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TOPIC:

UPDATED: THE CLERY ACT AND OVERSEAS/DISTANCE STUDY: NEW DEVELOPMENTS AND COMPLIANCE GUIDANCE, 2016 EDITION

Editor's Note: Updated on April 5, 2012 to include additional guidance from the U.S. Department of Education and on September 26, 2016 to include further guidance from the Department as well as updated Handbook references.

AUTHOR:

Joseph Storch^[1], Associate Counsel, State University of New York Office of General Counsel

INTRODUCTION:

The original Clery Act^[2] guidance, the Handbook for Campus Crime Reporting (“Clery Act Handbook”)^[3], issued in 2005, contained little mention of Clery Act reporting requirements for overseas locations.^[4] The 2005 Clery Act Handbook briefly stated that U.S.-owned institutions that actually *operated* locations abroad had to comply with the Clery Act^[5] and “make a good-faith effort to obtain statistics from the local police authorities,”^[6] but that simply sending students on exchange programs did not trigger reporting obligations.^[7]

That changed significantly when the Department of Education published revised guidance in February 2011. The 2011 Clery Act Handbook^[8] contained new references to counting crimes that occur overseas, including in private spaces and homes. Further guidance from the Department of Education in 2011 clarified and interpreted some of those then newly-published requirements.^[9] Most recently, the 2016 Clery Act Handbook included yet additional (and different) guidance on, among other things, reporting crimes occurring in certain distant locations.^[10]

The purpose of this NACUANOTE is to review the 2016 guidance and offer some tips for complying with it.^[11] Part I of this Note addresses some of the models that institutions use to send students to study overseas or to other locations within the United States, and provides guidance for complying with the Clery Act based upon those particular models. Part II of the Note highlights important information for

classifying and reporting Clery Act offenses occurring overseas or on distance campuses under various reporting situations.[12]

DISCUSSION:

I. Clery Reporting Requirements for Various Models of Sending Students Overseas

One of the most important principles of Clery Act compliance is that Clery Act reporting is not based on *who* the victim or assailant is, but on *where* the crime occurred. The Clery Act only requires that institutions report in the Annual Security Report crimes that occur in one of four geographic areas: on campus, in campus residence halls, on noncampus property (as defined below), and on public property immediately adjacent to and accessible from a campus.[13] Crimes that occur anywhere else are not reportable.[14]

A. Online or Correspondence Education Only (Including Military Education)

If an institution offers coursework in an online or correspondence environment only, there are no Clery Act requirements provided that the “students are never present on a physical campus.”[15] This rule applies regardless of whether the students are domestic or international. If your institution offers online or correspondence classes to soldiers located on a military base, or the institution sends faculty to teach at a base, but the institution does not own or have a written agreement to control *specific space* at that military base, then that space is not covered under the Clery Act.[16]

B. Students Overseas are Taught and Housed by a Local Institution or Third Party

As a geographically-based law, the Clery Act makes a distinction between agreements to send students to a distant location for a program versus agreements for use of specific physical space.[17] If your institution sends students abroad but does not maintain an overseas campus, and your institution does not own or control property abroad that is frequently used by students, then there is no Clery reporting requirement for crimes that occur in those locations regardless of whether your students, faculty, or staff are the victims or perpetrators.[18]

Controlling property is a defined term for Clery Act purposes. “*Controlled by* means that your institution . . . rents, leases or has some other type of *written* agreement (including an informal one, such as a letter or an e-mail) for use of a building or property, or a portion of a building or property.”[19] Further, “[e]ven if there is no payment involved in the transaction, for Clery Act purposes, a written agreement for the use of space gives your institution control of that space for the time period specified in the agreement.”[20]

If, for instance, your institution contracts with an overseas university or a third party agency to provide educational *programs* for your students, but your institution does not own or have a written agreement for specific space in a building or property, then crimes that occur there need not be reported for Clery Act purposes. However, if your institution sponsors a study abroad program with an overseas university and has some form of written agreement for housing and/or classroom *space*, your institution must report crimes for Clery purposes, as detailed in subsection F, *infra*.

C. Your Institution Maintains an Overseas or Distance Campus

As noted above, foreign campuses owned or controlled by a domestic institution that are covered by the Clery Act will likewise be covered as separate campuses, provided that they have an organized program of study and administrative personnel on campus.[21] The 2016 Clery Handbook includes new guidance on the Department of Education’s definition of these terms. “Organized program of study” means that the

location offers courses leading to a degree, certificate or other recognized credential, while administrative personnel includes those responsible for activities at the location, including directors, building coordinators, registrars or secretaries.[22] Locations where students can take some courses but not an entire program may still qualify as noncampus property.[23] Once you determine that such a campus is covered by the Clery Act, the rules for including policy statements and reporting crimes are the same as those that govern your main campus.[24]

Clery Act reportable on-campus property includes:

- (1) “Any building or property owned or controlled by an institution within the same reasonably contiguous geographic 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
- (2) Any building or property that is within or reasonably contiguous to the area identified in paragraph (1) of this definition, 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).”[25] The 2016 Clery Handbook added a general standard of one mile to determine whether a location is reasonably contiguous, with exceptions for major separations between the locations.[26]

