



PART 2 OF A 3 PART SERIES ON ACCURATELY GATHERING AND REPORTING CRIME STATISTICS

# Implications of the 2016 Handbook for Campus Safety and Security Reporting Changes

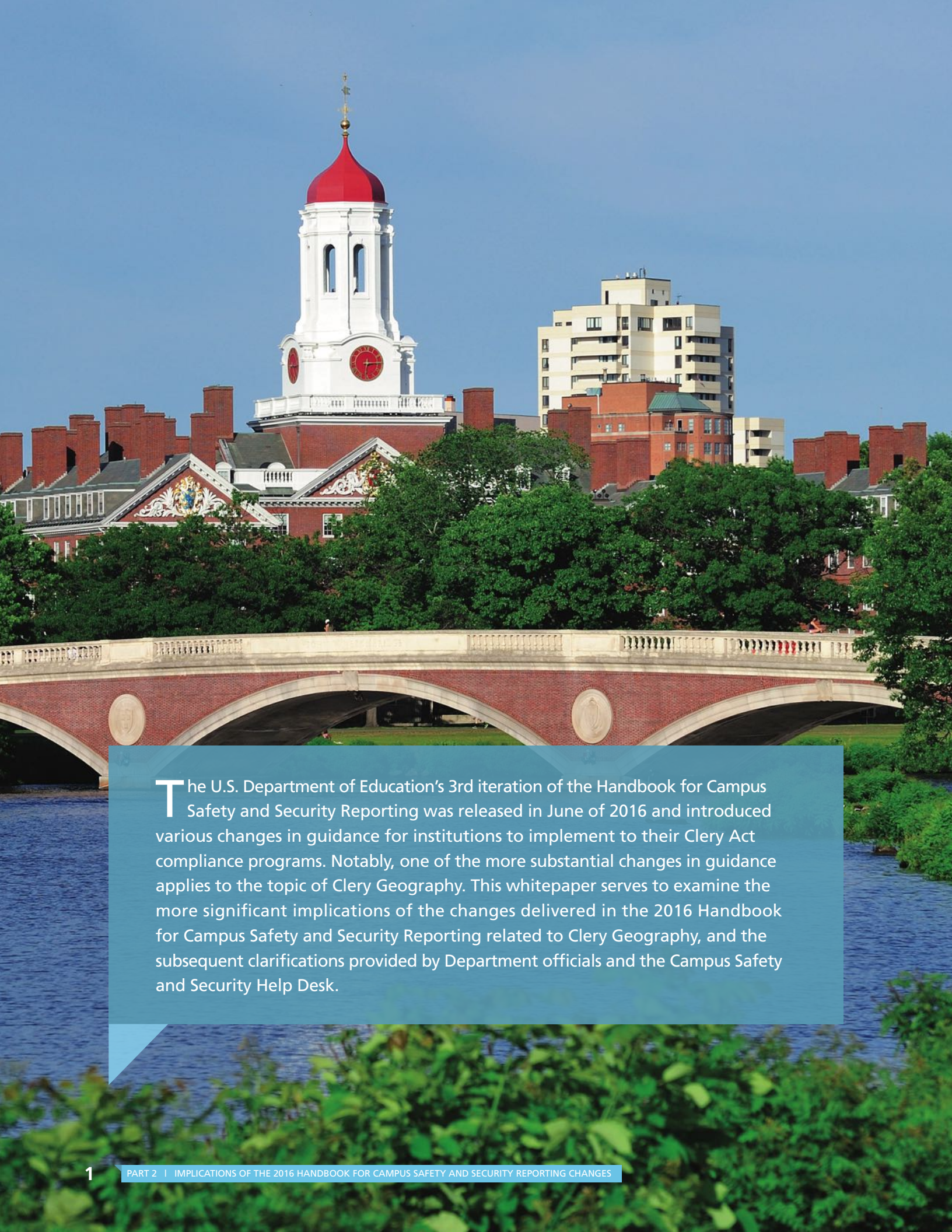
Impact on Assessing Clery Geography at Institutions of Higher Education

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Presented by:





The U.S. Department of Education's 3rd iteration of the Handbook for Campus Safety and Security Reporting was released in June of 2016 and introduced various changes in guidance for institutions to implement to their Clery Act compliance programs. Notably, one of the more substantial changes in guidance applies to the topic of Clery Geography. This whitepaper serves to examine the more significant implications of the changes delivered in the 2016 Handbook for Campus Safety and Security Reporting related to Clery Geography, and the subsequent clarifications provided by Department officials and the Campus Safety and Security Help Desk.

