

The Clery Act: Compliance Essentials, Best Practices, & Lessons Learned

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Disclaimer

“This presentation includes graphic content about violent crime and related topics that may be disturbing for some audience members. Please also note that this session is intended to provide general information about the Clery Act, the Drug-Free Schools and Communities Act, and related laws. It does not represent a complete recitation of the applicable law or ED/FSA policies and is for discussion purposes only. This presentation must not be used for any other purpose. Actual compliance determinations must be made after a careful analysis of specific facts on a case-by-case basis. Comments made during this presentation are for instructional and illustrative purposes only and are not intended for attribution or publication.”

Strategies For Success

Be Decisive and Proactive.
Form Strong Partnerships
with Community Leaders and
Local Law Enforcement
Agencies

Encourage Prompt
Reporting and Foster a
Culture of Transparency

Resolve Complaints
Quickly and Completely!

Make it Easy for Everyone to
be Informed and Stay Up-To-
Date

The Basics of the Clery Act

- **Annual Security Report (ASR) Production, Distribution, and Notification**
- **Annual Crime Statistics Survey**
- **Safety Alerts: Timely Warnings and Emergency Notifications**
- **Emergency Evacuation and Response Procedures**
- **Special Considerations: Schools with Campus Police/Public Safety and/or Student Housing**
- **Crime Logs**
- **Missing Students Notification**
- **Campus Sexual Assault Prevention & Response/Violence Against Women Act**

Enforcement Tools

ED/FSA Enforcement Options:

- **Audits, Assessments, Investigations, and Program Reviews**
- **Fines: Up to \$57,317 per violation - Now on “Auto Pilot”**
- **Provisional Certification - Growth Restrictions**
- **Heightened Cash Monitoring**
- **Limitation, Suspension, and Termination - (Denial of recertification or revocation of a provisional Program Participation Agreement)**

External Factors/Shifting Incentives:

- **Student Activism + Media Attention = Increased Awareness**
- **Reputational Harm (“Public Shaming”)**
- **Risk Management and Legal Exposure**
- **Financial Devastation and Existential Risk**

Program Reviews - What to Expect

Written Notification - Fieldwork - PRR - Response - FPRD

“How do you know what you think you know?”

Document! Document!! Document!!!

- **Document requests (not a negotiation)**
 - **Police/public safety incident reports + arrest records**
 - **Student and employee conduct records...advocacy, athletics, Greeks, housing**
 - **Interviews**
 - **What about FERPA?**
- **Opportunity to demonstrate administrative capability**
- **Emphasis on full disclosure and timely production**
- **Role of advisors, consultants, and attorneys**
- **Separate from other reviews or investigations (ED OCR; Justice)**

Program Reviews - What to Expect

- **Relevant Statutes and Regulations**
 - **18 U.S.C. §§1001 and 1516**
 - **34 C.F.R. §§668.14, 16, 24, 41, 46, 49**
- **Announcement Letter - “Here I Come”**
- **Entrance Conference**
- **Campus Tour**
- **Document Requests and Examination**
- **Interviews - Students and Staff**
- **Exit Conference...maybe**

Program Reviews - What to Expect

- **Post-Review Information Requests/Analysis**
- **Program Review Report**
- **Institutional Response**
- **Final Program Review Determination**
- **Post-Review Monitoring**
- **Appeals - Separate process!**
 - **Fine Notice**
 - **Institutional Response - 45 Days! No Exceptions!**
 - ✓ **Written Request for Reconsideration**
 - ✓ **Request for Hearing**
 - **Final Determination - Office of Hearings and Appeals or Settlement Agreement**

Major Program Reviews 2015-2019

<https://studentaid.ed.gov/sa/about/data-center/school/clery-act-reports>

- **Georgetown University - 2015**
- **Massachusetts Bay Community College - 2015**
- **Pennsylvania State University - 2016**
- **University of Jamestown - 2016**
- **Occidental College - 2017**
- **South Carolina State University - 2017**
- **University of Montana - 2017**
- **University of Saint Thomas - 2017**
- **Green River College - 2018**
- **Northern Virginia Community College - 2018**
- **Roxbury Community College - 2018**
- **University of North Carolina - 2019**
- **University of California, Berkeley - 2019**
- **Michigan State University - 2019**