If your institution also maintains residence halls at such a campus and those residence halls are located on the campus or immediately adjacent to the campus, Clery Act reportable crimes or arrests or referrals for drugs, alcohol, or weapons that occur in those residence halls must be reported twice; once as on campus and once as on-campus residential.[27] The 2016 Clery Handbook states that if an institution-associated foundation or other institution-associated entity “owns or controls a building or property that is operated in support of, or in relation to, your institution’s educational purposes, your institution is considered to be in control of that building or property.”[28]

The public property requirement covers only public property around on-campus property, **not** around noncampus property owned or controlled by the institution.[29] For there to be a public property reporting requirement, the public property must be both adjacent to, and accessible from, the on-campus property.[30] If the campus is surrounded by a fence or other barrier to the public property, or is surrounded by private property, then there is no public property reporting requirement.[31]

In addition to reporting requirements, institutions that maintain a distance or overseas campus must also comply with the policy statements,[32] fire reporting (on-campus residence only),[33] missing persons (on-campus residence only),[34] crime log,[35] emergency notifications, and timely warning[36] requirements of the Higher Education Act.[37]

D. Your Institution Owns or Controls a Research Vessel, Ship, Van or Other Mobile Classroom Upon Which Your Students Travel, Study, or Stay

Crimes occurring on research boats, ships, vans or other mobile classrooms that carry students for educational purposes must be disclosed as noncampus incidents unless the mobile classroom otherwise meets the requirements of a separate campus as described above (note that the 2016 Handbook expanded this category beyond boats and ships).[38] This rule applies no matter where in the world the boat, ship or van happens to be at the time the crime occurs. If the institution owns the mobile classroom, then all crimes in all areas of such mobile classroom must be reported; if the institution controls parts of the mobile classroom, then only crimes occurring in those parts of the mobile classroom during the time in which your institution has control are reportable, as well as any crimes occurring in areas used to access the institution-controlled part of the mobile classroom.[39]

E. Students Studying Overseas are Housed in Private Homes

In discussing reporting requirements for noncampus property, the Handbook specifically states that “[h]ost family situations do not normally qualify as noncampus locations *unless* your written agreement with the family gives your school some significant control over space in the family home.”^[40] If your agreement with the host family gives your institution that control, any crimes occurring in that home that are reported to Campus Security Authorities or to the local police (from whom you will have to request statistics) need to be counted in the noncampus property category.

Such an agreement pursuant to which your institution has significant control over specific space in the home is likely to be rare. To the extent that your institution simply agrees with host families to host students, or contracts with a local third party to place the students, without reference to exercising control, there is no reporting requirement.

F. Your Institution Owns or Controls Overseas Property Frequently Used by Students

If your institution owns or controls property overseas or at a distance that does not meet the definition of a separate campus but is frequently used by students, crimes that occur there must be reported in the noncampus property category. Included in this definition is “[a]ny 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.”^[41] The noncampus property does *not* include property that students do not frequently use (e.g., space for back office employees, housing or labs for researchers without students, etc.).^[42]

One area that can cause confusion is how to classify crimes that occur on day-long or overnight, college-sponsored trips. Typically, these crimes are not reportable because they do not occur on property “owned or controlled” by the institution.^[43] However, the Department of Education provided some additional clarification on this point regarding incidents that occur during overseas study programs at hotels or other locations to which students travel (including satellite trips from the main study location). The guidance has changed substantially between 2005 (where there was no reference to it) and 2016, where specific guidelines are included in the Handbook, so institutions should carefully review their programs and procedures again using the latest Handbook as guidance. The 2016 Handbook seems to have overturned 2012 guidance on the topic.^[44] The 2016 Handbook now states:

Repeated use of a location for school-sponsored trips: If your institution sponsors students on an overnight trip **every year** and the students stay in the **same hotel each year**, you must include portions of the hotel in your noncampus geography. For example, students in the debate club take a trip to Washington, D.C. and stay at the same hotel every year. You must include in your statistics any crimes that occur in the rooms used by your students and any common areas used to access the rooms (lobby, elevators, etc.) for the times and dates specified in the rental agreement. Note that what matters here is repeated use of a location that is owned or controlled by the institution, not the number of days it is used or whether it is used by the same students or different students.

Short-stay “away” trips: If your institution sponsors short-stay “away” trips of more than one night for its students, all locations used by students during the trip, controlled by the institution during the trip and used to support educational purposes should be treated as noncampus property. An example is a three-week marine biology study trip to Florida. Any classroom or housing space specified in the agreement between the institution and a third-party providing the space would be noncampus property. If your institution has entered into a written agreement with a third-party contractor to arrange housing and/or classroom space for a school-sponsored trip or study program (either domestic or foreign), it is assumed that the contractor is operating on behalf of the school as the school’s agent, putting the institution in control of this space. However, if your institution (or a contracted third party) does not have an agreement for the space used, your institution is not in control of the space and you are not required to count

it. For example, there are some situations, such as sports tournaments, for which the host institution makes all of the housing arrangements for visiting students. In these situations, the visiting institutions do not have a written agreement for the use of space and are not required to disclose crime statistics for the housing in which their students are located. However, the host institution would be responsible for disclosing crime statistics for the housing since they hold the agreement for the housing.

