



# Analyzing a Fire from a Clery Act/HEOA Perspective

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The Campus Fire Safety Right-to-Know Act became federal law with the passage of the Higher Education Opportunity Act (HEOA) of 2008.<sup>3</sup> The requirements of this Act afforded institutions of higher education (IHEs) and campus fire officials the opportunity to gather and analyze data to determine how fires were impacting institutions that owned or controlled on campus student housing facilities (a.k.a. “residential facilities”), as defined by the Clery Act.<sup>4</sup>

Prior to HEOA, there was no standardized mechanism (or requirement) for tracking residential facility fires on college and university campuses. The fires at Seton Hall and other college and university campuses helped support the need for legislation to ensure transparency and disclosure in this important area of campus safety. Until HEOA, interested parties had to rely on available media coverage for information regarding residential facility fires which, in the words of the Center for Campus Fire Safety’s Immediate Past President Paul Martin, “is far from comprehensive, and it is neither an efficient nor a definitive method of data collection.”<sup>5</sup>



Effectively tracking residential facility fires and disclosing fire safety information to students and employees is essential when one considers available data regarding fires in college and university settings. For example:

- In 2010-2014, U.S. fire departments responded to an estimated annual average of 3,970 structure fires in dormitories, fraternities, sororities, and barracks. The 4,230 reported fires in the dormitory occupancy group in 2014 represented a 24% increase from the 3,200 in 1980.<sup>6</sup>
- According to the U.S. Department of Education’s Campus Safety and Security Data Analysis Cutting Tool, which aggregates data submitted by IHEs through the Campus Safety and Security Survey, there have been 13,080 residential facility fires reported by IHEs occurring between the 2009 and 2014 calendar years (an average of 2,180 per year).<sup>7</sup> These reported fires resulted in 232 persons being injured or killed.<sup>8</sup>





## WHAT MUST INSTITUTIONS DO TO COMPLY WITH HEOA'S FIRE SAFETY REGULATIONS?

To begin, institutions must compile residential facility fire statistics and report these statistics for the three most recent calendar years for which data are available to both the Department of Education (ED) and the campus community by way of the Annual Fire Safety Report (AFSR).<sup>9</sup> IHEs must also inform the campus community about the number and types of fire safety systems in residential facilities, fire evacuation protocols, the number of residential facility fire drills conducted each year as well as other required disclosures.<sup>10</sup>

Institutions must then develop and implement protocols to ensure that the AFSR is published and distributed to current students and current employees by October 1 each year.<sup>11</sup> Clear and conspicuous notification of the availability of the AFSR must also be provided to prospective students and employees.<sup>12</sup> The AFSR and ASR can be combined into one publication as long as the title clearly states that the report contains both publications (e.g., the "Annual Security and Fire Safety Report"). When published as separate documents, each report must include

information about how to directly access the other report so that consumers are aware of the existence and availability of each report.<sup>13</sup>

In addition to these annual reporting requirements, the HEOA regulations direct institutions to develop and publish a fire log documenting all fires occurring within residential facilities.<sup>14</sup> These residential facility fires must be added to the log within two business days of being reported to an official of the institution.<sup>15</sup> The log must be available for review and open to public inspection during normal business hours.<sup>16</sup> The fire log and daily crime log can also be combined, if desired by the institution, as long as the title clearly reflects that the log contains both disclosures (e.g., "Daily Crime and Fire Log")<sup>17</sup> and includes all required information.<sup>18</sup>

HEOA's fire safety regulations focus exclusively on campuses of IHEs in the U.S. with residential facilities, including foreign campuses with residential facilities.<sup>19</sup> Separate campuses of an institution that do not have residential facilities are exempted from these requirements, but any other campuses with residential facilities must comply.<sup>20</sup> The regulations do not apply to other types of facilities or portions of an institution's Clery Geography, such as Noncampus facilities that house students, academic and administrative facilities on the campus, or any other property owned or controlled by the institution.<sup>21</sup> However, the 2016 Handbook for Campus Safety and Security Reporting is careful to note that "parking garages and dining facilities that are physically attached to and accessed directly from" on campus residential facilities are considered part of a residential facility for purposes of fire safety disclosures.<sup>22</sup>