## UNDERSTANDING THE ONE-MILE GUIDANCE

Until the 2016 Handbook for Campus Safety and Security Reporting (hereafter, the “Handbook”), no previous version of the Handbook specified a distance for institutions to use to determine or measure buildings or properties that are “reasonably contiguous.” Previously, it was at the institution’s discretion to make such a determination. However, the 2016 Handbook delivered a significant change to that assessment process and substantially limited institutional discretion in making these determinations.

Reasonably contiguous is a term of art for Clery Compliance Officers and is an integral part of the On-Campus geography category’s definition. In order to properly categorize an institution’s On-Campus geography, one must first fully understand the concept of reasonably contiguous, as that phrase literally rests within the Department of Education’s two “On-Campus” Clery Geography category definitions as well as one of the two “Noncampus buildings or property” definitions.

### Under the *Clery Act*, the on-campus category includes the following:

- Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution’s educational purposes, including residence halls; and
- Any building or property that is within or reasonably contiguous to the area identified in paragraph (1) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor)”

(U.S. Department of Education, 2016, p. 2-2).

### The 2016 Handbook defines *reasonably contiguous* as the following:

*Reasonably contiguous refers to a building or property your institution owns or controls that’s in a location that you and your students consider to be, and treat as, part of your campus. An example might be a house two blocks from campus that’s owned by your institution and which is used as an art studio for your students. Generally speaking, it is reasonable to consider locations within one mile of your campus border to be reasonably contiguous with your campus. However, this determination must be made on a case by case basis by taking into consideration the circumstances of the campus and the location. A location that is within one mile of campus but separated from campus by a river or a six-lane highway might not be considered contiguous unless a pedestrian bridge or tunnel connects the two sides. If you exclude from the definition of campus for Clery Act purposes a building or property your institution owns or controls that is within one mile of your campus you must be able to explain your basis for this decision (U.S. Department of Education, 2016, p. 2-3 through 2-4).*

Therefore, to distinguish between On-Campus and Noncampus locations, institutions must first identify their campus borders, then use the reasonably contiguous definition to determine if any locations within a one-mile distance of the campus borders are owned or controlled by the institution. This will be the initial step in the process to properly categorize On-Campus locations.



*Establishing campus borders allows institutions to determine whether additional owned and controlled locations are reasonably contiguous.*

## APPLYING THE ONE-MILE GUIDANCE

These changes in the Handbook are essentially a call to action for institutions to reassess their Clery Geography for each campus of the institution. In order to apply the one-mile guidance, institutions must first establish perimeter lines of their northern, southern, eastern, and western boundaries which will serve as their “campus borders.” For campuses without clear property or boundary lines, they should work to identify the primary concentration of their leased and owned property holdings (or any other locations the institution does not own, but has a written agreement to use, and therefore “controls” for Clery Act purposes). This may be the case for urban campuses, where there are typically no property lines to establish a campus border. Establishing campus borders allows institutions to determine whether additional owned and controlled locations are reasonably contiguous. The campus borders essentially serve as the starting point from which the one-mile distance can be measured. Institutions must then examine locations that are within a mile from the campus borders to determine if they meet either of the On-Campus definitions. The Help Desk has confirmed that it is acceptable to calculate the one-mile distance by measuring the walking distance between the closest part of the campus border and the location outside of the campus border (rather than “as the crow flies”). Google Maps has a convenient feature to calculate the walking distance from a fixed position.