Study abroad programs: If your institution sends students to study abroad at a location or facility that you don't own or control, you don't have to include statistics for crimes that occur in those facilities. However, if your institution rents or leases space for your students in a hotel or student housing facility, you are in control of that space for the time period covered by your agreement[45].

Therefore, according to the clarification, Clery Act crimes are reportable as noncampus incidents if they occur:

- (1) In space that the institution owns or controls overseas or at a distance, and that space is used to support the institution's mission and is frequently used by students; or
- (2) On an overseas study trip which includes overnight trips and either:
 - a. The same hotel/hostel is used for one night by the same or different groups on repeated occasions (e.g., annually); or
 - b. The hotel/hostel is used by a single group for an overnight trip of two nights or more and the institution makes a written agreement for use of the space to house or offer programs to students.

Only crimes that occur during the time in which that hotel or housing company is used by the institution are reportable (e.g., if the institution hosts only a summer trip to France, a crime occurring in the winter at that location is not reportable).[46] Also, only crimes in the area that is actually controlled by the institution or in spaces that are necessary to access that area are reportable.[47] Thus, if the hotel blocks off the second floor for use by the institution's students, a crime that occurs in a student's room, in a public area of the second floor, or in the lobby, elevator, escalator, or stairwell to the second floor is reportable; a crime that occurs on the ninth floor or inside a hotel room not used by a student is not. Additionally, any crime that occurs in a public location accessible to students in the hotel during that time is reportable.[48]

This new 2016 Handbook language on short-stay away trips may complicate study abroad and short trips where the property used varies throughout a multi-day trip. For example, if a faculty-led student trip is more than one night but changes hotels every night along the way, the Handbook can be read to say that each hotel (and rented/leased classroom space) are noncampus property even if the stay is only one night. The 2012 Department of Education guidance reads as though the length of the trip is what matters, not the length of the stay in any particular place. If the trip is four days and each day a different classroom is used by written agreement, one reading of the Handbook would say that each of those classrooms are noncampus property for that duration. These changes may require more staff time devoted to tracking travel and compliance.[49]

Crimes that occur on trips or in locations that are organized by students, but are not officially organized by the institution are not reportable, as the institution has no agreement to own or control the location in which the crime or incident occurs.

As noted above, the public property reporting requirement does not cover public property around noncampus property owned or controlled by the institution.[50]

II. Properly Classifying, Counting, and Reporting Under the Clery Act

A. Learning About Reportable Crimes and Referrals

Institutions typically learn about Clery Act reportable crimes and referrals through Campus Security Authorities or through local law enforcement in the relevant jurisdiction.

1. Campus Security Authorities

Clery regulations define certain institutional employees as Campus Security Authorities and the Handbook makes clear that they are so even if they are overseas or away from the main campus of the institution.^[51] Campus Security Authorities include police or security personnel, others with responsibility for security, and officials with “significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline and campus judicial proceedings.”^[52] “Official” is defined rather broadly as “any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.”^[53]

The individuals included above *must* be given the responsibilities of Campus Security Authorities. Institutions *may* also designate other personnel as Campus Security Authorities by listing those individuals in the Annual Security Report as individuals or organizations to which students and employees should report criminal offenses.^[54] Pastoral and professional counselors who are engaged in counseling when they receive a report of a crime are exempt from any requirements of Campus Security Authorities, even if they otherwise meet the requirements.^[55] Note there are differences between the Clery Act’s definition of a Campus Security Authority and the Department of Education’s Office for Civil Rights’ Guidance definition of a Responsible Employee for Title IX purposes.^[56] “While a person or vendor not employed by the institution does not fit squarely within any segment of the definition of Campus Security Authority, an institution may (but is not required to) give such third party similar or identical responsibilities by means of contract.”^[57]

Institutions must request statistics from all Campus Security Authorities each year to be included in the institution’s Annual Security Report.^[58] Campus Security Authorities must forward to the individual or office responsible for Clery Act incident collection (usually campus police, security, or student affairs) all allegations of Clery Act-covered crimes that the Campus Security Authority receives.^[59] At a minimum for Clery Act purposes, the Campus Security Authority should disclose the details of the crime and the location where the crime occurred.^[60] The Campus Security Authority *may* disclose the name and contact information of the victim or individual reporting the crime, or may agree to keep that information confidential at the request of the victim or individual reporting the crime.^[61] In the case of alleged dating violence, domestic violence, sexual assault, or stalking, the institution must protect the confidentiality of victims and other necessary parties.^[62]

All Campus Security Authorities should be trained in the obligations of Campus Security Authorities.^[63] In overseas programs, institutions may wish to designate and train all personnel working frequently with students as Campus Security Authorities, even if they do not meet the technical requirements of that designation. In that way, students abroad can feel they can speak to any institutional official overseas to report a crime. This suggestion is not a requirement but simply a good practice.