Top 10 Violations

1. **ASR Production Deficiencies**
2. **ASR Distribution/Notification Violations**
3. **Omitted/Inadequate Information Disclosures (VAWA)**
4. **Misclassification/Compilation of Crime Statistics**
5. **ASR/CSSDACT Discrepancies**
6. **CSA Violations**
7. **Crime Log Deficiencies**
8. **“Clery Geography” Violations**
9. **Timely Warning/Emergency Notification Violations**
10. **Impaired Administrative Capability**

Four General Categories of Crime



- **Statistics must be disclosed for each of four separate categories (when an incident meets definitions in more than one of those categories, it must be reported in each category)**
- **“Reported” means that an incident was brought to the attention of a campus security authority or to local law enforcement. A report cannot be “unreported” but can be “unfounded” by law enforcement agencies in some cases**
- **Don’t forget to request and disclose crime statistics from local law enforcement agencies**
- **Special note about HATE CRIMES**

Additional Requirements



- **Institutions must classify crimes using the definitions provided in Appendix A to Subpart D of the Department’s implementing regulations**
- **Institutions must disclose the total number of reported incidents that were “unfounded” by local law enforcement agencies**
- **Institutions with a campus police or public safety department must maintain a daily crime log that is accessible to the public during normal business hours**

“Clery Geography” Defined

What are you doing to identify and classify your Clery Geography?

Who are your key partners in this endeavor?

Campus I: any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and is used by the institution in direct support of, or in a manner related to, its educational purposes, incl. Residence halls

Campus II: any building or property that is within or reasonably contiguous to the area identified above that is owned by the institution but is controlled by another person, is frequently used by students, and supports institutional purposes (such as food or other retail vendor)

“Clery Geography” Defined

Non-campus building or property: (1) Any building or property owned or controlled by a **student organization that is officially recognized** by the institution; or (2) any building or property (other than a separate campus) 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 - “mobile” campuses and sea-faring vessels

Public Property: All public property including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or **immediately adjacent to or accessible** from the campus

What’s the other component of your Clery Geography??? Is there one???

Campus Security Authorities

- **Members of a campus law enforcement or public safety entity**
- **Any individual who has responsibility for campus safety but is not part of a campus law enforcement or public safety entity (hall monitors; parking attendants)**
- **Any institutional official with significant responsibility for student and campus activities**
- **Any other individual to whom students and employees are directed to report crimes**
- **Actual professional & pastoral counselors are exempt**

Note: Special considerations for institutions specializing in counseling or affiliated with churches/religious orders

Likely Categories of CSAs On Your Campus

**Campus Leadership and
Administrators**

**Residence Life Staff,
including RAs**

**Athletic Directors and
Coaches**

**Victim Advocates and
Ombudspersons**

**Campus Law
Enforcement and Public
Safety Professionals**

**Student Life and Student
Organizations Staff,
including Student
Leaders**

**Title IX Coordinators
and Staff**

What Every CSA Needs To Know

- **What is a Clery-reportable crime?**
- **What does it mean to have a crime “reported” to me?**
- **What do I have to do with these “reports?”**
- **Who is my point of contact and how do I transmit the information?**
- **What do I do next? Am I required to investigate?**



What's Happening on Your Campus?

Discussion

- **How many CSAs does your campus have?**
- **How does your school notify CSAs of their reporting responsibilities?**
- **What evidence does your school keep to show that CSAs have been notified of their reporting responsibilities?**
- **Do CSAs receive any training?**

Emergency Evacuation and Response

- **An institution must include a statement of policy regarding its emergency response and evacuation procedures in the Annual Security Report. This statement must include:**
 - **A clear explanation of the methods that the school will use to immediately notify the campus community about any immediate threat to the health or safety of students or employees occurring on the campus**
 - **A description of the process the institution will use to confirm the presence of such a condition**
- **An institution must also determine the segment or segments of the campus community that need to receive the notice then quickly determine the content of the notice and initiate the notification system**

Emergency Evacuation and Response

- **A list of the titles of the person or persons or organization or organizations responsible for carrying out the notification process**
- **The process that will be used to disseminate emergency information to the larger community**
- **Procedures for testing the effectiveness of the emergency response and evacuation system on at least an annual basis**
- **The notice of testing must state whether the tests will be announced or unannounced and include a description of the nature of the test and the date, time, and outcomes of the exercise**

Emergency Management

How do we develop an Emergency Management Action Plan?

