

# Campus Safety Provisions of the Higher Education Opportunity Act

**John DeLaHunt**  
**The University of Texas at San Antonio**

**Philip E. Hagan**  
**Georgetown University**

**Brendan McCluskey**  
**University of Medicine and Dentistry of NJ**

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Environmental Management Association

# Overview

- History of Higher Education Opportunity Act
- Rulemaking
- Campus Safety Provisions: Statute and Regulations
  - Clery Act Amendments
  - Campus Fire Safety Act language
  - Missing Students amendment
- Using HEOA on campus
- Questions

# Higher Education Law

- Higher Education Act of 1965
- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) of 1990
- Higher Education Amendments of 1998
- Higher Education Opportunity Act of 2008

# Higher Education Opportunity Act of 2008

- Enacted 14 August 2008 (P.L. 110-315)
- Amends and reauthorizes the HEA
- Omnibus legislation, including four key “Campus Safety” sections
  - Emergency Response and Evacuation procedures
  - Hate Crimes reporting
  - Campus Fire Safety reporting
  - Missing Student procedures

# Implementation Timeline & Process

## US Department of Education

- Consensus-driven negotiated rulemaking
  - Five teams
  - 31 issues for Team V, including campus safety provisions
  - No consensus for Team V
- Notice of Proposed Rulemaking 21 August 2009
- Public comments
- Final Rule 29 October 2009



# Existing Clery Act Obligations Prior to HEOA 2008

- Policy Disclosure – Provide the public with accurate statements of institution's current policies and practices regarding:
  - Procedures for reporting campus crimes or emergencies
  - Security and access for campus facilities
  - Campus law enforcement

# Existing Clery Act Obligations Prior to HEOA 2008

- Records Collection and Retention:
  - Crimes reported to campus security authorities
  - Campus Crime Log
- Information Dissemination
  - Annual Report on Campus Crime Statistics
  - Timely Warning of threats to the safety of students or employees
  - Access to Crime Log during normal business hours
  - Inform the campus community where to obtain information about registered sex offenders

# New Clery Act Obligations Under HEOA 2008

- Immediate effective date for campus safety provisions
  - Parties to make best efforts to comply prior to regulations
- Emergency Response and Evacuation Procedures
- Reporting of Hate Crimes
- Status of agreements with local law enforcement



# HEOA 2008 new requirement: Emergency Response & Evacuation

- Describe and document current campus policies on emergency response and evacuation procedures
  - include electronic or cellular communication systems, if applicable
- List of the titles of the persons or organizations responsible for carrying emergency notification procedures

# HEOA 2008 new requirement: Emergency Response & Evacuation

- Describe procedures for disseminating emergency information to the larger community
- Describe procedures for testing the emergency response and evacuation procedures
  - at least annual basis

# HEOA 2008 new requirement: Emergency Response & Evacuation

- Procedure for immediate notice to the campus community upon confirmation of a “significant [on-campus] emergency”
  - Unless such notice would compromise efforts to contain the emergency
- Annual publication of emergency response and evacuation procedures to students and staff

# Emergency Response and Evacuation Regulations

A statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing the notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency;

34 CFR 664.46(g)(3)



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# Emergency Response and Evacuation: Notification

- Create processes to
  - Confirm significant emergency or dangerous situation
  - Determine the appropriate segment or segments of the campus community to receive a notification
  - Determine the content of the notification
  - Initiate the notification system

# Emergency Response and Evacuation: Timeliness

- **Timely Warning**
  - If emergency notification procedures were followed
  - Then, not required to issue a timely warning based on the same circumstances
  - Provide adequate follow-up information to the community as needed

# Emergency Response and Evacuation: Testing

- Tests of emergency response and evacuation procedures:
  - At least annual
  - Announced or unannounced
  - Include publicizing emergency response and evacuation procedures in conjunction with at least one test per calendar year
  - Document, for each test, a description of the exercise, the date, time, and whether it was announced or unannounced

# Emergency Response and Evacuation Testing

- Definition - “Regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities”
- Drawn from the Emergency Management Accreditation Program (EMAP) Standard



# HEOA 2008 New Requirement Reporting Hate Crimes

- Institutions must report four additional crimes:
  - Larceny-theft
  - Simple assault
  - Intimidation
  - Property destruction, damage or vandalism
- See FBI's Hate Crime Data Collection Guidelines in the Uniform Crime Reporting Handbook:

<http://www.fbi.gov/ucr/hatecrime.pdf>

# HEOA 2008 New Requirement Agreements with Local Agencies

- Institutions must disclose their relationships with state and local police agencies
  - Including for the investigation of alleged criminal offenses

# Clery Act Penalty Provisions

The Secretary may impose a fine of up to \$27,500 per violation on a participating institution or third-party servicer that

- (i) Violates any statutory provision of or applicable to Title IV of the HEA, any regulatory provision prescribed under that statutory authority, or any applicable special arrangement, agreement, or limitation entered into under the authority of statutes applicable to Title IV of the HEA;

34 CFR 668.84(a)

# HEOA 2008 New Requirement Fire Safety Reporting

- Application
  - “On-campus student housing”
- Requirements
  - Annual Fire Safety Report
  - Fire Statistics
  - Fire Log
- Penalty provisions

# Fire Safety Reporting On-Campus Student Housing

- “On-campus” means any building or property
  - Within reasonably contiguous geographic area and used by the institution,
  - Owned or controlled by the institution, or
  - Owned by institution and controlled by another, used by/in support of institution
  - Similar to definition used for campus crime reporting
- “Student Housing” means
  - Dormitory or other residential facility for students

# Fire Safety Reporting

## Key Definitions

- Fire
  - Any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.
- Fire Safety System
  - Any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire. This may include sprinkler systems or other fire extinguishing systems, fire detection devices, stand-alone smoke alarms, devices that alert one to the presence of a fire, such as horns, bells, or strobe lights; smoke-control and reduction mechanisms; and fire doors and walls that reduce the spread of a fire.