2. Local Law Enforcement

The 2016 Handbook instructs that a U.S. college with additional campuses or noncampus property in foreign countries or distance locations “has an obligation to make a good-faith effort to obtain statistics from local law enforcement authorities in that area.”^[64] However, domestic and international law enforcement authorities are not subject to the Clery Act, and some may not provide the information requested. U.S. institutions satisfy this Clery Act requirement by timely requesting appropriate statistics in writing from local law enforcement and being clear and specific about the information being requested.^[65] If the statistics are not supplied, this does not constitute a violation on the institution’s part^[66]. In such instances, institutions should consider adding a caveat to the Annual Report, indicating that the statistics were requested but were not supplied or were not supplied in a usable format.^[67] If

the statistics are supplied in a manner that can be utilized, then they must be included in the Annual Security Report.[68] If the local police agency requests payment to provide the statistics, “[institutions] may pay the agency, but [institutions] are not required to do so.”[69]

B. Using the Correct Law for Classifying and Counting Clery Act Crimes

Institutions must report crimes as well as certain arrests and referrals for drug, alcohol and weapons law violations that occurred on property subject to the Clery Act, so understanding the correct way to classify and count Clery crimes is important.

Criminal Offenses:[70] The Handbook requires that institutions categorize and report Clery Act Criminal Offenses (sometimes called Primary Crimes)[71] using Federal definitions[72]. Further, using the FBI’s Uniform Crime Reporting hierarchy rules, when more than one crime is committed, only the most serious Criminal Offense should be reported.[73] Completed and attempted crimes are both counted as completed.[74]

For jurisdictions in which your institution owns or controls on-campus or noncampus property (including residence halls and public property adjacent to, and accessible from, the campus), your institution must request that the local law enforcement provide those statistics using the U.S. Federal definitions, regardless of where in the world the jurisdiction is or whether the local law enforcement is familiar with these Federal definitions.[75] Again, law enforcement is under no compulsion to provide the statistics, so an institution is in compliance if it timely and clearly requests the statistics in writing, even if those statistics are not provided.[76]

Drug, Alcohol, and Weapons Law Arrests and Referrals for Discipline: Unlike Criminal Offenses, these offenses must be reported based on the local law for the jurisdiction in which the crime occurs.[77] This law may differ from the law that governs your home institution. For instance, if a Campus Security Authority finds an eighteen-year-old drinking a beer in London, it may be a violation of law in your institution’s home state, as well as a violation of institutional policy, but it is not a violation of the law in the United Kingdom and therefore a referral for disciplinary action for such activity would not count for Clery statistics. Likewise, possession of marijuana does not violate the law for students in Amsterdam (or in any U.S.[78] state that has legalized possession of marijuana) and so a referral for disciplinary action for such activity would not be included in your institution’s statistics. For institutions that operate a research vessel or semester-at-sea program, multiple countries’ laws or international maritime law may apply depending on the boat’s location. To be reportable, referrals for discipline for violations of drug, alcohol, or weapons laws must actually be *violations of law*, not just violations of your institutional policy.[79] In a case where a student is arrested and referred for discipline for the same action, count only the arrest.[80]

Hate Crimes: Institutions must report all Criminal Offenses (Primary Crimes) plus four Hate Crime-only crimes (larceny; simple assault; intimidation; and damage, destruction or vandalism of property) if motivated by bias against individuals in specific protected classes using Federal definitions.[81]

VAWA Crimes: Institutions must report incidents of domestic violence, dating violence, and stalking occurring in Clery Act geography using Federal definitions (with the narrow exception that state definitions are used, in part, to determine a covered person for domestic violence purposes).[82]

C. Distributing the Annual Security Report to Distance and Overseas Students

In addition to distributing the Annual Security Report to currently enrolled students and all employees (via a clear, stand-alone notice) at your institution’s main campus,[83] your institution may have requirements to distribute the Report to students overseas.[84] If your institution maintains a campus overseas, students at that campus must receive an Annual Security Report specific to that campus, since that campus has its own compliance requirements.[85]

If your institution does not maintain a separate campus and simply sends students overseas, either through a local campus or third party, or to noncampus property owned or controlled by the institution, then each student should receive a copy of the main institution's Annual Security Report (which may be sent electronically), as the Handbook requires that the Report be sent to "all currently enrolled students (including those attending less than full-time and those not enrolled in Title IV programs or courses)" as well as enrolled students on study abroad with another institution.^[86] The Report must be sent to all employees, with no exceptions.^[87]

The Clery Act also requires that institutions provide notice of the availability of the Annual Security Report, upon request, to prospective students and prospective employees.^[88] Based upon guidance in the 2016 Handbook and conversations with employees of the Department of Education, the following method should comply with the requirement to notify prospective students of your overseas programs (who may or may not be students at your institution): Place a clear, readable link to your institution's crime statistics on your overseas study or international education page. Additionally, place text somewhere in publications on overseas study or international education notifying readers of the existence of Clery Act statistics.^[89] Importantly, the Handbook states that this notice may be provided along with other information in a document.^[90]

D. Emergency Notifications, Timely Warnings, Crime Logs, and Missing Student Notifications for Overseas or Distance Locations

1. Emergency Notifications

If your institution does not maintain a separate campus and simply sends students overseas, either through a local campus or third party, or to noncampus property owned or controlled by the institution, then your institution does not have an obligation to develop and disclose emergency response and evacuation procedures for that location.^[91] Institutions may choose to develop such procedures—including providing appropriate emergency notifications for applicable incidents, crimes, or dangers—in which case your institution must include those procedures in your Annual Security Report policy statements.^[92]

2. Timely Warnings

Institutions must issue a timely warning for all Clery Act crimes that occur within the Clery Act geography, including crimes on noncampus property, "that are reported to Campus Security Authorities or local police agencies," and that are "considered by the institution to represent a serious or continuing threat to students and employees."^[93] If your institution is required to comply with Clery Act reporting for its overseas or distance locations, then the timely warning requirement will apply to those locations.

