

BREAKOUT SESSION #20

The Clery Act and Campus Safety: What's New

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U.S. Department of Education

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DISCLAIMERS

- This presentation includes discussion of violent crime and related topics that may be disturbing for some audience members.
- This session is intended to provide general information about the Clery Act, Title IX, and related laws. It does not represent a complete recitation of the applicable law or ED/FSA policies and is for discussion purposes only.
- This presentation is intended exclusively for participants in FSA's 2022 Virtual Training Conference. This material must not be used for any other purpose. Actual compliance determinations must be made after a careful analysis of specific facts on a case-by-case basis.
- Comments made during this presentation are for instructional and illustrative purposes only and are not intended for attribution or publication.

THE CLERY ACT

HOW IT ALL STARTED

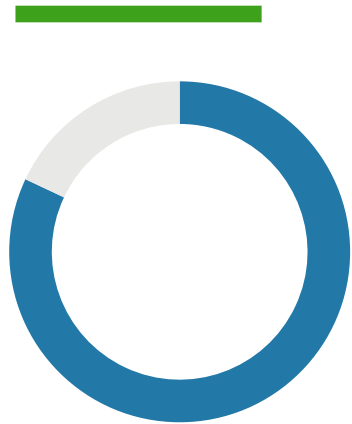
Campus Crimes

In 1986, Jeanne Clery was the victim of heinous crimes committed on the campus of Lehigh University. She was murdered after being brutally sexually assaulted by another student who broke into her campus dormitory room to commit a burglary.



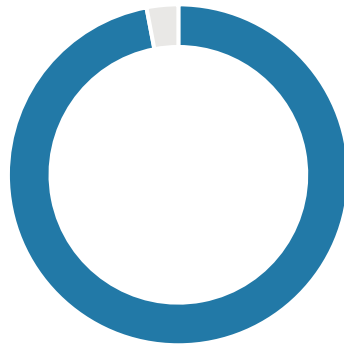
COLLEGE STUDENT SAFETY PERCEPTIONS

2021 College Safety Survey conducted by Clery Center and ADT



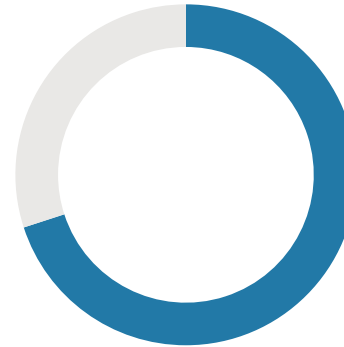
82%

Concerned about personal safety as they return to school in the fall



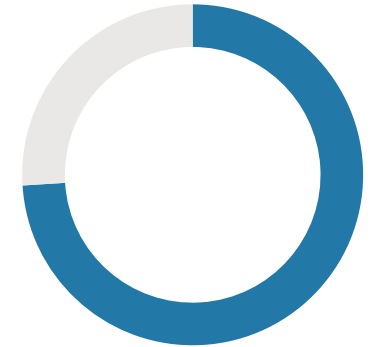
97%

Consider their personal safety while on campus



70%

Have talked to their families about ways to be safe while attending school



74%

Trust their institution to provide a supportive response

STRATEGIES

For Success and For Risk Management



INVOLVE LEADERSHIP

Engage senior leadership and board members and encourage their active participation



TRAINING & NETWORKS

Invest in training and technical assistance opportunities and build a practitioner network



CONSULT STAKEHOLDERS

Understand the concerns of ALL of your constituent and stakeholder groups – Expectations, Limitations, Pain Points, and Irreconcilable Differences

STRATEGIES (CONT.)

For Success and For Risk Management



PREPARATION

Be aware of the next thing.
Notice of Proposed
Rulemaking for *Title IX*
issued June 2022



IDENTIFY PITFALLS

Beware of “special rules
for special talents”



ACCOUNTABILITY

Be responsive and
transparent in your
dealings with the
Department and other
oversight entities

THE CLERY ACT TODAY

- People, not paper
- Increasing focus on student wellness, anti-hazing and suicide prevention
- Campus safety, crime prevention, consumer protection remain job #1
- Emphasis on team approach to problem-solving and risk mitigation
- The essential nature of training
- Importance of strong partnerships with community & law enforcement leaders
- Creating an environment that fosters a “Culture of Transparency”
- Training and wellness programming for public safety staff
- Implicit bias, de-escalation, and use-of-force

CURRENT LAW



ADMINISTRATION OF CAMPUS CRIME REPORTING

The Clery Act campus safety and crime prevention provisions require all participating schools to:

- Classify crime reports and compile and disclose accurate crime statistics
- Publish and distribute an Annual Security Report (ASR) that contains all required statistics and policies
- Submit required crime statistics to the Department
- Issue timely warnings and emergency notifications
- Maintain a Daily Crime Log
- Emergency evacuation and response procedures
- Housing: Missing person notifications and fire safety

CURRENT LAW (CONT.)



