Focus on … Clery Act Compliance

Last month, we spoke to a general counsel who suggests your school take to heart the extensive recommendations the Freeh Report provided to Penn State. This month we talk to a higher ed safety expert whose company’s input on Penn State’s Clery Act compliance was incorporated into those recommendations.

Where is your school most likely to get tripped up when it comes to Clery Act compliance?

That’s what we asked Steven Healy, a managing partner of Margolis Healy and Associates (MHA), a company that provides campus safety and security services.

Penn State hired MHA to assess its Clery Act compliance – and the Freeh Report incorporated MHA’s suggestions on pages 137 and 138.

Healy told us those Clery Act recommendations are good, solid advice for all schools, no matter the size – which is why, for the second straight month, we’re referring you to thefreehreportonpsu.com.

But Healy also told us MHA has been seeing schools having trouble with three key areas of Clery Act compliance – so that’s our real focus this month.

What You May Be Getting Wrong

As you know, participating in federal financial aid programs generally triggers a duty to comply with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

Compliance includes determining and reporting campus crime statistics plus having policies in place that have very specific requirements.


In this article, we zero in on issues Healy says schools especially struggle with:

• identifying all its Campus Security Authorities (CSAs) – the people charged with reporting crimes
• understanding the locations defined in the regulations – crucial for the duty to report crime statistics for each location, and
• including all the required info in their annual security report’s policy statements – especially concerning sexual assaults and emergency notification/response.

What Getting It Wrong Could Mean

In case you haven’t noticed, ED has gotten what Healy calls “proactive” when it comes to making sure higher ed institutions toe the legal line.

Where the Clery Act is concerned, this means ED has stepped up the number of program reviews and is imposing harsher fines for violations.

As ED’s Federal Student Aid Office says on its website, a Clery Act program review could be prompted not only by a complaint filed against a school or a red flag in the school’s self-reporting but if “a media event raises certain concerns.”
In other words, ED really has its radar up. And if your school crosses ED’s radar, it will scrutinize your compliance by conducting a program review.

And if the program review reveals a problem not resolved to ED’s satisfaction, it could mean a hefty fine.

**How Hefty Are the Fines?**

Before we scare you too much, fines are based on the gravity of the offense and the size of the institution.

It’s the incidents involving personal injury at big universities that tend to garner the really big fines.

Most routine compliance issues are resolved by a school demonstrating it’s made the needed changes.

That said, in June 2012, Secretary of Education Arne Duncan upheld $110,000 in fines against Tarleton State University. In August, he upheld two other big fines: $55,000 against Washington State University and $27,500 against Virginia Tech.

As if that wasn’t enough, all three cases included additional unresolved fines. Tarleton settled the claim against it by agreeing to pay $123,500.

Another thing: Those fines were assessed under the old maximum per-violation penalty of $27,500. It jumped to $35,000 in October 2012.

But while dramatic fines are possible, they aren’t the only negative consequence of noncompliance.

As Healy says, “The potential reputational damage to the institution and the time spent doing a program review is almost as scary as the financial penalty.”

**Don’t Go Where Other Schools Have Gone**

Your school wants to comply with the law, and there could be serious consequences if it doesn’t.

One resource Healy wants us to pass along to you is a database of program review reports at: studentaid.ed.gov/about/data-center/school/clery-act.

The case files include final reports of ED’s audits of schools’ Clery Act compliance.

Healy calls this info “road maps and lessons learned” you can use to assess your own compliance.

He also points out they can serve as cautionary tales – especially the files with fine letters – to help convince a reluctant administrator the school really does have to take all necessary steps to comply with Clery.

Later, we’ll dip into the program report results for a few illustrations of some of the things Healy and MHA have seen schools getting wrong.

We didn’t find a program-report result dealing with a school’s failure to identify its CSAs – but that’s where we’re starting because not only Healy but also ED’s *Handbook for Campus Safety and Security Reporting* recognize it as such a big problem.

**He’s Never Seen ‘An Absolutely Fabulous Job’**

Here’s the bottom line: Many CSAs don’t realize they have a Clery-Act duty to report crimes (or how to go about it) because no one has told them.

Healy says flatly, “We have not been at an institution where they have done an absolutely fabulous job of identifying all their CSAs and providing training.”

The easier CSAs to ID are:

- people who provide police or security services, and
- anyone listed in the school’s statement of campus security policy as a go-to person for reporting a crime.

The trickier calls fall under 34 CFR § 668.46(a)’s definition: an official “who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings[.]”

A few obvious individuals seem to jump out of that definition. It helps that the regulation goes on to specifically except counselors – but the definition also covers people who aren’t readily apparent as CSAs.

As a first step, Healy says MHA recommends “sitting down with an org chart of your institution” to identify those who fit the CSA definition – and cautions: “That can take time.”

Once you have identified your CSAs, Healy advises sending each one “a formal letter advising them that they are a CSA and outlining their responsibilities.”

Then he suggests calling them in for training.

**Make Sure They Know What to Do**

MHA divides CSAs into three tiers.

Tier one includes those with the most significant responsibility for student and campus activities: deans, coaches, and student-organization directors. Tier two includes people like resident assistants, and tier three CSAs are people like volunteer coaches.

Healy says not all schools have all three tiers – but the point of the division is to provide the right level of training. “What we suggest,” he says, “is that there’s probably a different level of training that’s appropriate for each of those groups.”

Deans, directors and coaches, for example, “probably need a good three-hour training block,” while tier three CSAs may only need an hour.

