

An Institutional Approach for Responding to Incidents of Bias and Hate Crimes

By: Bill Lafferty¹

Director of Federal Relations
National Association of Clergy Compliance
Officers and Professionals (NACCOP)

By: Lindi Swope²

Director of the National Association of Clergy Compliance
Officers and Professionals (NACCOP)

Presented by:

STANLEY
Security



D. STAFFORD
& ASSOCIATES



College and university campuses have always been sanctuaries for the free expression and active reflection of diverse opinions and ideas. Freedom of expression and inquiry has been essential to the missions of many institutions of higher education (IHEs) and are at the core of their very foundation. Allowing students the opportunity to experience varying viewpoints and ideas is what many would consider integral to the curricular and co-curricular learning goals of any IHE. That said, those of us working in higher education are witnessing a remarkable shift in what students, as well as some faculty and staff, generally would no longer consider as free speech. The issue of free speech on college campuses has been in the forefront of the news and highly debated within various committees of the U.S. Congress. The arguments and concerns related to this debate are varied and quite complex.

Following the 2016 Presidential election, bias incidents on college campuses have vastly increased, “with the Southern Poverty Law Center (SPLC) documenting 1,863 such incidents between then and April 2017, at least 330 of which took place on college campuses. In fact, in the 10 days following the election, there was an average of 87 incidents per day!”³ The SPLC labeled this spike as the “Trump Effect” in response to the campaign language that sparked hate, violence, and bullying before and after the election.⁴ In addition to the increase in bias incidents, the SPLC reported that hate groups increased as “Trump electrified the radical right.”⁵

There has been an emergence of alt-right or alternative right groups and those who refer to themselves as Antifascists. According to an article in Time magazine, the alt-right was referred to

as, “...a constellation of groups that organize on-line delight in ironic and coded forms of communication, and typically have little actual influence outside of anonymous message boards and the comments section of revisionist YouTube videos that declare Adolf Hitler’s greatness.”⁶ The alt-right rejects traditional conservative views and values and subscribes to what they refer to as white nationalism. Antifascists or Antifa, simply put, are against fascist beliefs, principles, and ideals and are often in conflict with those from the alt-right. Recruitment of college students on campuses across the nation by radical right groups has also increased. White nationalist leader Richard Spencer was quoted as saying that he “aims to get them while they are young.”⁷ The news during the fall semester of the 2017-2018 academic calendar seemed to be dominated by controversial speakers on campus, free speech debates, student and faculty protests, and counter protests by self-proclaimed Antifascist groups, some of which turned terribly violent and caused thousands of dollars in damages. Colleges and universities continue to struggle with providing a balance between allowing free speech and debate on their campuses while ensuring their campus communities are safe from crimes of hate and other acts of violence.

Even prior to the election, campuses were beginning to see an increase in student activism, including protests related to perceived injustices attributable to the appearance of institutional racism. There was also a growing desire for safe spaces and trigger warnings on syllabi and preceding presentations designed to warn students of material, content, or conversations that might spark an extreme emotional response from those who had experienced or witnessed a traumatic event in their lives. “Who would have



imagined that the original safe space motive — to explore issues in an inclusive environment — would so quickly give way to the impulse to quarantine oneself and create de facto cultural segregation?”⁸ These are certainly challenging times for IHE administrations and there doesn't seem to be a clear resolution in sight — at least not in the immediate future.

Considering this as the backdrop, many administrators understandably are quick to respond to inquiries related to bias incidents on their campuses and, in doing so, some get caught up in the emotion and discord often associated with such incidents and respond to these demands in ways that are not always entirely helpful to their institutions or compliant with Clery Act reporting requirements. IHEs continue to face increased scrutiny, often unrealistic and unreasonable expectations, and strong pressure from their campus communities to classify hate speech or bias incidents as Hate Crimes. This rush to judgment without following clear policies, processes, or protocols can lead to the misclassification of bias incidents. IHEs should establish clear protocols that are grounded in the law and be consistent with their investigative processes. Understanding what constitutes bias and how to properly classify and respond to crimes of hate are integral to an IHEs compliance with the Clery Act.

BIAS INCIDENTS VS HATE CRIMES

The challenge for IHE administrators within an extremely divisive political climate is being able to intelligibly distinguish the differences between bias incidents and Clery-reportable Hate Crimes while positively, assertively, and confidently communicating those differences to what is certain to be an emotionally charged, passionate, and distressed campus community.