3. Crime Logs

If your institution maintains a separate campus overseas and that campus has a security department or campus police, then the campus must maintain a daily crime log.^[94] If your institution owns or controls noncampus property at an overseas or distance location, a criminal incident that occurs at the distant locations would only be recorded in the daily crime log if the incident was reported to the institution's campus police or security department.^[95]

4. Missing Student Notifications

If your institution maintains a separate campus overseas with on-campus student housing facilities, those campuses also must comply with missing student notification regulations. The 2016 Handbook specifically states that the missing student notification regulations do not apply to students who are residing off-campus while attending study abroad programs.^[96]

E. Retaining Clery Act Records from Overseas or Distance Locations

All Clery Act records must be retained for at least seven years to facilitate a Department of Education program review.^[97] Note that such documents include police and fire reports, judicial reports, crime logs, timely warnings and emergency notifications, letters to local jurisdictions requesting crime statistics, correspondence with Campus Security Authorities, and any other documents used to comply with the Clery Act.^[98] As a practical matter, auditors conducting a program review of Clery compliance have asked to see not only underlying reports of Clery Act crimes, but also underlying reports that were *not* Clery Act crimes to determine whether the institution is properly classifying incidents. To avoid difficulty in a program review, it would be a best practice to retain such documents for the applicable time period as well.

CONCLUSION:

This NACUANOTE is not intended as a replacement for a careful reading of the Clery Act statute, regulations, and Handbook, but is rather intended to highlight and explain subjects that are important for complying with the overseas and distance reporting requirements of the Clery Act. Institutions should carefully review their overseas and distance programs, determine what aspects (if any) of the Clery Act govern such programs, and train personnel to properly comply with the Act and correctly report applicable statistics to the campus community.

RESOURCES:

U.S. Dep't of Educ., Office of Postsecondary Educ., [THE HANDBOOK FOR CAMPUS SAFETY AND SECURITY REPORTING](#) (June 2016).

[NACUA Clery Act Resource Page](#)

Joseph Storch, Univ. Risk Mgmt. & Ins. Ass'n, [Risk Management Considerations Regarding the Clery Act, Violence Against Women Act \(VAWA\) and Title IX When Students Study Abroad](#) (Jan. 2016).

Joseph Storch and Natalie Mello, Nat'l Ass'n of Coll. & Univ. Attorneys, [Reporting on Student Safety and Security Abroad: Legal Requirements and Best Practices](#) (June 2015).

ENDNOTES:

[1] Joseph Storch is an Associate Counsel in the SUNY Office of General Counsel and Chair of the Student Affairs Practice Group. He provides primary representation for the Cortland, Morrisville, and Oswego campuses and concentrates his practice on student affairs, intellectual property, and campus safety. In 2015, he received the NACUA First Decade Award. B.A., *Summa Cum Laude* SUNY Oswego; M.P.P., University at Albany; J.D. Cornell Law School.

[2] Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (2012); 34 C.F.R. § 668.46 (2015).

[3] U.S. DEP'T OF EDUC., OFFICE OF POSTSECONDARY EDUC., THE HANDBOOK FOR CAMPUS CRIME REPORTING 2005 [hereinafter 2005 HANDBOOK].

[4] For brevity, this Note may use the terms “overseas” or “abroad,” but the same rules apply to all distant properties owned or controlled by an institution, whether in another country or in another part of the United States (e.g., housing for students participating in a “semester in Washington” program).

[5] 2005 HANDBOOK, *supra* note 2, at 19.

[6] *Id.* at 56.

[7] *Id.* at 19.

[8] U.S. DEP'T OF EDUC., OFFICE OF POSTSECONDARY EDUC., THE HANDBOOK FOR CAMPUS SAFETY AND SECURITY REPORTING 2011 [hereinafter 2011 HANDBOOK].

[9] An argument could be made that nothing has changed; that the requirements were always there, but were not specified in the Handbook. Such a debate is outside the scope of this Note. This Note will seek simply to explain the recently published and clarified guidance from the Department of Education. It should be noted that the Handbook is a valuable tool, but it is not itself law. Where in conflict, the law and regulations take precedence. That said, it is the Handbook that guides auditors from the Department of Education when they conduct program reviews of compliance with the Clery Act, so an understanding of this guidance is critical. See U.S. DEP'T OF EDUC., OFFICE OF POSTSECONDARY EDUC., THE HANDBOOK FOR CAMPUS SAFETY AND SECURITY REPORTING 1-4, 15 [hereinafter 2016 HANDBOOK], <http://www2.ed.gov/admins/lead/safety/handbook.pdf>. For clarity, references to the differently-paginated 2016 Handbook will use the format (Chapter-Page, Page).