The one-mile guidance does not necessitate an expansion of campus borders, but rather, in some cases, a re-categorization of locations that were likely already previously being reported by the institution. The one-mile guidance will likely result in a re-categorization of locations that were previously assessed as Noncampus or Separate Campus to On-Campus and possibly as On-Campus Residential Facilities (if students live inside the facility). If the location meets the definition of an On-Campus Residential Facility, then the missing student notification and fire safety requirements apply. This means that the institution must adopt and implement procedures and policies for certain notifications in the event that a student who resides in an On-Campus Residential Facility is determined to be missing. Specifically, the Handbook indicates, “Your institution must issue a policy statement that addresses missing student notification for students residing in on-campus student housing; and include

procedures that your institution will follow if any of those students is determined to be missing for 24 hours” (U.S. Department of Education, 2016, p. 10-1). The Missing Students policies and procedures must also be disclosed in the Annual Security Report. Additionally, the institution must develop fire safety policies, publish and distribute an Annual Fire Safety Report, and submit statistics for all fires that occurred within the institution’s On-Campus Residential Facilities to the U.S. Department of Education.

As a consequence of the one-mile guidance, the Clery Geography category of Public Property was also impacted. While there were no explicit changes to the Public Property definition in the most recent Handbook, Public Property is defined in relation to those buildings or properties that meet the On-Campus definition. Therefore, if some buildings or properties were not previously identified as On-Campus, but have since been recategorized as On-Campus locations in light of the new one-mile guidance, then the extent of the institution’s Public Property may expand as a result of more On-Campus locations being part of the institution’s Clery Geography.

Under the Clery Act, public property encompasses the following: All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to and accessible from the campus (U.S. Department of Education, 2016, p. 2-11).



For example, if an institution's campus borders are identified and another institutionally-owned location that meets a definition of On-Campus is located  $\frac{3}{4}$  of a mile away, the public property immediately adjacent to and accessible from this (now reasonably contiguous) location should be included as Clery-reportable Public Property. It's noteworthy to mention that if this location was previously treated as Noncampus because of its proximity to campus, the public streets and sidewalks that are immediately adjacent to and accessible from the location would not have been included as Public Property since there is no public property reporting requirement associated with Noncampus locations.

The Help Desk has consistently offered guidance in which they've indicated that institutions do not need to include as Public Property all of the Public Property between their campus borders and other locations within a mile that also meet the On-Campus definition (i.e., public streets that connect the campus to reasonably contiguous locations, as well as cross streets between these locations, are not required to be categorized as Public Property). However, this will be a case-by-case assessment, as the "campus border" may change if a significant amount of buildings and properties that were previously considered to be Noncampus convert to On-Campus such that the institution expands its "campus borders." In such a case, institutions should remain cognizant that Public Property also pertains to any public property *within* the campus, even if that property is not immediately adjacent to and accessible from On-Campus locations. Therefore, institutions must assess the publicly-owned property within and

immediately adjacent to and accessible from the campus *in addition* to the publicly-owned property immediately adjacent to and accessible from additional On-Campus locations within a mile of the campus borders.

## INSTITUTION-ASSOCIATED HOSPITALS AND/OR MEDICAL CENTERS

**A**nother noteworthy addition to the 2016 Handbook relates to hospitals or medical centers that institutions of higher education may have certain arrangements with that could create a Clery Act reporting requirement. The following passage is a new piece of guidance offered in the 2016 Handbook,

*Institution-associated hospitals and/or medical centers that are controlled by your institution and reasonably contiguous with your campus should be included as part of your campus. Beyond formal legal arrangements, other factors that are considered in determining whether, for Clery Act purposes, the institution controls a hospital or medical center include overlapping faculty/doctors, overlapping boards of directors or officers, use of the hospital or medical center as part of the institution's educational program, geographic proximity, an ongoing relationship between the institution and the hospital, and whether students consider the hospital or medical center to be part of the campus (U.S. Department of Education, 2016, p. 2-3).*





The addition to the Handbook regarding hospitals and medical centers necessitates the institutions expand their assessment of these types of facilities beyond clear ownership or control of space via a written agreement to determine if some of the conditions exist that may qualify the hospital or medical center as Clery-reportable. Since the Handbook does not provide any guidance concerning *how* to apply these factors (e.g., whether some factors are always determinative of control, or how much weight to give any specific factor), institutions are urged to seek institution-specific guidance from the Campus Safety and Security Help Desk when assessing these locations.