Bias is not defined by the Clery Act, but the Hate Crimes Uniform Crime Reporting (UCR) manual defines bias as “a preformed negative opinion or attitude toward a group of persons based on their race, gender, religion, disability, sexual orientation, or ethnicity/national origin.”⁹ A Hate Crime is a criminal offense committed against a person or property which is motivated, in whole or in part, by the offender's bias.¹⁰ In its purest form, a Hate Crime is a bias incident, plus a Clery Act enumerated crime. Bias incidents on college campuses are unfortunately not a rarity, nor are they a Clery-reportable incident. They happen and are now unquestionably being reported at an increasing rate. That said, an incident of bias does not automatically become a Hate Crime. The regrettable incident wherein someone shouts racial slurs from a passing vehicle directed toward a person of color walking along your campus' public property does not, in and of itself, rise to the level of a Hate Crime.



We understand based on the *2016 Handbook for Campus Safety and Security Reporting* (2016 Handbook) that in order for a bias incident to be classified as a Hate Crime it must first meet the elements of a Clery Act general crime category or what is often referred to as a “Primary Crime.”¹¹ The applicable “Primary Crimes” include;¹²

- Murder & Nonnegligent Manslaughter,
- Sexual Assault (Rape, Fondling, Incest, and Statutory Rape),
- Robbery,
- Aggravated Assault,
- Burglary,
- Motor Vehicle Theft, and
- Arson.

According to the *2016 Handbook for Campus Safety and Security Reporting*, “Statistics must be disclosed separately for each of these four general categories. This means that when an incident meets definitions in more than one of these categories, it must be reported in each category. For example, any Criminal Offense that is also a Hate Crime or VAWA Offense, or results in an arrest or disciplinary action for a Weapons, Drug Abuse or Liquor Law Violation, should be counted as a Criminal Offense and also as a Hate Crime, VAWA Offense, arrest, or disciplinary referral, as appropriate. The Hierarchy Rule discussed on pages 3-24 and 3-25 applies only when counting crimes within the Criminal Offenses category” (p. 3-2).



Institutions must consider the aforementioned offenses, and any incidents of Larceny-Theft, Simple Assault, Intimidation, or Destruction/Damage/Vandalism of Property that were determined through investigation to have been motivated by bias.¹³

In determining the elements of a crime, campus law enforcement and security professionals need to be asking the right questions to complete thorough preliminary and potentially subsequent follow-up investigations. These investigations will be critical in ensuring compliance with Clery Act regulations and sub-regulatory guidance. As equally important, a well written incident report that documents key facts of the case will reduce potential suspicion that the administration is not properly responding to campus community concerns related to hate and it will also help IHE administrators and senior leaders speak intelligently about an incident of bias.

Understanding there are many categories of bias, for this conversation we are only referring to the eight categories outlined and defined within the 2016 Handbook for Campus Safety and Security Reporting, which include the following:¹⁴

- **Race Bias:** A preformed negative opinion or attitude toward a group of persons who possess common physical characteristics (e.g., color of skin, eyes, and/or hair; facial features, etc.) genetically transmitted by descent and heredity which distinguish them as a distinct division of humankind (e.g., Asians, blacks, whites).
- **Disability Bias:** A preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments/ challenges, whether such disability is temporary or permanent, congenital or acquired by heredity, accident, injury, advanced age or illness.
- **Gender Bias:** A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender, e.g., male or female.

In determining the elements of a crime, campus law enforcement and security professionals need to be asking the right questions to complete thorough preliminary and potentially subsequent follow-up investigations.

- **Gender Identity Bias:** A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender non-conforming individuals.
- **Religious Bias:** A preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being (e.g., Catholics, Jews, Protestants, atheists).
- **Sexual Orientation Bias:** A preformed negative opinion or attitude toward a person or a group of persons based on their actual or perceived sexual orientation.
- **Ethnicity Bias:** A preformed negative opinion or attitude toward a group of people whose members identify with each other, through a common heritage, often consisting of a common language, common culture (often including a shared religion) and/or ideology that stresses common ancestry.
- **National Origin Bias:** A preformed negative opinion or attitude toward a group of people based on their actual or perceived country of birth. This bias may be against people that have a name or accent associated with a national origin group, participate in certain customs associated with a national origin group, or because they are married to or associate with people of a certain national origin.





