



## Higher Education Law Alert

### The Clery Act - A Strong Reminder About Compliance in Light of the Penn State Tragedy

The [Freeh Report](#) on Pennsylvania State University – an independent investigative report commissioned by Penn State’s Board of Trustees, in part, to assess the response of University administrators and staff to the child sexual abuse allegations and subsequent Grand Jury investigations of Jerry Sandusky, and to provide recommendations regarding the University’s governance, oversight, and administrative procedures – provides a harsh and tragic lesson about the damage that can be done when an institution’s administrators and management fail to foster a culture of responsibility, transparency, and accountability.

The Freeh Report should also be a clarion call to colleges, universities, and other institutions to pursue active and consistent compliance with the numerous state and federal laws and regulations designed to protect the community. A strong compliance function – one that establishes, implements, communicates, and maintains workable policies and procedures – not only serves to identify and prevent or mitigate risks to the institution and its community, but also serves to foster accountability and encourage the reporting of potential or actual violations.

In Penn State’s case, the University’s non-compliance with the Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act, 20 U.S.C. §1092, (the “Clery Act”) was specifically identified as a “contributing factor in the failure to report the 2001 child sexual abuse committed by Sandusky.” Freeh Report, 137.

Enacted in 1990 and intended to improve campus safety, the [Clery Act](#) requires the reporting of sexual violence and other crimes on college and university campuses through: (1) the compilation and disclosure of statistics of reportable crimes on campus, including crime data reported to all “Campus Security Advisors”; (2) the disclosure of campus safety policies; (3) the publication and distribution of an Annual Security Report; (4) the provision of “timely warnings” about ongoing security threats to the campus community; and (5) the maintenance of a publicly-available crime log. 20 U.S.C. § 1092(f). Compliance with the Clery Act falls under the mandate of the U.S. Department of Education. 34 C.F.R. § 668.46. Not only are the Clery Act’s requirements essential for maintaining a safe and secure campus, failure to abide by the Department of Education’s extensive Clery regulations can lead to a protracted investigation by the Department and be extremely costly: up to \$27,500 per violation.

Though the aim of the Clery Act is straightforward, the related regulations and requirements can be complicated and involve varied constituencies: student affairs, athletics, residential life, fraternities and sororities, and campus security, among other departments, are all impacted by and subject to these regulations to varying degrees. For example, the Department of Education’s regulations broadly define the term “Campus Security Advisor” to include not only a campus police and/or security department, but

also “an official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings.” 34 C.F.R. § 668.46(a). This group is diverse and may include: a dean of students who oversees student housing; a director of athletics; a team coach or a faculty advisor to a student group; a student resident advisor or assistant; a coordinator of fraternity and sorority affairs; and, under certain specific circumstances, a physician in a campus health center, a counselor in a campus counseling center, or a victim advocate. United States Department of Education, Handbook for Campus Safety and Security Reporting, (Washington D.C., February 2011), 75.

In order to best serve a campus community and safeguard the interests of the institution, thorough communication and training regarding Clery Act roles and responsibilities are essential. But at Penn State, according to the Freeh Report, many interviewed university employees were unaware until recently that anyone but campus police had Clery Act reporting obligations. Freeh Report, 110. Clery Act training sessions and outreach efforts

were limited, “sporadic and not well attended,” and Penn State did not have a “draft” Clery Act policy until 2009. As of November 2011, that policy had not yet been finalized and implemented. Freeh Report, 116. Significantly, the University had never undergone a Clery Act compliance audit, and the University president was unaware that the school was not in compliance with the Act. In fact, while Penn State had over 350 different policies

and procedures in place, “oversight of compliance” was “decentralized and uneven,” contributing to the general lack of awareness and accountability. Freeh Report, 31.

Montgomery, McCracken, Walker & Rhoads, LLP is a leader in providing institutions of higher education with comprehensive representation to facilitate compliance with the Clery Act. Our attorneys have a detailed, substantive knowledge of the Act’s requirements, and have worked closely with college and university officials to design, assess, revise and implement best-practice policies and procedures that comply with the regulations. MMW&R’s Higher Education Practice Group understands the full range of compliance and regulatory challenges faced by colleges and universities: we have significant experience in and provide direction regarding Board governance matters, tax matters, charitable registration, record retention and compliance with Title IX, child abuse reporting requirements, Megan’s Law, and the implementation of appropriate policies and procedures related to FERPA, HIPAA, and the Americans with Disabilities Act, among others. In addition, our team includes attorneys who are certified compliance and ethics professionals who can perform compliance audits in a broad range of substantive areas.

If you would like to discuss Clery Act compliance or other compliances areas impacting your institution, please contact one of our attorneys listed below.

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FREEH Report on the Pennsylvania State University

[thefreehreportonpsu.com/](http://thefreehreportonpsu.com/)

The Handbook for Campus Safety and Security Reporting

[www2.ed.gov/admins/lead/safety/handbook.pdf](http://www2.ed.gov/admins/lead/safety/handbook.pdf)

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