[10] *Id.*

[11] Previous NACUANOTES covering Higher Education Opportunity Act (HEOA) changes to the Clery Act and the distinctions between the 2005 and 2011 Handbooks, as well as a University Risk Management and Insurance Association White Paper on the distinctions between the 2011 and 2016 Handbooks, may afford in-depth background on these laws. See Joseph Storch, *Safety, Missing Students and Fire Reporting Requirements of the Higher Education Opportunity Act*, NACUANOTES, Vol. 8, Iss. 13 (Aug. 25, 2010), <http://www.nacua.org/docs/default-source/legacy-doc/nacuanotes/cleryfiresafety.pdf?sfvrsn=6>; Joseph Storch, *The 2011 Clery Handbook: New Developments and Important Changes*, NACUANOTES, Vol. 9, Iss. 12 (June 10, 2011), <http://www.nacua.org/docs/default-source/legacy-doc/nacuanotes/the-2011-clery-handbook-new-developments-and-important-changes.pdf?sfvrsn=0>; JOSEPH STORCH & ANDREA STAGG, UNIV. RISK MGMT. & INS. ASS'N, THE 2016 CLERY HANDBOOK: NEW DEVELOPMENTS AND IMPORTANT CHANGES (July 2016)

[hereafter URMIA WHITE PAPER]. This Note is limited to Clery Act reporting on study abroad. For a discussion of Title IX guidance and Violence Against Women Act Clery amendment *response* to violations, see JOSEPH STORCH, UNIV. RISK MGMT & INS. ASS'N, RISK MANAGEMENT CONSIDERATIONS REGARDING THE CLERY ACT, VIOLENCE AGAINST WOMEN ACT (VAWA) AND TITLE IX WHEN STUDENTS STUDY ABROAD (Jan. 2016) and JOSEPH STORCH & NATALIE MELLO, NAT'L ASS'N OF COLLEGE AND UNIV. ATTORNEYS, REPORTING ON STUDENT SAFETY AND SECURITY ABROAD: LEGAL REQUIREMENTS AND BEST PRACTICES (June 30, 2015), http://www.nacua.org/docs/default-source/legacy-doc/conference/june2015/05d_15_6_33.pdf.

[12] Foreign institutions not owned or maintained by domestic institutions are not governed by the Clery Act and have no Clery Act reporting requirements. 2016 HANDBOOK, *supra* note 9, at 1-4.

[13] *Id.* at 2-1 to 2-27, 24-50.

[14] The one exception is the crime log that each institution with a security or police department must maintain. In rare cases, departments will have an additional patrol area outside of the four geographic areas for reporting. In such cases, any crime (Clery reportable or otherwise) reported within that additional patrol jurisdiction must be noted in the crime log, although it need not be included in the statistics submitted to the Department of Education and published in the Annual Security Report. *Id.* at 2-15 to 2-16, 38-39; 5-1 to 5-8, 126-133; 13-6, 223.

[15] *Id.* at 1-3 to 1-4, 14-15. Note that if students only come to the institution to attend commencement or graduation, attendance at this event alone does not result in Clery Act obligations. *Id.* at 1-4, 15.

[16] *d.* at 2-8, 31.

[17] *Id.* at 2-21, 44. An institution's Clery Act obligations will arise from the institution's control over specific physical space. Whether an institution has incorporated as a foreign entity or established a registered office in a foreign country is not relevant to the determination of Clery Act reporting obligations. [18] This is not to say that you have no responsibilities or should not or may not take any action. Your institution may indeed take action in those circumstances pursuant to the institution's policies, the policies of the owners of the programs or space being utilized, or applicable legal requirements. Also, recall that Clery Act reporting is based on geographic location, not the identity of the victim or assailant. Crimes that occur in reportable geographic areas are included in Clery reporting even if the victim or assailant is a stranger to the institution. *Id.* at 4-1, 108.

[19] *Id.* at 2-2, 25.

[20] *Id.*

[21] *Id.* at 2-6 to 2-8, 29-31.

[22] *Id.* at 2-6 to 2-7, 29-30.

[23] *Id.* at 2-8, 31.

[24] *Id.* at 2-6, 29.

[25] *Id.* at 2-2, 25.

[26] *Id.* at 2-3 to 2-4, 26-27.

[27] *Id.* at 2-9 to 2-10, 32-33.

[28] *Id.* at 2-3, 26.

[29] *Id.* at 2-20, 43. For an in-depth discussion of public property reporting requirements, see Joseph Storch, *The 2011 Clery Handbook: New Developments and Important Changes*, *supra* note 11.

[30] 2016 HANDBOOK, *supra* note 9, at 2-11, 34. In some cases, where a public road or bike path runs through a campus, there can be public property within a campus, provided it is accessible from the on-campus property (e.g., a sealed highway running over a campus with no entrance or exit ramps from the campus is not accessible from the campus and so crimes occurring on that highway are *not* reportable as occurring on public property).