RESPONDING TO AND INVESTIGATING INCIDENTS OF BIAS

Campus Scenarios:

- A swastika is carved into a faculty member's office door within one of the main campus academic buildings.
- Students run through your core campus carrying a confederate flag and chanting racial slurs.
- A student of color is surrounded by several older white men claiming to be Ku Klux Klan members who begin intimidating the student because of their perception of his racial identity.
- Students partying on a fraternity porch are celebrating Cinco de Mayo by wearing sombreros and making statements perceived as hateful and disparaging.
- A controversial speaker with a perceived anti-Islamic bias is invited to campus by a conservative student group. This invitation spurs an increase in bias-related incidents throughout campus – including controversial posters, students yelling slurs at their peers, and heated debates during open sessions of the Student Senate meetings.

Considering the ever evolving political landscape of the country and most IHEs climates around the issues of free speech, bias, and hate, it is important for campus law enforcement/security agencies or whomever is conducting investigations into bias-related conduct to understand the sensitive nature of these incidents, to proceed with deliberate caution, to assess each case separately and distinctly, to not be pressured by the community's often unrealistic expectations, and to be alert for misleading or feigned facts. IHEs are pressured to respond to these incidents

rapidly and with some swift measure of punishment. That pressure can cause an IHE to misclassify, often times over-report an incident as a Hate Crime in order to not be perceived as perpetuating the stigma of institutional oppression. We have witnessed presidents and senior institutional officials resigning or being fired, because of a sense of poor leadership, direction, or lack of influence and action as it is connected to diversity, equity, and inclusion matters. One such example of this came in the fall of 2015 "amid escalating tensions, students protesting what they see as a culture of racism at the University of Missouri successfully oust the system's president and the flagship's chancellor."¹⁵

IHEs should develop a bias incident response protocol as part of their overall emergency operations planning. We often neglect to include these types of response protocols, because we are focused on larger scale human-made and/or natural disasters when we prepare, plan, educate, and drill relative to emergencies on campus. A bias related incident, if mishandled, can become a crisis within a short period of time. Once these protocols are established, test them as part of your institution's table-top exercises and other drills. Make sure senior level officials participate in the exercises. This is an excellent way to create an awareness and clear understanding of the complexities surrounding these very complicated and intensely charged incidents. Senior level involvement, clear response and investigative protocols, and crisis communications plans will assist IHEs as they navigate these difficult waters and respond in a manner that is consistent with institutional policies and Federal requirements, transparent, supportive of victims and complainants, and in concert with the IHE's core values and campus climate.

Expedient and effective response from campus law enforcement/security to reported incidents of bias is important for victim support and community stability.¹⁶

The International Association of Chiefs of Police (IACP) declares the following for law enforcement agencies and departments to recognize as it relates to bias incidents and Hate Crimes:

- They are often especially brutal or injurious.
- Victims are often traumatized and terrified.
- Families, friends, and associates of victims often feel frustrated and powerless.
- Others in the community who share the victim's characteristics may feel victimized and vulnerable.
- Hate incidents can escalate and prompt retaliatory action.
- Hate Crimes and bias/hate incidents create communitywide unrest.¹⁷

While the IACP is referencing communities in general and municipal law enforcement entities, these also apply to our campus communities and law enforcement/security departments. IHEs should think about bias incident investigations as being comprised of two separate and distinct levels – the preliminary and follow-up investigations. The preliminary investigation is the investigation conducted by the initial responding officers in response to a report. The follow-up investigation is often conducted by a trained investigator, supervisor, or administrator and this involves the broader interview of suspects, witnesses, potential witnesses, and examination of a probable crimes scene, relevant evidence, etc. This level of investigation should provide adjudicators with sufficient information to make an informed decision; including credibility assessments, and recommendations of responsibility.

The International Association of Chiefs of Police (IACP) outline a law enforcement response and preliminary investigation related to incidents of bias in its “Guide to Responding to Hate Crimes” as summarized below.¹⁸ This is certainly not a thorough and complete list:

Response:

- Treat any incident scene as a crime scene and any materials, writings, etc. as evidence and preserve the scene and evidence.
- Ensure the safety of victims, witnesses, and others pertinent to the case.
- Treat injuries as needed and understand the potential psychological impact on a victim(s) and be prepared to engage support from on or off-campus counseling.