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The 2016 Handbook for Campus Safety and Security Reporting includes a revised definition of “reasonably contiguous” and the addition of a new one-mile rule.<sup>23</sup> Previously, no distance or range was offered to operationalize what could be considered a “reasonably contiguous” geographic area that would comprise On Campus locations. Now any building or property located within one mile of the campus border is considered “reasonably contiguous” and therefore constitutes On Campus property when it is owned or controlled by the IHE and used for educational or institutional purposes. A Department of Education official has confirmed that the revised “reasonably contiguous” definition was provided to require IHEs to bring Noncampus residential facilities within one mile of campus under the requirements of the fire safety regulations, thus ensuring the same fire log, policy statement and fire statistic reporting requirements that apply to On Campus Residential Facilities also apply to these (formerly Noncampus) residential facilities. Therefore, institutions should conduct a review of all institutionally owned or controlled facilities that are located within one mile of the campus border and ensure that any of these facilities that are being used to house students are treated as On Campus Residential Facilities for Clery Act purposes.<sup>24</sup> This will require, at a minimum, adding these new facilities to the fire statistics charts and disclosing the number of fire drills occurring in these facilities and the fire safety systems (all of which must be disclosed in the Annual Fire Safety Report).

To understand how to properly record and disclose On Campus Residential Facility fires, it is important to understand what constitutes a “fire” as well as when a “fire” is considered to be reported. A “fire” is “any instance of open flame or other burning in a place not intended to contain the burning or in an uncontrolled manner.”<sup>25</sup> An example of burning in a place not intended to contain the burning would include the infamous stove top grease fire in a residential facility apartment kitchen that flares up and singes a portion of the kitchen wall just behind the stove.<sup>26</sup> Burning in an uncontrolled manner would include carelessly stuffing a fireplace full with wood, pieces of furniture and other flammables that when ignited, ends up catching the chimney on fire. Remember, for reporting purposes, it doesn’t matter how big the fire is or whether it caused any damage or injury; if it meets the definition of a fire, it must be counted in the fire statistics and included in the fire log.

A fire is considered “reported” when it is brought to the attention of “any official at your institution. An official is any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution.”<sup>27</sup> An “official” is certainly a much broader category of individuals than that of a Campus Security Authority (CSA)<sup>28</sup> and could very well constitute all employees at an institution – professional, paraprofessional and student staff.<sup>29</sup>

Fires that must be reported include those extinguished before an official arrives as well as fires still burning upon an official's arrival. For example, if a student reports to their Resident Assistant (RA) that a poster accidentally caught fire in his residence hall room but was quickly extinguished, this is an example of a fire being reported to an official of the institution. The RA's obligation would be to promptly notify the individual or office identified in the institution's AFSR statement of policy regarding to whom fires should be reported so the receiving individual or office can ensure an entry is made to the fire log within two business days of the report to the RA and can further ensure that the fire is recorded in the institution's fire statistics.<sup>30</sup>



All campus community members should understand to whom fires should be reported. This information can be disclosed during annual training related to fire and emergency protocols, discussed at student and employee orientations, and thoroughly outlined in the institution's AFSR. It is recommended that institutions be clear about fire reporting so that the appropriate emergency responders can receive reports of fires in a timely fashion, respond quickly, and reduce the likelihood for personal injury and property damage. Most institutions articulate an expectation that fires should be immediately reported to their Public Safety or Campus Law Enforcement Departments, or to their Fire Department if they are large enough to have a dedicated fire agency on campus. For purposes of this article, we will refer to "Public Safety" as the responding entity on campus.