- **Step 1: Get Organized**
- **Step 2: Identify Hazards (“All Risk/Threat Basis”)**
- **Step 3: Conduct a Risk Assessment**
- **Step 4: Develop/Update the Emergency Management Plan**
- **Step 4: Implement the Emergency Management Plan**

“Action Guide for Emergency Management at Institutions of Higher Education”

<https://files.eric.ed.gov/fulltext/ED504389.pdf>

Political and Social Protests



Tuition Protests



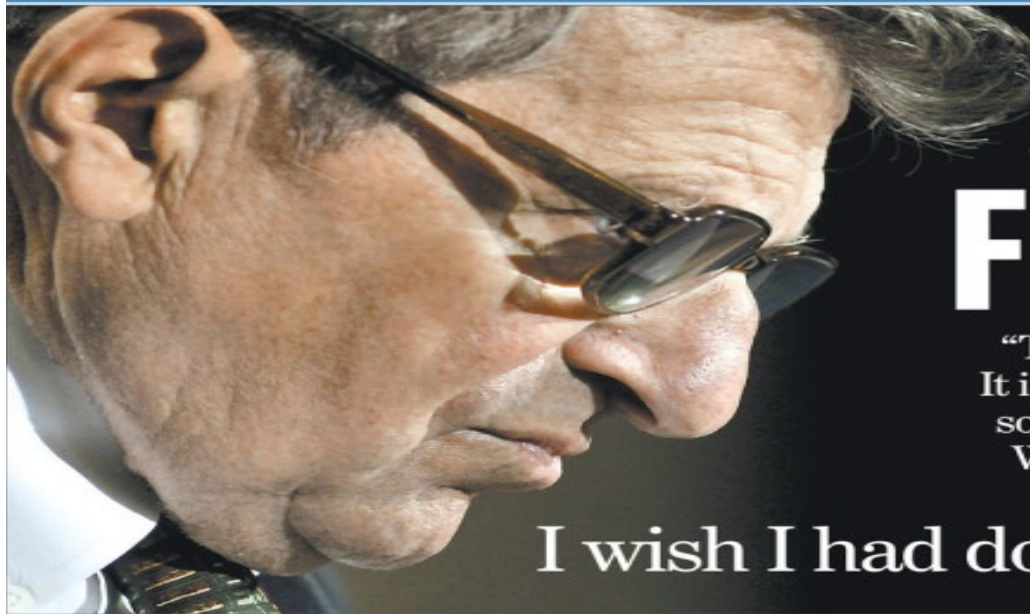
Penn State

The Philadelphia Inquirer philly.com

CSM 100th Year, No. 112 • City & Suburban Edition

Thursday, Nov. 10, 2011 ★ Philadelphia Media Network ★ \$1

\$0.25 in some locations outside the metro area



**PATERNO, SPANIER
OUT AT PENN STATE**

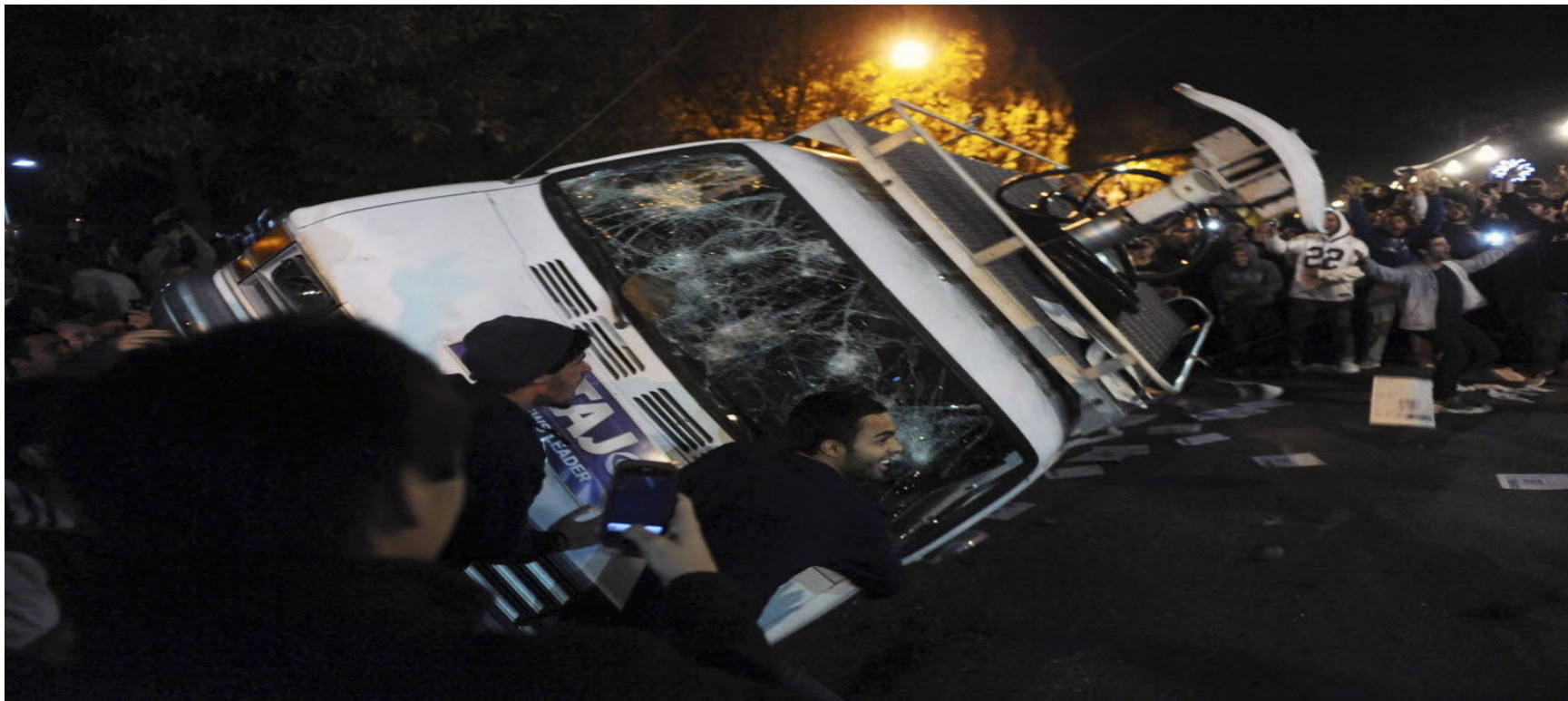
FIRED

“This is a tragedy.
It is one of the great
sorrows of my life.
With the benefit
of hindsight,
I wish I had done more.”

Joe Paterno, seen here during a 2008 news conference, won more Division I-A games than any other football coach, but his storied career was ended amid a child sex-abuse scandal.

PAT LITTLE / Associated Press

Penn State



Penn State



Community Uprisings - When Town & Gown Collide



Community Uprisings - When Town & Gown Collide



“I never thought this could happen here”



Safety Alerts...When Seconds Count

Issue Timely Warnings and Emergency Notifications

- Institutions must issue campus safety alerts to provide students and employees with timely information about ongoing threats due to crime or other dangerous conditions – Auburn/Univ. of Maryland/Univ. of Texas

Two kinds of alerts:

- Timely warnings are issued for Clery-reportable crimes that may pose a serious ongoing threat (**Clery Geography**)
- Emergency notifications are issued upon the confirmation of any significant emergency or dangerous situation that may pose an immediate threat to health or safety (**Campus Only**)

Does your school have a **THIRD** category of crime bulletins???

University of Texas



Virginia Tech



Umpqua Community College



Christopher Harper-Mercer



Umpqua Community College



Kayla Marie @KP_KaylaMarie · 40m

Students are running everywhere. Holy God.



77



5



Kayla Marie @KP_KaylaMarie · 42m

Omg there's someone shooting on campus.