Preliminary Investigation:

- Responding officers should be focused on the Five W's of basic investigation and report writing – Who, What, When, Where, Why, and whenever possible, How?
 - *Working diligently to answer these questions as thoroughly as possible will ensure the follow-up investigation conducted by a departmental investigator, supervisor, or administrator can be more responsive in determining the crime classification and potential suspects involved.*

While the IACP is referencing communities in general and municipal law enforcement entities, these also apply to our campus communities and law enforcement/security departments.





Follow-up Investigation:

- Review all information and evidence collected as part of the initial response and preliminary investigation.
- Re-interview witnesses, suspects, and canvass the area to see if anyone else may have witnessed the incident or event, but were not readily available as part of the preliminary investigation.
- Re-interview the victim as necessary.
- Be alert to misleading or feigned facts.
- When investigating incidents of bias, before classifying those incidents as Hate Crimes, it is important to differentiate between the incident of bias, the actual crime committed, and the offender's perceived bias of the victim, and ultimate motivation. "The mere fact the offender is biased against the victim's actual or perceived race, religion, disability, sexual orientation, ethnicity, gender, and/or gender identity does not mean that a Hate Crime was involved. Rather, the offender's criminal act must have been motivated, in whole or in part, by his or her bias."¹⁹

As outlined in the 2016 Handbook, objective evidence that a crime may have been motivated by bias include the following:

- *The offender and the victim were of a different race, religion, disability, sexual orientation, ethnicity, national origin, gender or gender identity. For example, the victim was African American and the offender was white.*
- *Bias-related oral comments, written statements or gestures were made by the offender, that indicate the offender's bias. For example, the offender shouted a racial epithet at the victim.*

- *Bias-related drawings, markings, symbols or graffiti were left at the crime scene. For example, a swastika was painted on the door of a synagogue, anti-Islamic statements on the wall of a mosque, or anti-gay graffiti on the door of an LGBTQ center.*
- *Certain objects, items or things which indicate bias were used. For example, the offenders taped a photo of a burning cross to the door of an African American student's dorm room.*
- *The victim is a member of a racial, religious, disability, sexual orientation, ethnicity, national origin, gender or gender identity group that is overwhelmingly outnumbered by other residents in the student housing facility where the victim lives and the incident took place. This factor loses significance with the passage of time (i.e., it is most significant when the victim first moved into the facility, and becomes less and less significant as time passes without incident).*
- *Several incidents occurred in the same location at or about the same time, and the victims were all of the same race, religion, disability, sexual orientation, ethnicity, national origin, gender or gender identity.*
- *A substantial portion of the campus community where the crime occurred perceived that the incident was motivated by bias.*
- *The victim was engaged in activities related to his or her race, religion, disability, sexual orientation, ethnicity, national origin, gender or gender identity. For example, the victim was a member of the National Association for the Advancement of Colored People (NAACP) or participated in an LGBTQ Pride celebration.*
- *The incident coincided with a holiday or a date of particular significance relating to a race, religion, disability, sexual orientation, ethnicity, national origin, gender or gender identity, e.g., Martin Luther King Day, Rosh Hashanah or the Transgender Day of Remembrance.*
- *The offender was previously involved in a similar Hate Crime or is a hate group member.*
- *There were indications that a hate group was involved. For example, a hate group claimed responsibility for the crime or was active on the campus.*
- *A historically established animosity existed between the victim's and the offender's groups.*
- *The victim, although not a member of the targeted racial, religious, disability, sexual-orientation, ethnic, national origin, gender or gender identity group, was a member of an advocacy group supporting the precepts of the victim group.²⁰*



If after a thorough investigative process, a bias committed Clery crime (as outlined above), “is determined to be motivated, in whole or in part, by the offender’s bias(es) against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity; then the institution should classify that bias criminal incident as a Hate Crime. Even if the offender was mistaken in his or her perception that the victim was a member of the group he or she was acting against, the offense is still a bias crime because the offender was motivated by bias against the group.”²¹ Open disclosures of a Hate Crime classification for Clery Act compliance purposes would include annotation on the Daily Crime Log (DCL), insertion in the IHE’s annual disclosure of crime statistics in the Annual Security Report (ASR), and reporting to the U.S. Department of Education (ED) through the use of ED’s online Campus Safety and Security Data Analysis Cutting Tool. It could also involve the campus-wide distribution of a Timely Warning Notification (TWN) depending on whether, after assessment by campus officials, it was determined to be a potential ongoing or serious threat to the campus community.