[31] *Id.* at 2-12 to 2-13, 35-36; 2-17, 40. If there is a gate that is accessible, the sidewalk, street, and sidewalk running the entire length of the side with the gate is public property. *Id.* at 2-17, 40.

[32] *Id.* at 7-1 to 7-9, 152-160.

[33] *Id.* at 11-1 to 14-6, 208-231.

[34] *Id.* at 10-1 to 10-7, 200-206.

[35] *Id.* at 5-1 to 5-8, 126-133.

[36] *Id.* at 6-1 to 6-17, 134-150.

[37] *Id.* at 2-6, 29.

[38] *Id.* at 2-22, 45.

[39] *Id.* at 2-21 to 2-22, 44-45.

[40] 2011 HANDBOOK, *supra* note 8, at 30-31 (emphasis added). One example provided by the Department of Education is a host family home that includes a separate apartment, and the institution is renting that apartment.

[41] 2016 HANDBOOK, *supra* note 9, at 2-18, 41.

[42] *Id.* at 2-18 to 2-19, 41-42.

[43] *Id.* at 2-25, 48.

[44] See DEP'T OF EDUC., CAMPUS SAFETY HELP DESK, CLERY CAMPUS SAFETY SURVEY (March 2012). In issuing the communication, the Department of Education requested that, if used as guidance, the communication be published as a single document. Since only the relevant part of the communication was used in the text, to honor that request, the entire text of the communication can be found at <http://counsel.cua.edu/res/docs/Clery-Campus-Safety-Survey.pdf>.

[45] 2016 HANDBOOK, *supra* note 9, at 2-25 to 2-26, 48-49 (emphasis added).

[46] *Id.* at 2-20, 43.

[47] *Id.* at 2-20 to 2-21, 43-44.

[48] *Id.* at 2-20, 43. While crimes occurring behind closed doors in hotel rooms not occupied by students are not reportable, the Department of Education has advised that crimes occurring in public places where access is granted to an institution's students through the written agreement (e.g., the hotel pool or sauna,

breakfast area, lounge, etc.) are reportable as crimes occurring in noncampus property. Note that if an institution owns the property, crimes occurring in any part of that property at any time are reportable, even if students are not present on that particular day. *Id.*

[49] See URMIA WHITE PAPER, *supra* note 11, at 6-7, for further examples.

[50] 2016 HANDBOOK, *supra* note 9, at 2-20, 43. For an in-depth discussion of public property reporting requirements, see Joseph Storch, *The 2011 Clery Handbook: New Developments and Important Changes*, *supra* note 11.

[51] 2016 HANDBOOK, *supra* note 9, at 4-2 to 4-5, 109-112.

[52] *Id.* at 4-2 to 4-3, 109-110.

[53] *Id.*

[54] *Id.* at 4-4, 11. to 4-5, 109-112.

[55] *Id.* 4-7 to 4-8, 114-115.

[56] Compare U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE 14-17 (Apr. 2014) [hereinafter TITLE IX Q&A], <http://www2.ed.gov/about/offices/list/ocr/docs/ga-201404-title-ix.pdf>, with 2016 HANDBOOK, *supra* note 9, at 4-5, 112. A Responsible Employee under Office for Civil Rights guidance is an employee required to address unequal treatment on the basis of gender, usually by notifying the Title IX Coordinator and following institution policy to address the unequal treatment and prevent its recurrence. U.S. DEP'T OF EDUC., OFFICE FOR CIVIL RIGHTS, REVISED SEXUAL HARASSMENT GUIDANCE: HARASSMENT OF STUDENTS BY SCHOOL EMPLOYEES, OTHER STUDENTS, OR THIRD PARTIES 13 (Jan. 2001); TITLE IX Q&A, *supra*, at 15-16.

[57] Whether or not your institution pays an individual is not a factor in determining whether that individual is a Campus Security Authority. 2016 HANDBOOK, *supra* note 9, at 4-3, 110.

[58] *Id.* at 4-1, 108, 4-9 to 4-11, 116-118.

[59] *Id.* at 4-5, 112.

[60] In this manner, the institution can properly determine how to classify the Clery Act crime and whether the crime occurred in one of the four applicable geographic locations. Please note that this does not mean that an institution may not or should not take appropriate additional actions, including involving local police, referring an assailant for judicial or conduct charges, providing counseling to a victim, or other actions; this is simply the minimum information gathering required for compliance with the Clery Act. In fact, other laws, such as Title IX, may require that institutions take certain additional actions when they know or should have known about certain incidents involving sexual harassment and sexual violence. See U.S. Dep't of Educ., Office for Civil Rights, [Dear Colleague: Title IX Requirements Related to Sexual Harassment and Sexual Violence](#) (April 4, 2011) [hereinafter April 2011 Dear Colleague Letter], <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>; JOSEPH STORCH, UNIV. RISK MGMT. & INS. ASS'N, *supra* note 11.

[61] 2016 HANDBOOK, *supra* note 9, at 4-8, 115, 4-11, 118.

[62] *Id.* at 8-12 to 8-13, 173-174. Note again the distinction between the Clery Handbook requirement for Campus Security Authority reporting and Title IX guidance requiring identification of the reporting individual to the Title IX Coordinator. See April 2011 Dear Colleague Letter, *supra* note 60.