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## IMPLEMENTING CLERY ACT AND HEOA REGULATIONS: A CLOSER LOOK

The first steps in preparing for the possibility of a campus emergency is to develop very clear plans and protocols,<sup>31</sup> identify the appropriate resources to implement a response, and train all individuals who have a role to play in the response process. These actions should not be limited to just emergency responders (e.g., fire officials, police, EMS, etc.). Educating the broader campus community on their responsibility for their own safety and the safety of others is paramount to reducing fire-related casualties.<sup>32</sup> It is going to be the support staff, grounds crew, facilities maintenance staff, RAs, and dining staff who will be on the front lines when a significant incident occurs and they need to be aware of their responsibilities in advancing their own safety and the safety of students.

Once an institution has a sound emergency operations plan, it is incumbent to then collaboratively reach out to the local fire department and external emergency responders well in advance of any campus emergency. Networking with these agencies and having a proactive and positive professional partnership will undoubtedly establish relationships that will endure most tragedies. This outreach should include joint training, functional exercises and drills,<sup>33</sup> joint emergency operations team meetings and, when possible, information and resource sharing. Having emergency responders equipped with the institution's emergency operations plan, building plans and other pertinent information will ensure a smoother and more effective response. The ultimate goal is to make certain any response to an emergency eliminates or at least greatly reduces the likelihood of injury or death. Regular meetings beyond training and exercises can help reduce red tape and build mutually-beneficial relationships that create a greater understanding of who is going to do what, when and where well before an incident ever occurs.



In addition to developing emergency operations plans and relationships with local first responders, the institution must consider how it will meet its obligation to determine the cause of all fires that occur anywhere on or within the institution's Clery Geography.<sup>34</sup> The 2011 Handbook for Campus Safety and Security Reporting indicated that "Because the Clery Act requires institutions to disclose all arsons that occur on their Clery geography, you must have every fire that is not known to be accidental (such as a cooking fire) investigated."<sup>35</sup> This language has been removed from the 2016 Handbook. The 2011 Handbook also stated that "Only fires determined through investigation to have been willfully or maliciously set" should be counted as Arson offenses.<sup>36</sup> The 2016 Handbook contains this same phrase, but without the words "through investigation."<sup>37</sup>

The 2016 Handbook also indicates that "All of the evidence for any fire not known to be accidental (such as a cooking fire) must be considered by the institutional official designated to make such determinations."<sup>38</sup> The 2016 Handbook also cautions that "Some jurisdictions have specific rules that state that a fire is not to be classified as Arson unless and until a fire marshal makes a determination of malicious burning. The Clery Act's Arson definition does not require that any findings be made by a fire official before classifying an incident."<sup>39</sup>

Considering the language from the 2011 and 2016 Handbooks, institutions should identify one or more officials to be responsible for determining the cause of each reported fire. Although it does not appear that institutions have an affirmative duty to investigate all fires not immediately known to be accidental, it is hard to imagine how a meaningful determination could occur if reported fires are not properly investigated by a trained official. Institutions would be wise to ensure all fires not immediately known to be accidental are investigated by qualified personnel so that a determination can be made as to whether the fire was willfully or maliciously set. This will help institutions carry



out their responsibilities under HEOA and Clery as it pertains to fires, and will also help to ensure that campus officials are not relying on local fire officials to their detriment, as campus officials do not generally exercise any control over local fire officials and local fire officials may use jurisdictional definitions of arson that are different from the Arson definition institutions are required to use under the Clery Act.<sup>40</sup> Furthermore, having in-house designees responsible for performing these functions (investigating and determining the cause of reported fires) will prove beneficial when institutions are unable to get local or state fire officials to respond to their campus to conduct an investigation, which is commonplace when small, extinguished fires have been reported but the local or state agency is unwilling or unable to respond (as may be the case with reports of singed bulletin boards or door decorations in residential facilities).