## SEPARATE CAMPUSES

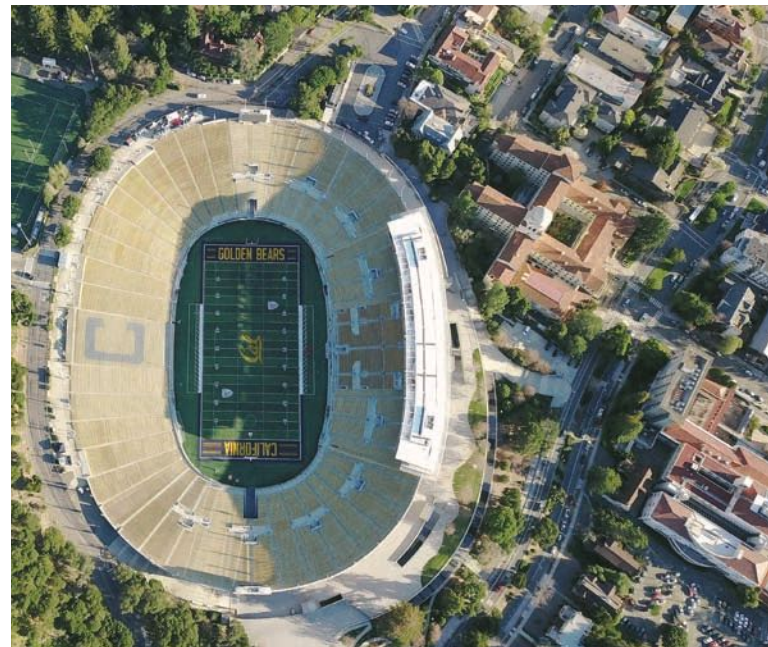
The 2016 Handbook also delivered additional guidance related to assessing Separate Campuses. Particularly, the most recent Handbook clarified what constitutes an Organized Program of Study, which is one of the qualifiers for determining if a location meets the Clery Act's definition of a separate campus. The definition provided indicates "An **organized program of study** means that the location offers courses in educational programs leading to a degree, certificate, or other recognized credential" (U.S. Department of Education, 2016, p. 2-2). Of note here is the word *courses*<sup>1</sup>, which is plural. The definition necessitates that more than one course be offered at the location for it to have an organized program of study.

According to the Handbook, an institution is a separate campus if: "Your institution owns or controls the site; It is not reasonably geographically contiguous with the main campus; It has an organized program of study; and There is at least one person on site acting in an administrative capacity (U.S. Department of Education, 2016, p. 2-6).

According to the updated Handbook, there is a seemingly increased focus on the types of activities conducted at a location that may qualify it as an organized program of study. For example, student jobs or other regularly scheduled use could be instrumental in determining if a location should be reported as a separate campus. As noted in the 2016 Handbook, "If your institution owns a farm, agricultural or horticultural center, or other noncontiguous research facility that has an administrator on-site and that is used by students for recurring classes, recurring field trips, internships, student jobs or other regularly scheduled use, it should be considered a separate campus" (U.S. Department of Education, 2016, p. 2-8).