75



7



Umpqua Community College



REBECCA
CARNES



TREVEN
ANSPACH



LARRY
LEVINE



JASON
JOHNSON



LUCAS
EIBEL



QUINN
COOPER



SARENA
MOORE



KIM
DIETZ



LUCERO
ALCARAZ

UCC Vigil



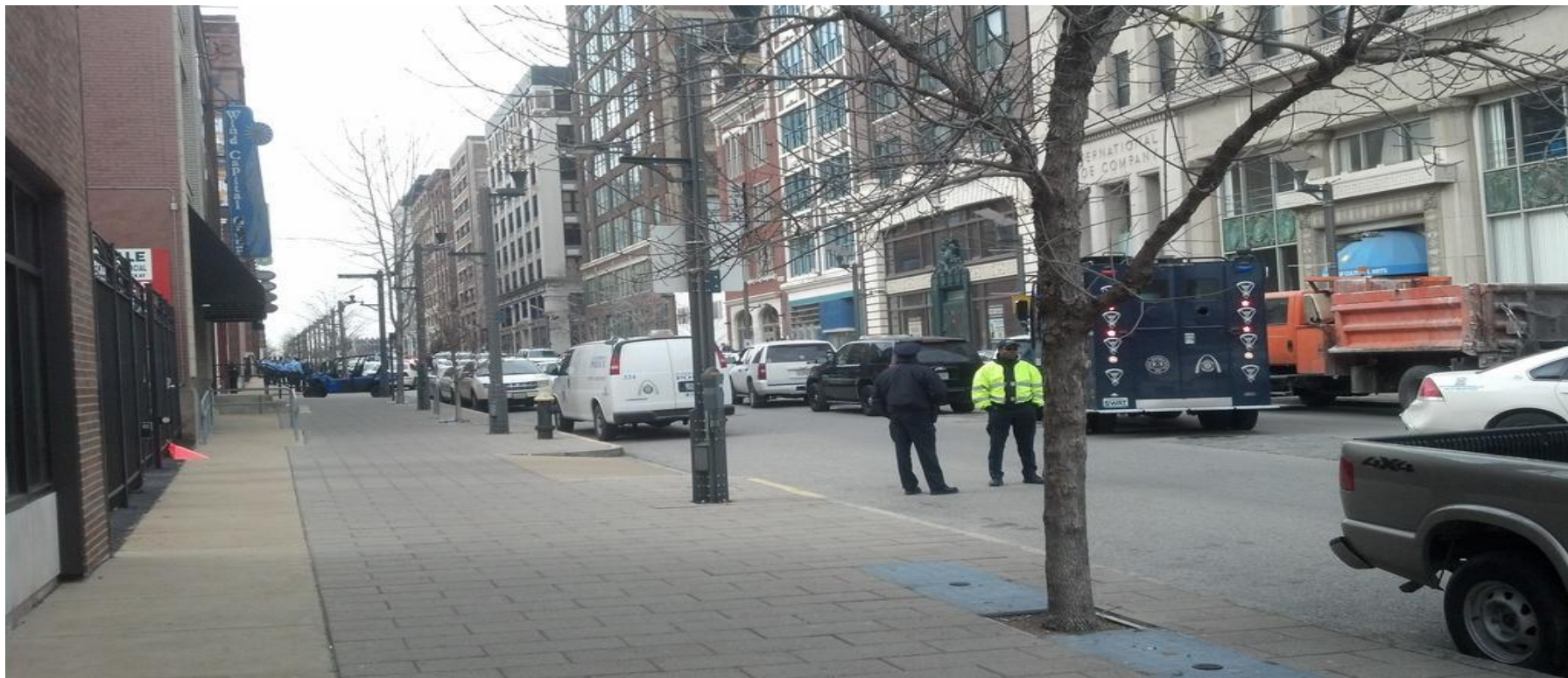
Stevens Institute of Business and Arts



Stevens Institute of Business and Arts



Stevens Institute of Business and Arts



Other Serious Threats

Comprehensively evaluate threats from an “All Risk/Threat” Perspective

- **Protests, Demonstrations, and Sit-Ins**
- **Political instability and Terrorism**
- **Sabotage (internal threats)**
- **Predators**
- **Weather**
- **Pandemics**
- **Social Media/Internet**
- **Untreated Mental Illness**
- **Drug and/or Alcohol Addiction**

Drug-Free Schools & Communities Act

Implemented by 34 CFR Part 86 (Part 86)