Many Public Safety or Environmental Health Departments identify an employee who will be the point of contact for investigating fires to determine intent. Typically, the person conducting the investigation is also the person responsible for considering the evidence to determine whether a fire should be classified as an Arson in accordance with Clery Act standards. Regardless



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of who is identified to perform these functions, the person or persons designated to conduct investigations and determine whether the fire was willfully or maliciously set should receive some basic training in arson investigation. These individuals are not required to be certified as arson investigators, but should understand basic principles of fire science and be able to apply those principles to reported fires occurring at their institution. If an institution has a collaborative working relationship with the local fire department, the fire chief or someone within the fire department could train an institutional official or officials on the basics of fire investigation, including how to determine the fire's cause and origin. Any training obtained by the institutional official responsible for investigating and/or determining the cause of fires should be documented and retained by the institution to evidence the institution's good-faith attempts to competently meet disclosure requirements.

When a report of a fire is received by Public Safety, what happens next is critical in determining the cause. Upon arrival, Public Safety's first course of action should be to ensure the building, room or space is safely evacuated. If anyone is injured, those persons should be evacuated to a safe location for triage and medical assistance. If the fire can be safely extinguished, then Public Safety should do so. If not, Public Safety should await the arrival of emergency responders and allow those

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professionals to deal with the fire while Public Safety begins questioning residents who may live in the affected space about the fire's origin. Any witnesses or other observers should additionally be questioned. It is important to identify and document whatever is immediately known and/or readily available during the active incident. Any of these details could be key in determining the cause of the fire.

Once the immediate emergency is resolved, examining the scene of the fire, if safe to do so, should be the next step. This might be accomplished by a local, county or State arson investigator, but even if it is, that does not remove the institution's obligation under the Clery Act to determine the nature of the fire. While the responding officer may not be trained in arson investigation, they should understand the need to take good photographs and prepare drawings for the incident report, if applicable. Incident scene information and potential evidence will be absolutely critical to the investigator during their continued follow-up. An incident report with a detailed narrative, plenty of scene photographs from multiple angles, and witness statements are a treasure trove of information for an investigator who is assigned to follow-up after the initial incident response.

The investigator will want to review the incident report, examine photographs, examine the incident scene and potentially re-interview persons initially interviewed by the responding Public Safety officer(s). The goal of the investigator is to identify the fire's point of origin, establish the potential cause by examining all the available evidence, and determine if an Arson has occurred.

Once a determination is made that the fire could be an arson, that's when the investigator shifts their focus to intent. Was the fire ignited intentionally? If it was accidentally started by a person or persons who simply did not know or recognize the hazards or consequences of their actions, then it is an accidental fire. This is a careless act. Plugging in and turning on a space heater within a residence hall room and placing it on a high-top table just underneath a decorative tapestry hanging from the ceiling



of that room is an intentional act, but getting distracted by phone calls and friends and not realizing that the intense heat from the space heater had caused the tapestry to catch fire is careless, but would not constitute an arson.

If a person or persons knowingly ignited the fire, without real purpose, and they knew the hazards or consequences, then they acted maliciously. In calculating whether there was a real purpose for the fire, a determination regarding the functional reason for starting a fire must be made; e.g., cooking on a stovetop. A person who starts a fire for the purpose of burning and defacing a poster hung on another resident's door inside of a residence hall, who is seemingly aware of the potential consequences of their actions, would clearly be engaged in a malicious ignition of a fire. Everything revolves around intent and purpose.

## **CLERY & HEOA REQUIREMENTS: A REAL-WORLD APPLICATION**

Consider the following scenario to assist in analyzing a fire from a Clery Act and HEOA perspective. It's 5 a.m. on a Sunday morning and an automatic fire alarm is received within the Public Safety communications office from a Greek chapter house that is owned by the college, reasonably contiguous to the core campus, and qualifies as an On Campus Residential Facility. As the communications officer dispatches responding patrol officers, additional smoke alarms are received indicating smoke is traveling through the third floor of the building. In response to multiple alarm activations, the communications officer contacts 911 and requests fire department response.

Upon arrival to the incident scene, the responding Public Safety patrol officers observe the third floor of the building engulfed by flames. All students appear to have evacuated the building and Public Safety confers with the chapter leadership as they do a joint head count. The senior Public Safety officer on-scene informs the communications officer to send out an immediate notification text and email alert (consistent with this institution's protocols for confirming emergencies and issuing emergency notifications) to inform the campus about the fire and requesting that campus community members evacuate and avoid the immediate area as it is an active fire scene.