Clery Compliance Officers should work closely with colleagues in academic affairs to assess the frequency of use and types of activities held at locations to determine if they substantiate an organized program of study. Collaboration must also happen with colleagues in athletics to determine if athletic complexes are being used as classroom space and regular classes are offered. The Handbook indicates that classes held at athletic facilities could equate to a separate campus:

*If your institution owns a noncontiguous athletic complex that has administrators on site and houses classrooms used for courses that are part of an organized program of study (for example, the complex includes one or more large auditorium-style classrooms to be used by large courses in any department, or houses one or more regular classrooms used for courses towards a golf course management degree), the athletic complex is a separate campus (U.S. Department of Education, 2016, p. 2-8).*





An important takeaway that is stressed in the Handbook is that the use of a site must be regular rather than sporadic when determining if it qualifies as a separate campus. The Handbook clarifies, “If student attendance at these locations is determined by individual research needs and there is no regularly scheduled use of the facility by students (i.e., student use is sporadic), it is not a separate campus” (U.S. Department of Education, 2016, p. 2-8).

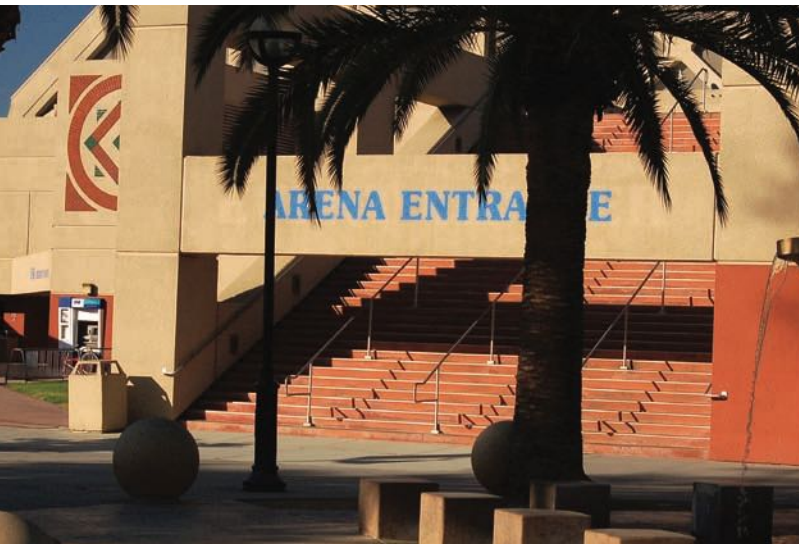
Also, the Handbook indicates that if a location qualifies as a separate campus for any portion of the year, it must be treated as such for the entirety of the year. This means that institutions must address any separate policy statements in the Annual Security Report (ASR) as well as present separate crime statistics in the ASR and submit them to the U.S. Department of Education. This applies to locations that are only used for a short time, such as a few weeks, or a longer period that does not span the entire calendar year. However, institutions are only required to collect crime statistics for the period in which the location is under the institution’s control.

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## ADDITIONAL CONSIDERATIONS FOR OFF-CAMPUS LOCATIONS

The Campus Safety and Security Help Desk issued an email to campuses in 2012 in which they provided guidance requiring institutions to report crime statistics for noncontiguous locations they controlled for short-term durations or for which the use was repeated (meaning students stayed at the same location each year). This guidance rested outside of the 2011 Handbook and was ambiguous, at best. For example, the email provided an example of a three-week trip to illustrate a duration that would be long enough to be considered frequently used by students, but the email also indicated “there is no ‘magic number’ of days that must be met to be considered ‘frequently used by students’” (Campus Safety and Security Help Desk, 2012, para. 6). It was not until the 2016 Handbook that this requirement was addressed officially in the Handbook.

As introduced in the 2012 email, the two standards for determining if a location is frequently used by students continue to be (1) if there is either repeated use of a location or (2) if the duration of the stay long enough to be considered frequently used by students. According to the 2016 Handbook, “If your institution sponsors students on an overnight trip every year and the students stay in the same hotel each year, you must include portions of the hotel in your noncampus geography” (U.S. Department of Education, 2016, p. 2-25). This example would qualify as meeting the *repeated use of a location for a school-sponsored trip* standard. Subsequent guidance provided by the Help Desk has further clarified that the repeated use standard



includes circumstances when a location is used more than once during the same calendar year, but also when a location is used once in the current year and again in the next year. Also, it is worth noting that it doesn't matter which students of the institution use the location. For example, if the women's lacrosse team uses a hotel as part of an out-of-town "away" game and the men's baseball team uses the same hotel later in the year, the repeated use standard has been satisfied even though different students of the institution made use of the location.