- **Requires institutions to certify that they have developed and implemented a drug and alcohol abuse education and prevention program (DAAPP) – completed through the PPA**
 - **The program must be designed to prevent the unlawful possession, use, and distribution of drugs and alcohol on campus and at recognized events and activities**
 - **As part of the program, institutions must distribute certain information to students and employees annually**
 - **Institutions must do a biennial review of the program**

Drug-Free Schools & Communities Act

Annual disclosure

- **Must distribute information to enrolled students and current employees**
- **34 CFR § 86.100 outlines the information that must be included:**
 - **Standards of conduct prohibiting the possession, use, and distribution of drugs and alcohol**
 - **Possible sanctions for violations of Federal, state, and local drug and alcohol laws as well as sanctions for violation of institutional policies**
 - **Health risks associated with the use of drugs and alcohol**
 - **Information on counseling, rehabilitation, and treatment programs**
 - **A clear statement that the school will impose sanctions on students and employees who violate drug and alcohol laws, ordinances, and/or institutional policies**

Drug-Free Schools & Communities Act

Biennial Review - Two objectives:

- To determine the effectiveness of your drug and alcohol abuse prevention program
- To ensure consistent enforcement of applicable laws, ordinances, and institutional policies against violators

The biennial review report and supporting documents must be maintained by the school and made available to the Department upon request

Special Note: The DFSCA requirements are stackable/cumulative i.e. if an institution fails to develop and implement a substantive DAAPP, the institution CANNOT comply with the other requirements

Purdue University



Andrew Boldt



The Brothers Boldt



Cody Cousins



Inconvenient Truths

“I killed Andrew Boldt because I wanted to.

I am glad that he’s dead.”

Cody Cousins

Andrew suffered five gunshots and 19 stab wounds at the hands of Cousins

“I have performed roughly 9,500 autopsies and this was by far the worst homicide I have ever seen.”

Dr. Elmo Griggs

Cody Cousins visited the Office of Counseling and Psychological Services at least 17 times

University of Virginia, Charlottesville, VA



Charlottesville



Charlottesville



Charlottesville



Charlottesville



Charlottesville



© Stephanie Keith for DailyMail.com

Charlottesville



Charlottesville



Heather Heyer



UVA Vigil



“Omen of Things to Come?”

- **For the first time, a court has found that a “special relationship” exists between students and an institution**
- **A Special Relationship creates a duty to warn or protect students from foreseeable acts of violence. See *The Regents of the University of California (UCLA) v. The Superior Court of Los Angeles (Rosen)***
- **In this case, a female student was seriously injured when the fellow student attacked her from behind with a kitchen knife. Although the attacker had not previously exhibited violent tendencies and had denied any plans of violence, UCLA allegedly had knowledge of the attacker’s mental conditions and that he had been hearing voices**
- **While the court was careful to say that colleges did not have a duty to prevent all violence, the court found that the schools have a duty is to take *reasonable* steps to protect students when it becomes aware of a *foreseeable* threat to their safety"**

Laura Dickinson and Jeanne Clery



Campus Sexual Assault



Violence Against Women Reauthorization Act of 2013

- **Supplements and enhances the existing Campus Sexual Assault Victim's Bill of Rights**
- **Expanded reporting for incidents of sexual assault, dating violence, domestic violence, and stalking (including cyber-stalking)**
- **Additional information about policies procedures, and programs focused on sexual assault prevention and response**
- **Awareness Campaigns and expanded training on primary prevention, risk reduction and bystander intervention**
- **Expands academic and living accommodations and other protective measures**

