

UC Legal – ECAS Guidance on Clery Act Compliance
Notifications Regarding an Immediate Threat to Health or Safety (§ 668.46)
April 8, 2020

Purpose

This Memo is intended to analyze the Department of Education's April 3, 2020 guidance on Notifications Regarding an Immediate Threat to Health or Safety during the COVID-19 pandemic, and provide best practice recommendations.

Audience

This Memo is intended for the following stakeholders: Clery Officers and Clery Coordinators, the Chief Ethics and Compliance Officers, UC police departments, campus counsel, and campus offices of emergency management.

Legal Background

On April 3, 2020, the US Department of Education issued written guidance regarding how to handle Clery emergency notifications and updates for the COVID-19 pandemic. As written, the guidance appears to provide significantly more flexibility by allowing Institutes of Higher Education to:

- provide students and employees a single notification informing of a confirmed COVID-19 case through the regular means of communicating notifications
- provide necessary health and safety precautions
- encourage the campus community to obtain information from health care providers

OR,

- create a website banner at the top of the institution's home page that,
- provides necessary health information
- encourages the campus community to obtain information from health care providers
- link to the CDC COVID-19 website

However, the National Association of Clery Compliance Officers and Professionals (NACCOP) stated in their April 7, 2020 webinar that they do not interpret the guidance to provide an exception to the emergency notification requirements in the Clery Act Handbook. Meaning, NACCOP does not interpret the “or” as an option to abandon already established policy-designated emergency notifications through Clery emergency channels.

The full text of the Department of Education's guidance is below:

"The Clery Act and its implementing regulations require institutions to notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on campus. The Department does not interpret the statutory language as requiring institutions to give regular, on-going updates on COVID-19 or to proactively identify positive COVID-19 cases within the campus community.

The Department also does not interpret the statutory language to apply to positive COVID-19 cases among individuals who are not attending classes, working, or residing on campus or to require notifications to such individuals.

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An institution may satisfy the emergency notification requirements of the Clery Act and § 668.46 as follows: (1) provide students and employees a single notification through the regular means of communicating emergency notifications informing them about COVID-19 and necessary health and safety precautions, as well as encouraging them to obtain information from health care providers, state health authorities, and the CDC's COVID-19 website; or (2) create a banner at the top of the institution's homepage containing that same information, including a statement about the global pandemic and a link to the CDC's website."

<https://ifap.ed.gov/electronic-announcements/040320UPDATEDGuidanceInterruptStudyRelCOVID19>

Current State of Campus COVID-19 Emergency Notifications

Currently, some campuses have issued emergency notifications through the policy-designated Clery emergency channels as well as posting a website banner on the campus homepage. Others have issued emergency notifications through non-Clery emergency channels, and a few have yet needed to issue emergency notifications or publish a website banner.

Recommendations

UC Legal and ECAS provide the following best practices recommendations concerning current and future COVID-19 emergency notifications to 1) ensure consistency across the UC system, and 2) balance between the April 3rd Department of Ed guidance and NACCOP's concerns:

1. While not required, campuses which have not yet issued initial COVID-19 related emergency notifications and determine in the future that such notice should be sent may issue through your policy-designated Clery emergency channels or a compliant website banner. A best practice is to use the policy-designated channel as per NACCOP.
2. For campuses who choose to use the policy-designated channel in the future, the initial emergency warning language can be high-level and does not need to identify specific cases in your community. The language should provide a link to the website banner and direct the campus community to reference the institution's home page COVID-19 web banner for updates. This allows campuses to use the policy-designated channel with minimal burden and establishes the website as the campus's preferred communication channel.
3. Campuses should create a banner at the top of your institution's home page that contains specified COVID-19 information, including a link to the CDC COVID-19 page <https://www.cdc.gov/coronavirus/2019-nCoV/index.html>
4. Campuses do not need to provide updates through the formal Clery channel if the campus maintains website banner referenced above in #3.

Please contact Chad Pimentel Chad.Pimentel@ucop.edu (UCOP OGC), or Shanda Hunt shanda.hunt@ucop.edu (ECAS) regarding any questions concerning this Memo.