Presenting Hate Crime Data in the Annual Security Report

Practitioners should also be mindful of the specific formatting requirements when presenting Hate Crime data in the Annual Security Report. As demonstrated in the 2016 Handbook for Campus Safety and Security Reporting, institutions have the option to disclose Hate Crime data using either a tabular or narrative method, provided that they are including statistics for the three most recent calendar years.

Here is an example of narrative reporting as provided in the Handbook for Campus Safety and Security Reporting:

EXAMPLE 1: HATE CRIMES

2014: One on-campus Intimidation incident characterized by religious bias.

2013: One noncampus Robbery characterized by National Origin bias, and one public property Aggravated Assault characterized by Sexual Orientation bias.

2012: No Hate Crimes reported.

EXAMPLE 2: HATE CRIMES

There were no reported Hate Crimes for the years 2012, 2013 or 2014.²²

Either method necessitates four pieces of information to meet ED’s Hate Crime disclosure requirements. Anything less would be noncompliant. The four pieces of required information include; the year in which the offense was reported, the category of crime, the Clery Geography category in which the offense occurred, and the category(s) of bias. Institutions should also be mindful that they should not merge Hate Crime data within their Primary Crimes statistics chart. Doing so would also be noncompliant, as those charts rarely include the four categories identified above.

It’s also noteworthy to mention that the 2016 Handbook offers guidance reminding institutions to count in their crime statistics any Hate Crimes that involve a Criminal Offense in addition to presenting the data in the Hate Crime category. Essentially, this results in double counting of the Criminal Offense as it should be disclosed in two locations (the Criminal Offense crime statistics table as well as the Hate Crime table or narrative disclosure). The following passage in the 2016 Handbook reinforces this requirement:

For any Criminal Offense that is also a Hate Crime, your statistics should indicate the offense and also the offense with the category of bias. For example, if an Aggravated Assault is a Hate Crime, include one Aggravated Assault in the statistics in the Criminal Offenses category and one Aggravated Assault motivated by (category of bias) in the Hate Crime category.

The exception is when the Aggravated Assault is not included in the Criminal Offenses category because of the hierarchy rule. For example, for a single incident involving both a Rape and an Aggravated Assault that were both Hate Crimes, include only the Rape in the Criminal Offenses category and both the Rape and the Aggravated Assault in the Hate Crimes category.”²³

EDUCATING AND PREPARING YOUR CAMPUS LEADERS AND COMMUNITY

It goes without saying that responding campus police or security officers need to be trained and well versed in the area of incident response and investigation – this includes asking the right questions, recording and preserving evidence, and canvassing the area/campus “neighborhood” for details, evidence, witnesses or peripheral information that will help investigators or others properly collect and classify crimes. Having an educated and capable response force is where the rubber meets the road. Establish that foundation first and then move to educate other key campus areas and constituencies.

Proactive education and awareness is often half the battle when trying to confront misunderstandings and misinterpretations related to a potentially sensitive and often emotional topic.

This includes the following key areas and offices:

- The president (including the Board of Trustees) and their cabinet – senior leadership is often thrust into the spotlight in response to a controversial or sometimes tragic incident that occurs on campus, including an incident of bias or a Hate Crime. Understanding that the president or senior leader designee may need to be the institutional spokesperson, it is necessary for them to be knowledgeable of what constitutes bias and how to differentiate between a bias incident itself versus one that reaches the level of a Hate Crime. Conflating the two as interchangeable can result in serious backlash from the campus community, unfavorable media coverage, and a negative impact on the institution’s brand identity and reputation.
- Faculty – faculty should be seen as partners. They often have remarkable institutional influence and, if informed of administrative processes, can be exceptional allies and resources.
- Student Affairs Professionals – these professionals are typically the policy makers and will be directly involved determining the student affairs response, which will include the adjudication of cases when students are accused of the underlying conduct.
- Residence Life Professional and Student Staff, Greek Life and Student Activities Professionals – they are often the first responders to bias incidents occurring within the residence halls or among student groups and organizations. They should understand how to respond and interact with complainants, witnesses, and others with a great degree of sensitivity and be able to recognize what information to capture as part of



their initial response before contacting campus law enforcement or security. Often what is initially said or done in front of a student staff member before professional staff get actively involved could be a key or critical component in the investigative process.