### Repeated Use Example

The 2016 Handbook indicates, "For example, students in the debate club take a trip to Washington, D.C. and stay at the same hotel every year. You must include in your statistics any crimes that occur in the rooms used by your students and any common areas used to access the rooms (lobby, elevators, etc.) for the times and dates specified in the rental agreement" (U.S. Department of Education, 2016, p. 2-25).

Beyond repeated use, the Handbook now offers a bright line standard for how long is "long enough" to be considered frequently used by students. Specifically, the Handbook notes, "If your institution sponsors short-stay "away" trips of *more than one night* [emphasis added] for its students, all locations used by students during the trip, controlled by the institution during the trip and used to support educational purposes should be treated as Noncampus property" (U.S. Department of Education, 2016, p. 2-25). This means that if a location is used for a duration of more than one night, even if it is used on a one-time-only basis, it should be considered "frequently used by students" when evaluating whether the location should be categorized as a Noncampus location.

### Short-Stay Away Example

The Handbook indicates, "An example is a three-week marine biology study trip to Florida. Any classroom or housing space specified in the agreement between the institution and a third-party providing the space would be noncampus property" (U.S. Department of Education, 2016, p. 2-25).

In this context, it is important to remember that being frequently used by students is necessary, but not sufficient, for a noncontiguous location that is used by the institution to support educational purposes to be Clery reportable. There must also be a written agreement for space to be used. In other words, it must be controlled by the institution. Control can be established both formally and informally, such as through leases, emails, or hotel receipts, which ultimately yields control of space to the institution. The Department also clarified in the 2016 Handbook that control of space can be established indirectly on behalf of the institution, such as if a 3rd party is contracted to coordinate logistics for study abroad programs on behalf of the institution. "However, if your institution (or a contracted third party) does not have an agreement for the space used, your institution is not in control of the space and you are not required to count it" (U.S. Department of Education, 2016, p. 2-26).





## IMPLEMENTATION OF CLERY GEOGRAPHY CHANGES

Clery Compliance Officers should be managing a comprehensive list of all Clery-reportable locations that meet the definition of Clery Geography. The Department of Education has consistently requested a Clery Geography building and property list that is categorized by On-Campus, Noncampus, or Public Property when notifying institutions of a Program Review (i.e., a Clery Act audit). Institutions should also develop and maintain a Clery map for each campus that presents an accurate reflection of the Clery Geography locations depicted in the map. Clery maps serve many purposes, such as offering various stakeholders within the institution an accurate reflection of geography that can be used for categorizing crime reports from a geography perspective as well as an effective resource for training Campus Security Authorities. Clery maps and property lists should be developed and updated as needed each year. These documents should be retained with each respective calendar year's Clery records for seven years.

It is imperative for Clery Compliance Officers to collaborate with key stakeholders, such as campus officials in housing, real estate, and student organizations, to conduct a comprehensive, institution-wide evaluation of locations where institutional activities occur to determine if they are Clery-reportable. An inter-disciplinary team at the institution should collaborate on this project so that all stakeholders at the institution with knowledge related to locations owned or controlled by the institution are involved with the assessment. This collaborative effort will serve dual benefits, as it will assist with the creation and maintenance of a Clery Geography list which translate to ensuring the institution's crime statistics are properly categorized and disclosed from a Clery Geography perspective.



<sup>1</sup>The Help Desk has confirmed that a location must host more than one class to substantiate an organized program of study. If the location only hosts one class it is not considered to be an organized program of study.

### References

Campus Safety & Security Helpdesk. (2012). Additional Reporting Guidance. Help Desk Email sent on March 12, 2012. Retrieved April 26, 2016 from <https://surveys.ope.ed.gov/security/HelpDeskEmailView.aspx>

U.S. Department of Education, Office of Postsecondary Education, The Handbook for Campus Safety and Security Reporting, 2016 Edition, Washington, D.C., 2016.



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