log for the most recent 60- day period open to public inspection during normal business hours. Make any portion of the log older than 60 days available within two business days of a request for public inspection.

ED Recommended Action Steps

- Review campus safety policies and procedures to ensure the log is maintained and freely accessible and available for inspection by the public.

Challenge:

Drug-Free Schools And Communities Act Requirements Implementation

Background:

The Drug-Free Schools and Communities Act (DFSCA) requires institutions to adopt and implement a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees. The Clery Act requires a description of any drug or alcohol-abuse education programs as required under DFSCA within the institution's annual security report, but does allow for a cross-reference of materials. Findings related to the DFSCA often link back to whether specific prevention requirements were met, particularly the biennial review institutions must conduct to evaluate the effectiveness of the program and implement changes and ensure that disciplinary sanctions are consistently enforced.

Examples of Specific Findings:

- *Drug & Alcohol Abuse Prevention Program Requirements Not Met*
- *Inadequate Drug & Alcohol Prevention Policies*

Clery Act Requirements

- Include within the institution's annual security report a description of any drug or alcohol-abuse education programs as required under the Drug-Free Schools and Communities Act (DFSCA) of 1989.
- Institutions can cross-reference the materials the institution uses to comply with the DFSCA.

ED Recommended Action Steps

- Include description of any drug or alcohol- abuse education programs as required under the Drug-Free Schools and Communities Act (DFSCA) within the annual security report. If cross-referencing to DFSCA, make sure the statement is clear on where and how to access the additional content.

DFSCA Requirements

- The DFSCA requires institutions to adopt and implement a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees. At a minimum, the program must include the annual distribution to each student and employee of:
 - » Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on the institution's property or as part of any institution's activities
 - » A description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol
 - » A description of the health risks associated with the use of illicit drugs and the abuse of alcohol
 - » A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and
 - » A clear statement that the institution will impose sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution for violations of the standards of conduct

ED Recommended Action Steps

- Review and revise policies and procedures for distributing Drug and Alcohol Abuse Prevention Program (DAAPP) materials.
- Determine whether existing program content meets DFSCA requirements.
- Develop new program content as needed.
- Review specific required statements to ensure that they reflect all required elements and align with campus policies.
- Ensure established procedures include annual DAAPP disclosure to students and employees.

DFSCA Requirements

- The DFSCA also requires a biennial review by the institution of the institution's program to:
 - » determine the program's effectiveness and implement changes to the program if changes are needed
 - » determine the number of drug and alcohol-related violations and fatalities that occur on the institution's campus or as part of any of the institution's activities and are reported to campus officials
 - » determine the number and type of sanctions that are imposed by the institution as a result of drug and alcohol-related violations and fatalities on the institution's campus or as part of any of the institution's activities; and
 - » ensure that the sanctions are consistently enforced.

ED Recommended Action Steps

- Identify individuals and offices responsible for conducting the institution's biennial review to measure the effectiveness of its Drug and Alcohol Abuse Prevention Program. Review or establish policies and procedures for conducting biennial reviews in a timely manner and documentation of the reviews.
- Review the research methods and data analysis tools used to determine the effectiveness of programs and consistency of the institution's enforcement strategy.

Challenge: Compilation Of An Accurate And Complete Annual Fire Safety Report And Fire Log

Background:

The 2008 Higher Education Opportunity Act, which reauthorized the Higher Education Act of 1965 (HEA), requires institutions with on-campus student housing to prepare an annual fire safety report and maintain a fire log of fires that occur within on-campus student housing (similar to the annual security report and daily crime log required under Clery). Like the annual security report, program review findings related to publishing and disseminating the annual fire safety report often connect to missing required elements within fire safety policies. The reviews also showed that some institutions with on-campus student housing didn't have effective processes for maintaining a fire log.

Examples of Specific Findings:

- *Failure to Publish & Distribute the Annual Fire Safety Report*
- *Failure to Meet Institutional Fire Safety Policies & Fire Statistics Requirements*
- *Failure to Maintain a Fire Log*

HEA Requirements

- Fire safety policy and fire log requirements only apply to institutions that maintain on-campus student housing facilities.

ED Recommended Action Steps

- Determine whether the institution maintains on-campus student housing.

HEA Requirements

- Prepare an annual fire safety report that contains, at a minimum:
 - » Fire statistics for each on-campus student housing facility for the three most recent calendar years concerning
 - The number of fires and cause of each fire
 - The number of persons who received fire-related injuries that resulted in treatment at a medical facility, including at an on-campus health center
 - The number of deaths related to a fire
 - The value of property damage caused by a fire
 - » A description of each on-campus student housing facility fire safety system
 - » The number of fire drills held during the previous calendar year
 - » The institution's policies or rules on portable electrical appliances, smoking, and open flames in a student housing facility
 - » The institution's procedures for student housing evacuation in the case of a fire

- » The policies regarding fire safety education and training programs provided to students and employees (which must describe the procedures that students and employees should follow in the case of a fire)
- » A list of titles of each person or organization to which students and employees should report that a fire occurred
- » Plans for future improvements in fire safety if determined necessary by the institution
- Annually submit a copy of the fire statistics to the Department of Education.

ED Recommended Action Steps

- If the institution has on-campus student housing, develop or review campus policies and procedures for preparing an annual fire safety report and a written, easily understood fire log that records the nature, date, time, and general location of each fire that occurs in an on-campus student housing facility.
- Review policy requirements for the annual fire safety report to ensure the institution reflects all required policies and statistics within the fire safety report.

HEA Requirements

- Maintain a written, easily understood fire log that records, by the date the fire was reported, any fire that occurred in an on-campus student housing facility.
- Include the nature, date, time, and general location of each fire in the log.
- Make entries or additions to an entry within two business days.
- Make the fire log for the most recent 60- day period open to public inspection during normal business hours. Make any portion of the log older than 60 days available within two business days of a request for public inspection

ED Recommended Action Steps

- Review campus policies and procedures to ensure fire log additions are entered within two business days of the report of a fire.

Moving Forward

The goal of this document was to help colleges and universities better understand common gaps or weaknesses in Clery Act compliance and, most importantly, create a path forward and determine – “Where do we go next?”

Many challenges reflect a lack of administrative capacity, such as limited training, coordination, or oversight related to campus safety and security. Even so, a cohesive and effective Clery Act compliance program cannot be built overnight and requires buy-in and contributions from multiple individuals and departments on campus.

The challenges present within program reviews, those seen over and over in Department of Education findings, do have solutions, some of which are outlined in the listed action steps, designed to create more fluid information-sharing, develop robust policies and procedures, and build comprehensive training. Use this document as a starting point to determine specific next steps, such as building or updating resources and training for campus security authorities, revising certain campus policies and procedures, creating a short presentation to campus leadership on institutional Clery efforts, or convening a team to develop the annual security report. It may begin necessary conversations on campus – and advance your many efforts to build safer campus communities.

References

U.S. Department of Education. (n.d.) Clery Act Reports. Retrieved from: <https://studentaid.ed.gov/sa/about/data-center/school/clery-act-reports>

While this document contains discussions of general legal principles and specific laws, it is neither intended to be given as legal advice nor as practice of law and should not be relied upon by readers as such. Before taking any action, always check with a licensed attorney in your jurisdiction to ensure compliance with the law.