- General Counsel – providing legal counsel as it relates to 1st amendment free speech issues and historical court rulings on the topic. Assisting in the development of policies related to assembly, speech, protests, civil discourse, etc. – especially policies that relate to time, place, and manner restrictions on speech.
- Local Law Enforcement (LLE) Partners – establishing understanding or even agreements with LLE can reduce confusion when an incident occurs and make it clear which agency will investigate the incident. Information-sharing, role clarification, and clear expectations can help eliminate or at least reduce potential jurisdictional problems and other political or public relations issues.
- Any response teams and special committees to include; Bias Response Team, Behavioral Threat Assessment Team, Mediation Team and Groups, Title IX and Clery Compliance Teams, Campus Emergency Response Team – these teams can often become aware of an incident before any “official” reporting entity on your campus. If unaware of processes, policies, or compliance requirements, they can do damage in the way they unintentionally respond to the initial report, and
- Specific student groups and organizations that support and provide resources to your students of color, international students, LGBT students, women, religious organization, and other marginalized groups that may be more acutely affected by incidents of bias at the institution.

Proactive education and awareness is often half the battle when trying to confront misunderstandings and misinterpretations related to a potentially sensitive and often emotional topic. This outreach builds trust, understanding and establishes long-term relationships and partnerships. The time for trust building is before a tragedy occurs as there won’t be time in the aftermath of a highly charged event.



INTERACTING WITH THE MEDIA — CRISIS COMMUNICATIONS

IHEs should have their most seasoned and knowledgeable person in front of the media responding to inquiries related to bias incidents and Hate Crimes on campus. This should be someone knowledgeable of the law and the intricate differences between incidents and crimes. Additionally, this knowledge base should be expanded among all IHE leaders including the Chief Executive Officers/Presidents and to a certain extent, the Board of Trustees. IHEs should prepare media response protocols that are as comprehensive, accurate, and consistent as possible.

Suggestions to consider:

- Develop canned messaging based on institutional policy and the law for bias-related incidents. While not every incident will be the same, definitions of bias and Hate Crimes, Hate Crime classifications, campus law enforcement/security response and investigative protocols will be similar and those should be clearly outlined. Having this information readily available and accessible will assist the president or other IHE spokesperson or public information officer (PIO) stay on message and be clear about what has been reported and what the next steps may be without compromising investigative processes. Clear, transparent, and open communications will reduce uncertainty, suspicion, and enhance confidence and subsequently create a greater sense of campus safety.
 - *Limit the number of spokespersons and have a plan for when the president speaks, if at all. The IHE will need to also coordinate communications external to the campus and that might include television, radio, and print media.*
- IHE public relations or communications & marketing teams should be an integral part in developing the messaging. This can and should be accomplished as part of the IHEs emergency operations processes.

IHEs should prepare media response protocols that are as comprehensive, accurate, and consistent as possible.

- IHEs need to determine how this communication will occur – through a mass email, the campus newspaper, campus “town hall” meeting, etc. Depending upon the investigative process and information available, the IHE may have had enough information present to classify the incident as a Hate Crime at the preliminary investigative stage and initial communications may have been sent as a Timely Warning Notification. If this is the case, a plan for follow-up communications, while not required, should be developed to ensure the community continues to feel connected to the IHEs management of the incident.
- Continue to provide public follow-ups as new information is developed. Again, this should be done in a manner that does not interfere with investigative efforts or directly or indirectly jeopardize the safety of victim(s), witnesses, or potential suspects.
- IHEs should confer and work with local, State, and Federal law enforcement agencies as necessary. This will depend on the jurisdictional issues involving the case, the resources needed to conduct a comprehensive investigation, and the seriousness of the threat and/or crime. If an IHE is working with another agency, be clear about that as long as it doesn’t interfere with the investigation. Issue joint statements and conduct joint briefings where and if possible. This conveys a motivation to be transparent, collaborative, and strong desire to use all available resources to resolve the incident.
- Once protocols are in place, test them. This can effectively be accomplished through table-top scenarios or case study reviews. Bring in the key personnel and decision-makers likely to be involved in a bias incident response.



