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Office of General Counsel

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TO: SUNY Council on International Education Members
FROM: Joseph Storch
Associate Counsel, Office of General Counsel
DATE: November 28, 2016

Re: SUNY Proposed Clery and Title IX Procedure for International Programs

In light of recent changes to New York State law pursuant to Education Law 129-B and new interpretations of the Clery Act by the U.S. Department of Education (“ED”), attached please find an updated Clery and Title IX Procedure for International Programs.

I look forward to discussing this procedure and answering any questions.

Copy: Joseph Porter
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APPROVED BY SUNY Council on International Education November 2016

To Learn
To Search
To Serve



SUNY Clery & Title IX Reporting Procedure for International Programs

This procedure is intended to assist SUNY campuses (institution) in complying with the Clery Act, Title IX guidance, and New York State Education Law 129-B in an effective and consistent manner. Individual facts may require specific solutions not described in the procedure below.

While the Clery Act generally requires reporting and response in specific geographic locations, Title IX and Education Law 129-B are not specific to geography. This procedure is limited to reporting and responding to covered crimes and violations and does not cover training, prevention, and other requirements under the relevant laws.

- I- SUNY institutions will include all Clery reportable crimes and incidents in the Annual Security Report when those incidents occur in geographic locations covered by the Clery Act. These locations include:
- On-Campus
 - All campuses of the institution.
 - At a Separate Campus, defined as a geographic location staffed by administrative personnel and where a student can take an organized program of study. An “organized program of study” means an entire educational program from which a student can attain a degree, diploma, or certificate. It does not include locations where a student can simply take a course.
 - At any location designated as On Campus property, the institution will also collect and include crimes occurring in Public Property adjacent to and accessible from the On Campus property.
 - Noncampus
 - All of the following factors must be met in order to make crimes at a given property reportable in the relevant¹ Noncampus category:
 - Building or property;
 - Owned or controlled by the institution;
 - Used in direct support of, or in relation to, the institution’s educational purposes;
 - Frequently used by students; and
 - Not within the same reasonably contiguous geographic area.
 - Property is controlled by the institution if the institution has a written agreement for use of the geographic location or parts thereof, and it meets all the factors above. Analyze the following to determine whether the agreement meets the factors:
 - Geographic locations within one mile of the main campus, if not separated by a major natural or human barrier (such as a body of water or an un-

¹ Another definition of Noncampus property applies to property owned or controlled by recognized or registered student groups that is generally not applicable to study abroad.

crossable highway) are generally considered On Campus and not Noncampus.

- Geographic locations that are owned or controlled by the institution that are only used by faculty/staff are not frequently used by students and so do not count for Clery reporting purposes.
 - The determination of whether an agreement for space meets the delineated factors will be determined based on an analysis of:
 - What the parties specifically agree to, whether the agreement outlines the terms of an experience without reference to any specific geographic location or whether the agreement includes information regarding access and control of a specific geographic location (e.g., building names or street addresses);
 - Whether the institution maintains documents stating that students will live or study at a specific geographic location; and
 - Who makes the living or academic arrangements:
 - If the student makes arrangements directly, the property does not count for Clery Act purposes; but
 - If the institution makes the arrangements, the property may count if it meets the factors delineated above.
 - Frequently used by students: Third party property, hotels, and hostels: Property is frequently used by students if it is used for a “short stay away trip” of more than one night or is subject to “repeated use” (including for a single night).
 - Short Stay Away Trip: For student trips of more than one night, 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. This includes classroom or housing space specified in the agreement between the institution and a third-party providing the space (including a provider operating as the institution agent for securing program property). If there is no agreement for the space used, there is not control for Clery Act purposes.
 - Repeated Use: A student overnight trip occurring every year and using the same hotel is included as Noncampus property.
 - For hotels/hostels that count for Clery Act purposes, crimes are counted if they occur in a student’s room or any common areas used to access the rooms (e.g. elevators, escalators, stairs, lobby, breakfast area) for the times and dates in which the institution has control (rental agreement times).
 - Host families: Count crimes in the geographic location used for housing students with a host family only if the institution has “significant control” of the space. For example, an institution has significant control over a property when the students have a separate entrance to their living space, but not in homes where the students and the host family use the same entrance.
- If an institution owns property, crimes are reportable year round.
 - If an institution controls property pursuant to a written agreement, crimes are only reportable during the times when the institution has control, not before or after.

- There is no reporting obligation for public property around Noncampus property.

Crimes committed at locations that do not meet Clery geography definitions are not counted for Clery Act purposes, although certain crimes may need to be reported to institution officials pursuant to Title IX and other laws.

II- To properly learn of and report crimes that occur in international and domestic education, Campus Security Authorities shall report crimes to the institution's designated Clery compliance official. In addition, the institution will query local law enforcement and Campus Security Authorities for information about crimes occurring in qualifying geographic locations during times of institutional use and/or control (as defined in Part I).