# Fire Safety Reporting

## Fire Log

- On campus student housing facilities only
- Records fires by date of occurrence
  - Nature of fire
  - Date and Time of event
  - Location of fire
- Updated within two business days of receipt of new information
- 60-day log available for inspection during business hours
- Entire log available for inspection with two business days notice

# Fire Safety Reporting

## Fire Statistics

- On campus student housing facilities only
- Number of fires per year, by facility, for the last three years
- Number of persons with fire-related injuries
  - Includes students, employees, guests, general public, first responders
- Number of fire-related deaths within one year of fire event
- Property damage resulting from fire event
  - not including business interruption



# Fire Safety Reporting

## Annual Fire Safety Report

- Annual Fire Statistics
- Description of on-campus student housing facility fire safety systems
- Number of fire drills held during previous calendar year
- Policies or rules
  - Sources of fire
  - Evacuation
  - Training and information
- List of titles to whom students should report fires
- Plans for improvements, if any

# Fire Safety Reporting

## Annual Fire Safety Report

- Publication
  - October 1 of each year, for previous calendar year
  - Similar distribution methods as Campus Crime Report
- Integration with Campus Crime Report
  - Clearly stated if integrated
  - Cross-referenced if separate

# Fire Safety Reporting

## Annual Fire Safety Report

An institution may publish its annual fire safety report concurrently with its annual security report only if the title of the report clearly states that the report contains both the annual security report and the annual fire safety report. If an institution chooses to publish the annual fire safety report separately from the annual security report, it must include information in each of the two reports about how to directly access the other report.

38 CFR 448.41(e)(6)



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# Fire Safety Reporting

## Annual Fire Safety Report

- Putting the report into context
  - “Fire” as opposed to “policy violations”
  - Damage to third-party property
  - Skewing of report data by high-dollar value losses
- Reporting to ED
  - On-line system promised, not yet delivered

# Fire Safety Reporting Penalty Provisions

- Monetary penalties under HEOA
  - Not applicable to Fire Reporting
- Other avenues
  - Injunctive relief
  - Loss of access to federal financial aid
  - Risk to reputation

# HEOA 2008 New Requirement Missing Students Procedures

- Institutions that maintain on-campus housing must establish a missing student notification policy for students who reside in that housing
- Governs institutional response when it is determined that a covered student has been missing for 24 hours

# Missing Student Procedures Contact

- Allows students to name a contact person
- Requires a confidential method to register contact information
- Minor students: Notification that the institution must contact the parent or custodial guardian within 24 hours after the institution determines that the minor student is missing

# Missing Student Procedures Notification and Reports

- Inform students that the institution will notify the appropriate law enforcement agency not later than 24 hours after the institution determines that a student is missing
- Require all official reports of a missing person to be referred immediately to campus police or campus security



# Missing Student Procedures Inclusions

- In addition, the Missing Persons Policy must establish notification procedures to reach:
  - Appropriate individuals at the institution
  - The listed contact person or parents/custodians for the student
  - The appropriate law enforcement entity

# Missing Student Procedures

## Privacy Issues

- Relationship between student's confidential contact and the requirements under the Family Education Rights and Privacy Act (FERPA)?
- From the Preamble:
  - Missing student contact information is considered part of student's education record
  - ED interprets the HEOA to provide student's confidential contact information with **greater privacy** than FERPA provides
  - Only authorized campus officials and law enforcement officers with responsibility for a missing person investigation may have access to the confidential contact information

# Using HEOA Requirements

- Internal Marketing
- Differentiation from Public Safety
- Comparisons with Peer Institutions
- Culture of Fire Prevention
- Culture of Preparedness

# Summary and Conclusions

- HEOA amended the HEA, including Clery Act
- Four campus safety provisions
- Good faith effort to comply since law was enacted
- Negotiated rulemaking
  - CSHEMA and IAEM "at the table"
- Regulations in force on July 1, 2010
- Compliance Handbook in development
- Use it to your advantage

# HEOA 2008 Requirements

Questions



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# Contact Info

Brendan McCluskey, JD, MPA, CEM®

Executive Director

UMDNJ Emergency Management and Occupational Health and Safety

30 Bergen Street ADMC 304

Newark, NJ 07101-1709 USA

973-972-6164 (office)

973-972-6104 (fax)

973-445-9083 (mobile)

856-535-0103 (mobile)

[brendan.mccluskey@umdnj.edu](mailto:brendan.mccluskey@umdnj.edu) (email)

<http://ready.umdnj.edu> (web)



**CSHEMA**  
Campus Safety Health and  
Environmental Management Association

# Contact Info

Philip E. Hagan, JD, MBA, MPH, ARM,  
CIH, CHMM, CET

Director

Georgetown University  
Safety and Environmental Management  
P2 Leavey Center Box 571176  
Washington, DC 20057-1176 USA

202-687-7641 (office)

202-687-9229 (fax)

202-369-1767 (mobile)

[haganp@georgetown.edu](mailto:haganp@georgetown.edu) (email)



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Campus Safety Health and  
Environmental Management Association

# Contact Info

John DeLaHunt, MBA, ARM

Risk & Life Safety Manager

University Fire Marshal

The University of Texas at San Antonio

Environmental Health, Safety and Risk Management

SSB B 1.104B/MC 05500

One UTSA Circle

San Antonio, TX 78249

(210)458-4420 (office)

(210)458-7450 (fax)

[John.delahunt@utsa.edu](mailto:John.delahunt@utsa.edu) (email)



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