LESSONS LEARNED AND PENDING HATE CRIME LEGISLATION

Occidental College was recently found out of compliance for the failure to disclose a Hate Crime. According to the Final Program Review Determination report,

“Incident No 12-0607 Classified as Harassment – should have been classified as Hate Crime Offense/Intimidation. Complainant was surrounded by five or six males who started to call him sexually orientated slurs. This placed the complainant in “reasonable fear” causing him to quickly retreat from the area. Intimidation occurred when the suspect was surrounded, which unlawfully placed the suspect in reasonable fear of bodily harm, even though no weapons were displayed and the complainant was not physically attacked. This would result in an under-reporting of Hate Crime/Intimidation (FPRD p. 17).”²⁴

This example serves as a reminder to practitioners to ensure that all bias related incidents are assessed to determine if the elements of a Hate Crime exist in a reported incident. In this scenario, the anti-gay slurs combined with the suspects surrounding the victim caused this individual to have reasonable fear of bodily harm. Additionally, this report was discovered by ED during a sampling of incident reports during the review and was originally classified as “Harassment.” This type of audit finding reinforces the importance of a comprehensive review of all incident report narratives to ensure reportable offenses are disclosed. Harassment is not one of the Clery-reportable crime categories, which may have been the reason this was omitted from Occidental’s statistical disclosures IF the institution was reliant on report classifications to identify Clery-reportable offenses.

The Occidental College audit finding provides practitioners insight into ED’s enforcement activity related to Hate Crime reporting, and the Campus Hate Crimes Act²⁵ gives a glimpse into possible future requirements that are on the horizon. H.R. 4093 is a proposed bill that would amend the Higher Education Act of 1965, the proposed bill is otherwise referred to as the CAMPUS HATE Crimes Act. The intent of this proposed legislation is to enhance the prevention and response to Hate Crimes on college and university campuses. This bill references the Southern Poverty Law Center’s tracking efforts for Hate Crimes and bias incidents and notes the significant increase in occurrences on campuses since the 2016 Presidential election. This proposed legislation intends to amend the Clery Act in response to this surge in bias incidents. The primary objectives of the proposed bill include annual distributions to campus constituents on information about standards of conduct and sanctions related to Hate Crimes, definitions of Hate Crimes, resource/accommodation information for victims of Hate Crimes and like the Drug Free Schools and Communities Act, a requirement to conduct a self-review of the program’s effectiveness.

As with any campus incident or emergency, the best time to deal with it is before it occurs. Clear protocols, trained personnel, campus education and awareness, and partnership development as outlined throughout this Whitepaper should sufficiently prepare an IHE to effectively respond to an incident of bias and/or Hate Crime in a manner that not only achieves compliance with existing laws, but also ensures a response congruent with the IHE’s core values, campus community expectations, and the expectations of those directly and indirectly impacted.



¹ Bill Lafferty serves as the Director of Federal Relations for the National Association of Clery Compliance Officers and Professionals (NACCOP) and as an associate with D. Stafford & Associates. Bill Lafferty has over 30 years working in security and law enforcement and nearly 25 years has been within the higher education environment. Bill Lafferty is an active practitioner and currently serves as the Assistant Vice President for College Life and Executive Director of Public Safety at Gettysburg College in Gettysburg, PA. He can be reached at blafferty@naccop.org.

² Lindi Swope serves as the Director of the National Association of Clery Compliance Officers and Professionals (NACCOP) and as the Director of Clery Compliance Services for D. Stafford and Associates (DSA). Lindi Swope has over 15 years of experience assisting institutions of higher education with complying with the Clery Act. Prior to joining DSA and NACCOP, Lindi spent 11 years working at the George Washington University in Washington, D.C.