- Campus Security Authorities are:
 - Police/Campus Security (Department members and others affiliated);
 - Those designated by the institution as Campus Security Authorities; and
 - Faculty/staff with significant responsibility for students and campus activities.
 - All faculty or staff travelling with students overseas or to a distant location that meets Clery geographic definitions established in Part I, are designated as Campus Security Authorities, regardless of whether they ordinarily possess significant responsibility for student and campus activities.
- Responsible Employee for Title IX purposes:

All faculty or staff travelling with students overseas or to a distant location regardless of whether it meets Clery geographic definitions established in Part I, are designated as Responsible Employees for Title IX purposes, and are required to report learned of or observed cases of sex discrimination, including sexual violence, to the institution's Title IX Coordinator or designee.
- The institution will query local law enforcement for locations that meet the definitions of Clery Act geography in Part I asking for records of Clery Act reportable crimes occurring during the timeframes in which the institution controlled the property (or if the property is owned, during the entire calendar year). The institution will use "good faith" to contact these law enforcement entities via paper mail, telephone, or electronic messaging, and will keep a record of the contact and whether or not any statistics were received.
- Reporting Crimes:
 - Campus Security Authorities must report all crimes to the individual designated by the institution, with no exceptions.
 - Crimes are to be reported immediately or as soon as possible.
 - It is *never* appropriate for faculty or staff to handle crimes in house, investigate, or adjudicate, except as specifically instructed by institution officials.
 - It is *never* appropriate for faculty or staff to attempt to mediate an accusation of sexual assault or sexual violence.
 - With the exception of crimes that include sexual violence or sexual harassment, the Campus Security Authority may keep the identity of the victim private.

- If the Campus Security Authority receives a report of sexual harassment, including sexual violence, s/he is required to report to the Title IX Coordinator (or designee) regardless of where or when the incident is alleged to have occurred.
- If the Campus Security Authority is a pastoral or professional counselor, s/he may keep reports confidential pursuant to law and policy.
- Timely Warnings: The College will provide students with Timely Warnings of crimes occurring in relevant Clery Act geography.
 - For Clery act crimes occurring in Clery Act geography:
 - The institution, trip leader or designee will notify students on the trip of such crimes in a timely fashion;
 - Notification may occur by use of paper or digital messaging or may have an oral warning come through the group leader;
 - While there is no defined method, the Timely Warning must be active, not passive.

III- To ensure student safety and Title IX compliance, SUNY institutions will follow the protocol established below when informed about cases of sex discrimination, including sexual violence or interpersonal violence, involving SUNY students or employees.

- Definitions:
 - Home Institution: Student's original institution, from which the degree is anticipated, or to which the study abroad credits will transfer.
 - Host Institution: Domestic or overseas institution in which one or more students from Home Institution will be temporarily enrolled for a term or set length of time. A Host Institution may also meet the definition of a Provider.
 - Provider (Program, Administering, Sponsor): A private or public for-profit or not-for-profit Non-SUNY institution or entity that provides international or domestic travel, support, and/or education services for students at a Host Institution or a non-campus environment.
 - Reporting Individual: Encompasses the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.
 - Accused: A person accused of a violation who has not yet entered an institution's judicial or conduct process.
 - Respondent: A person accused of a violation who has entered an institution's judicial or conduct process.
- Host Institutions and Providers that learn about incidents of sex discrimination, including sexual violence, will work collaboratively with the Home Institution(s) of the reporting individual(s) and accused/respondent(s) to ensure the following:
 - The reporting individual is notified of any and all options, remedies, resources, and services available through the Home, Host and Provider;

- The appropriate institution or entity can conduct a prompt, impartial investigation, which may lead to adjudication through the formal student conduct or Title IX grievance process.
- Students participating in study abroad through a Host or Provider are subject to the policies and procedures of the Provider or Host, as well as those of his or her Home Institution.
 - Which institution takes the lead in investigating and responding to allegations of sexual harassment and/or violence shall be determined immediately following the reporting of an incident. Factors to consider include:
 - the location of the incident;
 - the enrollment status of the student(s) involved;
 - the nature and duration of the program;
 - the timing of the report (during or after a program).
 - Generally, the institution with immediate and primary control over the parties and evidence shall lead the investigation and response.
 - At all times the fairness of the process, effectiveness of the investigation/response, and best interests of the parties shall govern the decision making of SUNY officials.
- The Title IX Coordinators of SUNY institutions, in collaboration with International Programs staff, should consider all incidents and allegations consistent with their responsibilities to spot patterns and track complaints.
- Consistent with working collaboratively, a Host Institution or Provider will promptly provide any incident reports and related information to the Home Institution.