As the fire department arrives on location, it is believed no one is left in the building. Public Safety officers begin their preliminary investigation by asking questions of residents and potential witnesses inquiring what may have caused the fire. The fire department works to extinguish the fire. During this process, one of the fire fighters falls inside the building, possibly spraining their ankle, and is later transported to the hospital for x-rays. This information is recorded by one of the responding Public Safety officers. Once the fire department completes their work and the students are relocated for at least the rest of the day, the building is secured for further investigation by the institution. Upon extinguishing the fire and downgrading the emergency, a follow-up text message and email are sent to the campus community updating them on the fire response and current status.<sup>41</sup>

Several hours later, a Public Safety official designated and trained to investigate fire incidents responds to the incident scene. This official begins examining the scene, takes additional photographs, and reviews witness statements. The investigator identified the point of origin and finds what they believe to







apprehended (i.e., there is a continuing danger to the campus community), that a Timely Warning should be issued informing the campus community that the fire at the On Campus fraternity has been classified as an Arson.<sup>43</sup> This warning is distributed to the entire campus via blast email, consistent with the institution's procedures. The warning provides safety suggestions and recommendations along with a request for anyone having additional information that might be useful to the Department's investigative efforts to immediately report this information to Public Safety. Within two business days of the incident being classified as an Arson, an entry is made on the daily crime log and the fire log's "nature of fire" is updated to indicate the cause of the fire.<sup>44</sup> The investigation goes cold and no one is ever identified or found responsible.

Public Safety has completed the incident report, made an entry to the fire log, annotated the crime log and is now ready to include this information in its ASR and AFSR prior to the following year's October 1st deadline. In the ASR, an Arson is included in both the "On Campus" and "On Campus Residential Facility" categories of the crime statistics chart. In the AFSR, a fire is annotated next to the name of the On Campus chapter house along with the cause (Malicious/Intentional Burning of Books), the number of injuries (1=the fire fighter who sprained their

be an accelerant on the floor of a third floor common restroom. Additional follow-up seems necessary. Public Safety has classified their incident report as a fire within an on-campus residential facility and an entry is made to the fire log within the two business day window (i.e., by Tuesday since the fire occurred and was first reported to an official of the institution on Sunday).<sup>42</sup> No entry is added (yet) to the crime log since the fire was not reported to be a crime (i.e., no one reported that they observed an offender purposefully ignite a fire) and an investigation has not yet determined that the fire was criminal in nature.

Within the next 48-hours, the investigator determines that the fire was willfully set. It is believed that a box of textbooks were soaked with gasoline and intentionally ignited. The Public Safety Director reviews the report and assesses this information for the potential of a continuing threat to the campus community. The Director believes, based on the information presented and the fact that no one responsible has yet to be identified and







ankle and received medical treatment), and the value of the property damage, which for scenario purposes was estimated by the institution's insurance appraiser at \$70,000.<sup>45</sup>

As this scenario illustrates, depending on the location of a fire and its cause, fire incidents have the potential of being documented in several different ways depending upon their investigative classification. An Arson can show up in two different logs and two different annual disclosures – as both a fire and as a crime – when it involves an Arson in a residential facility. Training and awareness at all levels within the institution, especially within Public Safety, will ensure proper information retrieval, documentation, classification and reporting.

Throughout this article, we have identified the need to develop comprehensive emergency response procedures, educate campus communities, thoroughly train campus emergency personnel, collaboratively connect with outside emergency responders, and test and drill our emergency operations processes. Preparation, response, mitigation, recovery and business continuity are all vital to the ultimate success of our institutions should we be faced with a significant incident that negatively impacts our campus and poses a threat to the health and safety of our communities. We should also consider preparation as a serious means of protecting and preserving the institution's integrity and ultimate brand reputation.