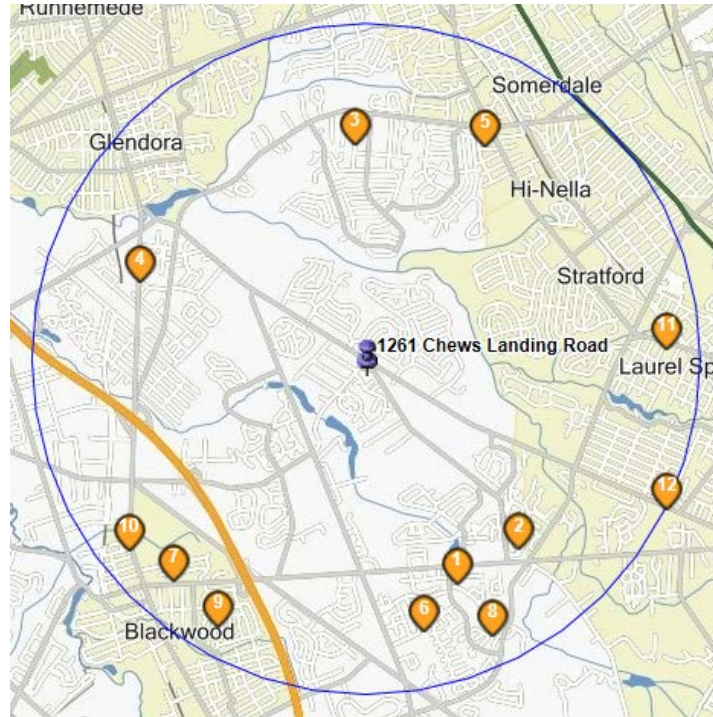
<http://ifap.ed.gov/eannouncements/102014ViolenceAgainstWomenAct.html>

Violence Against Women Reauthorization Act of 2013

Key Provisions

- Revises the definition of Rape
- Adds Gender Identity and Perceived Gender to Hate Crimes provision
- Requires Specialized Training for Disciplinary Hearing Officials*
- Reforms the disciplinary proceeding process - **CAUTION!**
 - More information on how to file complaints
 - List possible sanctions
 - Describe the range of protective measures
 - Explicit right to timely notice of all meetings (including appeals)*
 - Fair, prompt, and impartial process (do not delay!)
 - Advisor of choice*
 - Equal opportunities to be heard, present evidence, and have others present (Basic procedural rights to notice and to hearing)*
 - Unconditional and simultaneous notice of outcomes reached and sanctions imposed*

What Does A Predator Look Like?



Jerry Sandusky



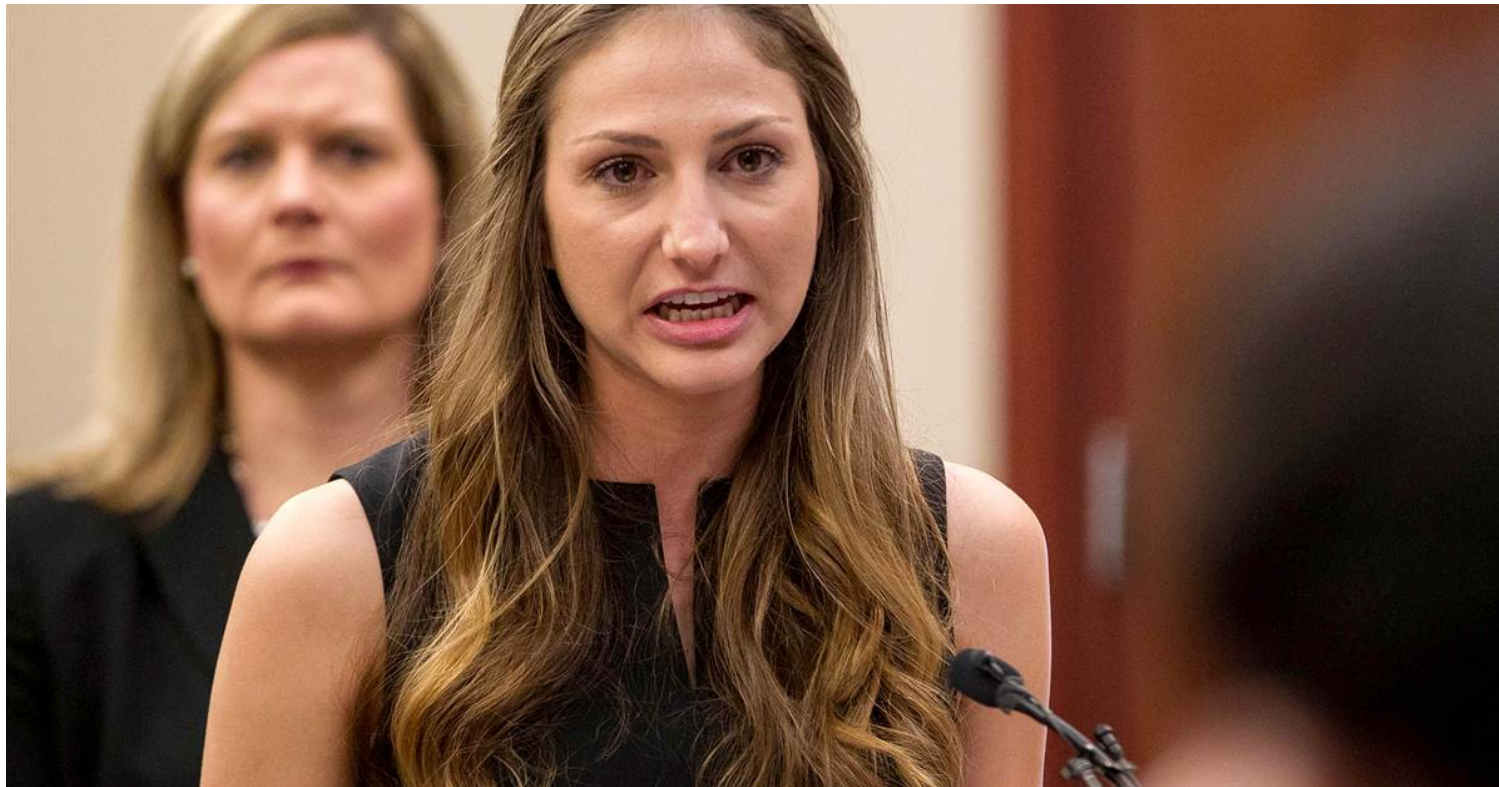
“What About Jenson?”