**Getting the Definitions Straight**

Healy also sees schools struggling with the Clery Act’s requirement to provide separate crime statistics for these locations: “on campus, in or on noncampus buildings or property, and on public property[.]”

A basic problem is simply getting a clear sense of the act’s definitions for the locations, so we’ve tried to clarify them for you.

The act defines “campus” as school-owned property “within the same reasonably contiguous geographic area of the institution” that is:

- school-controlled and used for the school’s educational purposes (including dorms), or
- “controlled by another person” but is “used by
students, and supports institutional purposes (such as a food or other retail vendor).”

“Noncampus buildings or property” means:
- any building or property owned or controlled by a school-recognized student organization, and
- any school-owned or -controlled building or property – apart from a branch campus – that “is not within the same reasonably contiguous geographic area” but is used for the school’s educational purposes by students.

“Public property” means:
- sidewalks, streets or other public areas adjacent to a school-owned or -controlled facility if the facility is used for the school’s educational purposes.

One school that got into trouble with ED over this provision is Yale.

‘Media Event’ Leads to Program Review
The review of Yale’s program was triggered by a 2004 Yale Alumni Magazine article called “Lux, Veritas and Sexual Trespass.” (Remember the online warning that a review could be prompted by a “media event”?)

The article led ED to look into whether forcible sex offenses were going unreported.

One of the findings against Yale in a 2011 final program review determination was that it had “failed to properly include all properties as required by the definition of campus established by the Clery Act.”

The property at issue was the Yale-New Haven Hospital. It’s not owned or controlled by Yale, but the reviewers found the two are “directly linked ... by crosswalks, thoroughfares and hallways” and that “formal affiliation agreements ... between the [two] ... directly support a student’s educational purpose.”

Yale IDed seven spaces in the hospital where its faculty had offices, saw patients or conducted clinical training – but argued it had no duty to include those spaces in Clery reports as no written agreement gave Yale ownership or control rights over hospital premises.

ED found: “The lack of a written agreement does not diminish Yale’s responsibility to account for these spaces which are used for the direct support of ... [its] educational purpose.”

The report also hit another compliance issue Healy has run into in connection with this provision: the need to be aware that a change in the use of school-related property can change the school’s reporting duty.

The reviewers noted Yale’s recognition that “its use of certain properties and facilities may change from year to year depending on programmatic needs[,]” so Yale would stay on top of this with “an annual review of the property list to assess changes” and to update its list.

You’ll want to stay on top of such changes, too.
If you do decide to appoint a Clery Act coordinator.

Should Your School Have a Clery Act Coordinator?

The Department of Education’s (ED’s) Handbook for Campus Safety and Security Reporting stresses it’s a recommendation, not a requirement, for schools to designate a person or office to oversee CSAs.

But since ED’s Office for Civil Right’s April 2011 “Dear Colleague” letter clarified that compliance with Title IX includes having a Title IX Coordinator, the idea has taken hold that it’s at least a very good idea to have a coordinator for other federal education laws, too.

Steven Healy, a managing partner of Margolis Healy and Associates (MHA), identified it as a trend in Clery Act compliance that schools are appointing a Clery Act coordinator.

Compliance Is a Full-Time Job
“I think increasingly folks have begun to realize that there really needs to be someone who is formally appointed by the president as a Clery Act coordinator – in that the majority of that person’s time is spent insuring the institution’s compliance,” says Healy.

“I’m not going to call it, necessarily, a best practice,” he adds, “but I will tell you that with the institutions that we have the honor and the privilege of working with, generally we always recommend that there is a person who is assigned, if not full time, then near full time to Clery compliance.”

The Freeh Report incorporated this recommendation, and Penn State has already acted on it.

So Much to Keep Track of
“Clery compliance is complicated,” Healy points out. It involves being on top of “so many different processes for gathering and classifying the required statistics” as well as “ensuring that the CSAs know what their responsibilities are, collecting the information from those different officers, and putting together and reviewing all the policy statements.”

Does a coordinator seem like a good idea for your school, but you need a place to start? MHA has created a “generic Clery coordinator job description.” You can check it out at: margolishealy.com/resources/category/clery_act.
(see blue box), Healy says s/he should be someone who can develop very strong working relationships across campus – and in particular, “It’s important for a Clery compliance coordinator to have a good relationship with the office that’s responsible for real estate and for purposing and repurposing buildings.”

**Policy Statements**

Finally, Healy says a common compliance issue for many, many schools is not including absolutely everything the law requires into its Clery-required policy statements – especially the ones concerning sexual assaults and emergency notification/response.

“It’s pretty in depth,” he warns.

A 2011 final program review determination of the University of Utah (UU) took more than a page to list everything UU had left out of its policy statements.

The same year, a final program review determination of the University of Northern Iowa (UNI) found UNI had resolved this issue by adding the info ED had spotted as missing. It basically considered the matter closed – but just had one last thing to say about its campus security report (CSR).

“While UNI’s actions are sufficient to address this finding, the review team noted a typographical error in the CSR. ... We wish to call attention to the error.”

That’s right. The review team called UNI out on a typo.

When it comes to Clery compliance, you need to pay attention to every detail. ED certainly does.

**Looking for More?**

Need Clery Act compliance training? ED has free online offerings at [www2.ed.gov/campus-crime/HTML/cc_on/Contents.html](http://www2.ed.gov/campus-crime/HTML/cc_on/Contents.html).

For-fee training is also available from many sources, including from the Clery Center, where it costs about $450. You can see what’s being offered, and where, at: [securityoncampus.org/training-seminars](http://securityoncampus.org/training-seminars).