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<sup>3</sup>The final regulations implementing this law were published in the October 29, 2009 Federal Register, Vol. 74 No. 208, available online at: <https://www.gpo.gov/fdsys/pkg/FR-2009-10-29/pdf/E9-25373.pdf>.

<sup>4</sup>Paul D. Martin, "HEOA Update: Fire Incident Reporting Requirements," *Campus Safety Magazine* (2010), accessed October 10, 2016, <http://www.campusafety-magazine.com/article/Fire-Incident-Reporting-Requirements>.

<sup>5</sup>Paul D. Martin, "Big Data Service on Campus," *NFPA Journal* (November/December 2009), at 9. The Center for Campus Fire Safety (CCFS) offers a voluntary fire data collection tool campuses can use to submit detailed information about fires associated with their campus. This tool will help CCFS learn more about the nature of campus fires and develop training programs and resources to mitigate the risk of future fires. For more information on the CCFS campus fire data collection project, visit [www.campusfiresafety.org](http://www.campusfiresafety.org).

<sup>6</sup>Richard Campbell, "Structure Fires in Dormitories, Fraternities, Sororities and Barracks," *National Fire Protection Association* (August 2016), accessed November 17, 2016 at <http://www.nfpa.org/news-and-research/fire-statistics-and-reports/fire-statistics/fires-by-property-type/residential/dormitories-fraternities-sororities-and-barracks>.



<sup>7</sup>U.S. Department of Education Campus Safety and Security Data Analysis Cutting Tool, "How many fires occurred in on-campus student housing facilities?" accessed November 17, 2016 at <http://ope.ed.gov/campusafety/Trend/public/#/answer/6/601/trend/-1/-1/-1-1>.

<sup>8</sup>U.S. Department of Education Campus Safety and Security Data Analysis Cutting Tool, "How many injuries or deaths due to fires were reported in on-campus student housing facilities?" accessed November 17, 2016 at <http://ope.ed.gov/campusafety/Trend/public/#/answer/6/602/trend/-1/-1/-1-1>.

<sup>9</sup>34 CFR § 668.41(b)(1) and 34 CFR § 668.41(c)(2).

<sup>10</sup>Pertinent statements of policy that must be included in the AFSR can be found in 34 CFR § 668.49(b).

<sup>11</sup>34 CFR § 668.41(e)(1) and 34 CFR § 668.41(e)(5).

<sup>12</sup>34 CFR § 668.41(e)(4)

<sup>13</sup>34 CFR § 668.41(e)(6)

<sup>14</sup>34 CFR § 668.49(d)(1)

<sup>15</sup>34 CFR § 668.49(d)(2) and U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting, 2016 Edition [2016 Handbook], Washington, D.C. Accessed October 10, 2016, <http://www.ed.gov/admins/lead/safety/campus.html>. (As discussed later in this white-paper, the 2016 Handbook explains: "Unlike Clery Act crime reporting, in which a crime is "reported" when it is brought to the attention of a campus security authority or a local law enforcement agency, there are no such restrictions with fire reporting. Any student housing fire that is reported to any official at your institution must be documented in your fire log.")

<sup>16</sup>34 CFR § 668.49(d)(3)

<sup>17</sup>2016 Handbook, at 12-5. It may be especially beneficial to combine these logs if the same individual or office is responsible for maintaining both logs. Also note that although all fires must be recorded on the fire log, only arsons are required to be included on the Daily Crime Log. See 2016 Handbook at 13-6.

<sup>18</sup>See 2016 Handbook, at 12-5

<sup>19</sup>See 2016 Handbook, at 11-1

<sup>20</sup>See 2016 Handbook, at 11-1

<sup>21</sup>See 2016 Handbook, at 11-1

<sup>22</sup>2016 Handbook, at 11-3

<sup>23</sup>2016 Handbook at 2-4

<sup>24</sup>Namely, for both the fire safety requirements discussed throughout this article as well as the missing student notification policies and procedures listed at 34 CFR § 668.46(h). Crime statistics for residential facilities should also be reported as a subset of the On Campus category. See 34 CFR § 668.46 (c)(5)(ii)

<sup>25</sup>34 CFR § 668.49(a)

<sup>26</sup>See the NFRA's "Structure Fires in Dormitories, Fraternities, Sororities and Baracks," which reported that "86% of the reported structure fires involved cooking equipment" at iv.