Larry Nassar



Kyle Stephens



Brianna Randall



332 And Counting



BRENDON JOHNSON/REUTERS/GETTY IMAGES

Better Days



Aly Raisman



Aly Raisman



Nassar



What You Can Do To Protect Your Institution

The Key: Administrative Capability

To participate in any Title IV program, an institution must demonstrate that it is capable of adequately administering the program under the standards established by the Secretary, including:

- **employing “an adequate number of qualified persons”**
- **Ensuring that programs are administered with appropriate “checks and balances in a system of “internal controls”**
- **Implementing written procedures that document the responsibilities of institutional officials with respect to the “preparation and submission of reports to the Secretary”**

Demonstrating Administrative Capability

The key to Admin Cap is to design and implement a system of policies, procedures, training programs, and systems that will provide reasonable assurance that required actions will be taken and that mechanisms are in place to detect deficiencies before they become systemic or result in catastrophic failure. Among other elements, an adequate Clery compliance program will include:

- Detailed procedures for preparing an accurate and complete ASR and distributing the report
- Substantive processes for identifying and classifying the institution's "Clery Geography"
- Comprehensive procedures for identifying CSAs and notifying them of their responsibilities
- Reliable processes for requesting and collecting information about Clery-reportable crimes from institutional CSAs and local law enforcement agencies
- Consistent procedures for properly responding to ED's annual crime statistics survey

Best Practices

- **Appoint and empower a Clery Act Compliance Officer***
- **Understand your “Clery Geography”**
- **ID, notify, and train CSAs. Then, provide an easy mechanism for them to report**
- **Specifically inform students and employees about how to report incidents of crime**
- **Check crime statistics for similar schools using the “Cutting Tool”**
- **Be proactive: You can’t fix a problem that you don’t know about***
- **Be alert to cultural and policy drift**
- **Educate Senior Executives and manage expectations***
- **Beware Positional Authority - Do not “lay prostrate to the “higher mind.”**
- **Get a seat at the table***
- **Remember that there is no money to be made in clarity**
- **1) Develop policy 2) Implement policy 3) “Live” your policies, all the while understanding that the imperative to do #3 is why schools don’t do #1 and #2**
- **Remain calm, the sky may be probably not actually falling...yet**
- **Get ready for the next thing***

Demonstrating Administrative Capability

Based on what you have learned today, would your school be able to demonstrate an acceptable level of Administrative Capability when it comes to Clery Act compliance and overall campus safety operations?



Any Questions???



Need more help???

Jim Moore

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ED Campus Safety Help Desk -

campussafetyhelp@westat.com

or 1-800-435-5985