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Department of Education strips Clery Handbook guidance, issues short Appendix rooted in statutory and regulatory language

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On October 9, 2020, the Department of Education (Department) [issued notice](#) that it rescinded the 2016 Handbook for Campus Safety and Security Reporting (Clery Handbook), the Department's guidance document interpreting the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). The Clery Handbook is replaced by a [Clery Act Appendix](#) to the Financial Student Aid Handbook (Appendix).

The Appendix represents a severe rollback of Department guidance interpreting the Clery Act, paring the 256-page Clery Handbook down to 13 pages of Appendix. The Department has maintained some form of handbook-style guidance since the first handbook was published in 2005, each handbook surpassing 200 pages.

The new Appendix essentially eliminates Departmental guidance interpreting the Clery Act and regulations, resulting in a 13-page recapitulation of statutory language and binding regulations and providing little interpretive guidance. The Appendix acknowledges the Department's intent to interpret requirements of the Clery Act, applying the plain meaning of each of the terms within. According to the Appendix, the Department will accept institutions' reasonable interpretations of Clery Act terms

as long as those terms are defined within institutional Clery reports.

Addressing why it rescinded the Clery Handbook, the Department expressed concern that the Handbook expanded requirements beyond the scope of the Clery Act and corresponding regulations. The result, the Department says, was a focus on lengthy annual statistical reports which took resources away from the mission of campus safety. The notice of rescission acknowledged that few students or parents consult Clery reports, and the reports can overwhelm them with “excessive data that obscures the most important and helpful parts of the reports.”

The Appendix is effective for the 2021 reporting year. Rescission of the Clery Handbook is not applied retroactively, so institutions will continue to use the Handbook to guide them for the 2019 and 2020 reporting years. Changes do not impact the temporary extension to December 31, 2020, for distribution of institutions’ Annual Security and Fire Safety Reports for the 2019 reporting year.

Significant changes to the Clery Handbook found in the new Appendix include changes to:

- Clery Geography
 - Elimination of the one-mile guidance for reasonably contiguous/public property
 - Elimination of “owned or controlled by” and “directly supports” guidance language previously used for public property and non-campus buildings or property
 - Elimination of the reporting requirements for institutionally sponsored travel where there is a written agreement for space, including overnight travel and study abroad programs
- Clery Crimes
 - Adoption of references to specific regulatory definitions for crimes rather than expanded guidance definitions found in the Clery Handbook
- Campus Security Authorities
 - Strict adherence to the regulatory definition of Campus Security Authority, with an acknowledgement that the Department will rely on institutional discretion for designation

As with all sub-regulatory guidance, the Department acknowledged that the contents of the Appendix do not have the force and effect of law and are not meant to bind the public but, instead, are intended to provide clarity regarding existing statutory and regulatory requirements. To the extent the Department later finds that further elaboration on the statutory and regulatory-based definitions are needed, the

Department recognized its intent to engage in notice and comment rulemaking rather than issuing another guidance document similar to the Clery Handbook. The Department also committed to a renewed emphasis on technical assistance, including webinar offerings, to provide institutional support and “reverse the overreach of past guidance”.

Withdrawal of the Clery Handbook and some of its onerous and, arguably, ineffective reporting requirements will be welcome news for many Clery Coordinators. On the other hand, institutions are now left with a dearth of information on how the Department interprets the “plain meaning” of the statutory and regulatory language left bare in the Appendix. If the Department actually gives deference to institutions, as they say they will, all is well. If, on the other hand, the real rules of interpretation are a mystery until they are violated, such guidance by enforcement at the rate of \$58,328 per violation will result in expensive lessons learned.