<sup>27</sup>2016 Handbook, at 12-1 through 12-2

<sup>28</sup>A pre-requisite of being a CSA is being an "official," although in order to be considered a CSA, the official must have certain functions, such as having significant responsibility for student and campus activities. See 2016 Handbook at 4-2.

<sup>29</sup>We note that "officials" need not be employees of the institution. For example, a student that has been authorized to assist in the resolution of student conduct matters via participation on a student conduct hearing board would certainly constitute an "official" even though the student is not compensated for their service or otherwise an employee of the institution.

<sup>30</sup>See 34 CFR § 668.49(b)(7)

<sup>31</sup>As noted in the 2016 Handbook, "The Clery Act requires every Title IV institution, without exception, to have and disclose emergency response and evacuation procedures that would be used in response to a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus." 6-1. In essence, this means institutions must have an emergency response plan, which should include the institution's planned response to fires.

<sup>32</sup>Incidentally, an institution must describe the fire safety education and training programs provided to students and employees in the AFSR. 34 CFR § 668.49(b)(6)

<sup>33</sup>HEOA also requires institutions to test their emergency response and evacuation procedures on an annual basis. 34 CFR § 668.46(g)(6). An exercise that is used by an IHE to meet the annual testing requirement should involve representatives from local response agencies, such as local police, the local fire department, and EMS personnel.

<sup>34</sup>Although all residential facility fires must be included in the fire statistics per HEOA, not all residential facility fires will be included in the crime statistics as Arsons. Only those fires determined to meet the definition of Arson should be included in the crime statistics. See 2016 Handbook at 13-6

<sup>35</sup>U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting (2011) [2011 Handbook], Washington, D.C. at 51

<sup>36</sup>2011 Handbook, at 51

<sup>37</sup>See 2016 Handbook at 3-21

<sup>38</sup>2016 Handbook, at 3-21

<sup>39</sup>2016 Handbook, at 3-21 through 3-22

<sup>40</sup>In the case of a major fire, the local or state fire agency is likely to respond and investigate. In these instances, we strongly encourage campus officials to obtain a copy of that agency's investigative report(s), if available, so that campus officials can consider any facts discovered through investigation and determine whether those facts rise to the level of an Arson for Clery Act purposes.

<sup>41</sup>Although the requirements of sending Emergency Notifications are beyond the scope of this article, we note that institutions are required to "provide adequate follow-up information to the community as needed." 34 CFR § 668.49(e)(3)

<sup>42</sup>The 2016 Handbook notes "Use the date that the fire was initially reported. For example, if the fire was reported to a campus dean on a Friday and the dean reported it the following Monday to the office maintaining the log, Friday's date would be entered in the log. Enter the date the fire was reported regardless of how much time has passed since the fire occurred." at 12-3

<sup>43</sup>Although institutions are not required to distribute a Timely Warning Notice and an Emergency Notification, this example highlights how circumstances have changed since the initial Emergency Notification was sent regarding an active fire, and based on the information available, a Timely Warning is required since a Clery Act crime occurred on or within the institution's Clery Geography and is considered by the institution to pose a serious or ongoing threat to students and employees. See 2016 Handbook, at 6-17 for an illustration of these principles as applied to an active shooter situation.

<sup>44</sup>Leaders should note that even if the institution in this example chose to combine its Daily Crime and Fire Logs, two separate entries would be required: one for the Arson (for crime log purposes) and another for the residential facility fire (for Fire Log purposes). The Arson would also be included in the crime statistics and the fire statistics.

<sup>45</sup>The institution would also denote "0" as the number of deaths related to the fire in its fire statistics, as this information must be disclosed for each residential facility fire, even if the fire did not result in any deaths. See 34 CFR § 668.49(c)(1)(iii)

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