[63] 2016 HANDBOOK, *supra* note 9, at 4-10, 117.

[64] *Id.* at 4-12, 119.

[65] *Id.* at 4-14 to 4-16, 121-123. As a best practice, institutions should send these letters early in the year to better ensure that the information is available in time to be included in the statistics submitted to the Department of Education and published in the Annual Security Report. *Id.* at 4-14. A program reviewer may not view letters sent to local law enforcement shortly before the deadline as a "good faith effort." The institution should include in the letter how to respond appropriately and in an efficient manner, as well as any other pertinent information that helps local law enforcement respond to the request. As a best practice, for those local law enforcement agencies that will not provide usable statistics, some institutions include language in the letter instructing the local law enforcement to notify the institution that they are not able to provide the appropriate statistics by responding to an email or mailing address. Institutions are also urged to send written follow-up requests to further evidence that a "good faith effort" was undertaken to obtain the requested statistics.

[66] *Id.* at 4-12, 119.

[67] *Id.* at 4-17 to 4-18, 124-25.

[68] *Id.* at 4-12 to 4-13, 119-20. For instance, if a city police department, foreign or domestic, provided an institution with statistics for all crimes that occurred in the city in a calendar year with no geographic or

temporal breakdown, those numbers are not in a form that can be utilized because the Clery Act requires that a college report crimes within designated geographic areas (and for certain noncampus property, only at times frequently used by students), not all crimes that occur in an entire city. *Id.* at 4-17, 124.

[69] *Id.* at 4-16, 123.

[70] Sometimes referred to as Primary Crimes or Part I offenses.

[71] Clery Act Criminal Offenses are described in the 2016 Handbook at 3-4 to 3-23, 55-74. They include Murder and Non-Negligent Manslaughter, Manslaughter by Negligence, Rape, Fondling, Incest, Statutory Rape, Robbery, Aggravated Assault, Burglary, Motor Vehicle Theft, and Arson.

[72] Regarding such Federal crime definitions, the 2016 Handbook instructs institutions to classify Criminal Offenses based on FBI Uniform Crime Reporting (UCR) definitions. *Id.* at 3-3, 54.

[73] *Id.* at 3-24 to 3-25, 75-76. Note that there are exceptions to the hierarchy rule. See *id.* at 3-24 to 3-35, 75-86; 3-41, 92.

[74] *Id.* at 3-6, 57; 3-9 to 3-10, 59-60; 3-13 to 3-15, 64-66; 3-20 to 3-21, 71-72; 3-28, 79; 3-47, 98; 3-49, 100; 3-51 to 3-54, 102-105; 11-3, 210; 12-5, 216. The exception to this rule is attempted murder and attempted manslaughter. If the victim does not die, this crime should be classified as an aggravated assault, not a murder/manslaughter. *Id.* at 3-4, 55.

[75] *Id.* at 4-12 to 4-18, 119-125.

[76] *Id.* at 4-12 to 4-13, 119-20; 4-17 to 4-18, 124-25.

[77] *Id.* at 3-42, 93; 3-47 to 3-49, 98-100.

[78] Cf. *id.* at 3-48, 99 (discussing not counting marijuana referrals for discipline in states that have decriminalized possession of marijuana).

[79] *Id.* at 3-42, 93.

[80] *Id.* at 3-44, 95. For information on hierarchy options in properly counting drug, alcohol, and weapons arrests, see Joseph Storch, [The 2011 Clery Handbook: New Developments and Important Changes](#), *supra* note 11, at 5-6.

[81] *Id.* at 3-2, 53; 3-25 to 3-35, 76-86.

[82] *Id.* at 3-2, 53; 3-36 to 3-41, 87-92.

[83] *Id.* at 9-7 to 9-8, 192-193.

[84] See *id.*

[85] See *id.* at 2-6, 29.

[86] See *id.* at 9-7 to 9-8, 192-193.

[87] *Id.* at 9-7, 192.

[88] *Id.* at 9-7, 192, 9-9 to 9-10, 194-195.

[89] *Id.* at 9-9 to 9-10, 194-195. The language must include a statement of the report's availability, a description of its contents, the exact URL at which Clery information may be found, and the opportunity to request a paper copy. *Id.* Please do not take this advice as an instruction to destroy current documents in use! That is wasteful and unnecessary. Rather, in an effort to continually improve Clery compliance, you may consider making this statement a part of appropriate *future* publications, and alerting and educating publications and marketing personnel of the need to include this statement somewhere in these documents.

[90] *Id.* at 9-9, 194.

[91] *Id.* at 6-1, 134.

[92] *Id.* at 6-1 to 6-2, 134-35.

[93] *Id.* at 6-12, 145.

[94] See *id.* at 5-1 to 5-2, 126-127.

[95] *Id.*

[96] *Id.* at 10-1, 200.

[97] *Id.* at 9-11, 196. Note that your institution or state may require specific retention periods for Clery Act records or the Annual Safety and Fire Reports that are longer than seven years.

[98] Depending upon the policies and practices of your institution, this is almost certainly *not* a comprehensive list.

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