³ Tim Abel, "US Experiences Surge in Hate Based Incidents Since Trump's Election, Particularly on College Campuses", News, Politics, July 12, 2017, <http://www.ifyouonlynews.com/politics/us-experiences-surge-in-hate-based-incidents-since-trumps-election-particularly-on-college-campuses/>

⁴ Mark Potok, "The Trump Effect", Southern Poverty Law Center, February 15, 2017, <https://www.splcenter.org/fighting-hate/intelligence-report/2017/trump-effect>

⁵ "Hate groups increase for second consecutive year as Trump electrifies radical right", Southern Poverty Law Center, February 15, 2017, <https://www.splcenter.org/news/2017/02/15/hate-groups-increase-second-consecutive-year-trump-electrifies-radical-right>

⁶ Michael Scherer and Alex Altman, "Bigots Boosted by the Bully Pulpit", Time, August 28, 2017.

⁷ Josh Harkinson, "The Push to Enlist "Alt-Right" Recruits on College Campuses", Mother Jones, December 6, 2016, <http://www.motherjones.com/politics/2016/12/richard-spencer-alt-right-college-activism/>

⁸ Frank Furedi, "Campuses are breaking Apart Into 'Safe Spaces'", Los Angeles Times, January 5, 2017, <http://www.latimes.com/opinion/op-ed/la-oe-furedi-safe-space-20170105-story.html>

¹⁰ Ibid

¹¹ U.S. Department of Education, (2016), The Handbook for Campus Safety and Security Reporting, pp. 3-1 – 3-23, <https://www2.ed.gov/admins/lead/safety/handbook.pdf>.

¹² Hate Crimes are not reported for Manslaughter by Negligence.

¹³ U.S. Department of Education, (2016), The Handbook for Campus Safety and Security Reporting, pp. 3-27 – 3-29, <https://www2.ed.gov/admins/lead/safety/handbook.pdf>

¹⁴ U.S. Department of Education, (2016), The Handbook for Campus Safety and Security Reporting, pp. 3-25 – 3-26, <https://www2.ed.gov/admins/lead/safety/handbook.pdf>

¹⁵ Kellie Woodhouse, "Activists Oust Two Leaders", Inside Higher ED, November 10, 2015, <https://www.insidehighered.com/news/2015/11/10/u-missouri-leaders-resign-amid-student-concerns-over-racism-and-diversity>

¹⁶ "Responding to Hate Crimes: A Police Officer's Guide to Investigation and Prevention", International Association of Chiefs of Police, p. 4, <http://www.theiacp.org/Portals/0/documents/pdfs/HateCrimesBrochure.pdf>

¹⁷ Ibid

¹⁸ "Responding to Hate Crimes: A Police Officer's Guide to Investigation and Prevention", International Association of Chiefs of Police, p. 5, <http://www.theiacp.org/Portals/0/documents/pdfs/HateCrimesBrochure.pdf>

¹⁹ Criminal Justice Information Services (CJIS) Division Uniform Crime Reporting (UCR) Program, "Hate Crime Data Collection Guidelines and Training Manual", February 27, 2015, pp. 4-9, <https://ucr.fbi.gov/hate-crime-data-collection-guidelines-and-training-manual.pdf>

²⁰ U.S. Department of Education, (2016), The Handbook for Campus Safety and Security Reporting, pp. 3-30 – 3-31, <https://www2.ed.gov/admins/lead/safety/handbook.pdf>

²¹ Criminal Justice Information Services (CJIS) Division Uniform Crime Reporting (UCR) Program, "Hate Crime Data Collection Guidelines and Training Manual", February 27, 2015, pp. 9, <https://ucr.fbi.gov/hate-crime-data-collection-guidelines-and-training-manual.pdf>

²² U.S. Department of Education, (2016), The Handbook for Campus Safety and Security Reporting, 2016 Edition, pp 9-6. Retrieved from <https://www2.ed.gov/admins/lead/safety/handbook.pdf>

²³ U.S. Department of Education, (2016), The Handbook for Campus Safety and Security Reporting, 2016 Edition, p. 3-33. Retrieved from <https://www2.ed.gov/admins/lead/safety/handbook.pdf>

²⁴ U.S. Department of Education. (2017). Final Program Review Determination [Occidental College], p. 17. Retrieved from: https://studentaid.ed.gov/sa/sites/default/files/fsawg/datacenter/clery-act/Occidental_College_8_11_17_FPRD_Redacted.pdf

²⁵ H.R. 4093, The CAMPUS HATE Crimes Act, https://www.govtrack.us/congress/bills/115/hr4093/text?utm_campaign=govtrack_email_update&utm_source=govtrack_email_update&utm_medium=email