IMPLEMENT VIOLENCE AGAINST WOMEN ACT (VAWA) POLICIES

- Expanded reporting for dating violence, domestic violence, and stalking
- Additional information about policies, procedures, and programming
- Prevent sexual assault and improve responses
- Expanded accommodations and protective measures



FIRE SAFETY AND SUBSTANCE ABUSE PREVENTION

- Requirements for reporting fire events
- Substance abuse prevention program requirements

EXTERNAL PARTNERS



STAKEHOLDER ENGAGEMENT

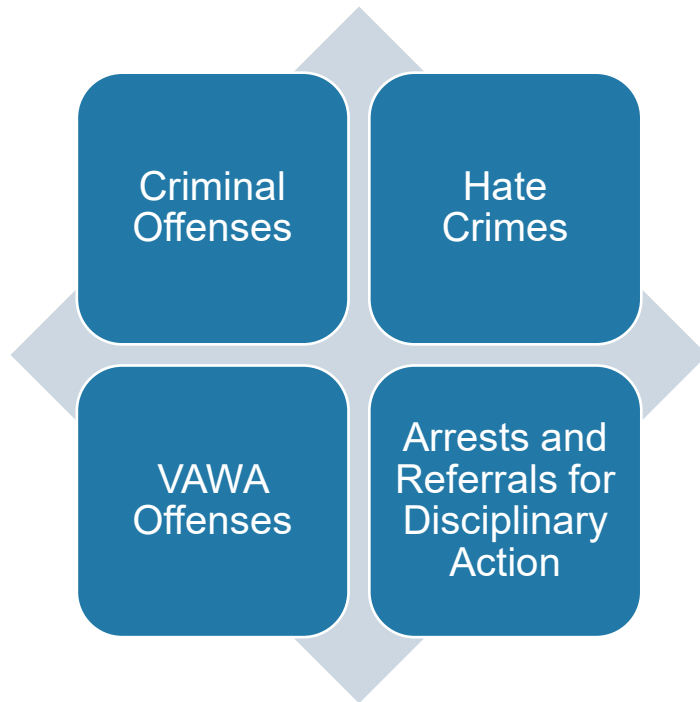
The Clery Group works with students, parents, school officials, officials from across government, to identify and address violations and vulnerabilities in an institution's campus safety, crime prevention, and Clery compliance programs.

- Department of Education (ED) Office for Civil Rights
- ED Office of Inspector General
- State Offices (Attorneys General and Auditors General)
- State Law Enforcement/Bureau of Investigation
- State Uniform Crime Reporting Programs
- Inter-agency Working Groups
- Multiple Offices of the Department of Justice
 - FBI/Criminal Justice Information Service
 - Civil Rights Division
 - Office of Violence Against Women (VAWA)

REALITIES OF CRIME

- Crime can happen anywhere
- Crime “moves”
- “Frankly, crime is not a problem that can be solved. Rather, it is a condition that must be managed.”
General Michael V. Hayden Former Director of the CIA and the NSA

CLERY-REPORTABLE CRIMES



- Statistics must be disclosed for each of four separate categories (when an incident meets definitions in more than one of those categories, it must be reported in each category)
- “Reported” means that an incident was brought to the attention of a campus security authority or to local law enforcement. An incident cannot be “unreported” but can be “unfounded” by law enforcement under certain conditions
- Schools are also required to request crime statistics from local law enforcement agencies

CAMPUS SECURITY AUTHORITIES



PUBLIC SAFETY OFFICIALS

Any members of a campus law enforcement or public safety entity



ASSIGNED SAFETY RESPONSIBILITIES

Any individual who has responsibility for campus safety but is not part of a campus law enforcement or public safety entity (e.g., hall monitors, parking attendants)



STUDENT OR CAMPUS ACTIVITIES

An institutional official with significant responsibility for student and campus activities



INSTITUTIONALLY IDENTIFIED

Any other individual to whom students and employees are directed to report crimes

CAMPUS SECURITY AUTHORITIES (CONT.)



MOST COMMON CSA CATEGORIES

Campus Security Authorities are commonly found among the following types of groups:

- Campus Law Enforcement and Campus Public Safety Professionals
- Campus Leadership and Administrators
- Residence Life Staff including Resident Assistants
- Athletic Directors and Coaches
- Study-Abroad Program and Foreign Campus Administrators
- Student Life and Student Organizations Staff, including Student Leaders
- *Title IX* Coordinators and Staff

“CLERY GEOGRAPHY” DEFINED



CAMPUS I

Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and is used by the institution in direct support of, or in a manner related to, its educational purposes, incl. residence halls



CAMPUS II

Any building or property that is within or reasonably contiguous to the area identified above that is owned by the institution but is controlled by another person or entity, is frequently used by students, and supports institutional purposes (such as food or other retail vendor)

“CLERY GEOGRAPHY” DEFINED (CONT.)



NON-CAMPUS BUILDING OR PROPERTY

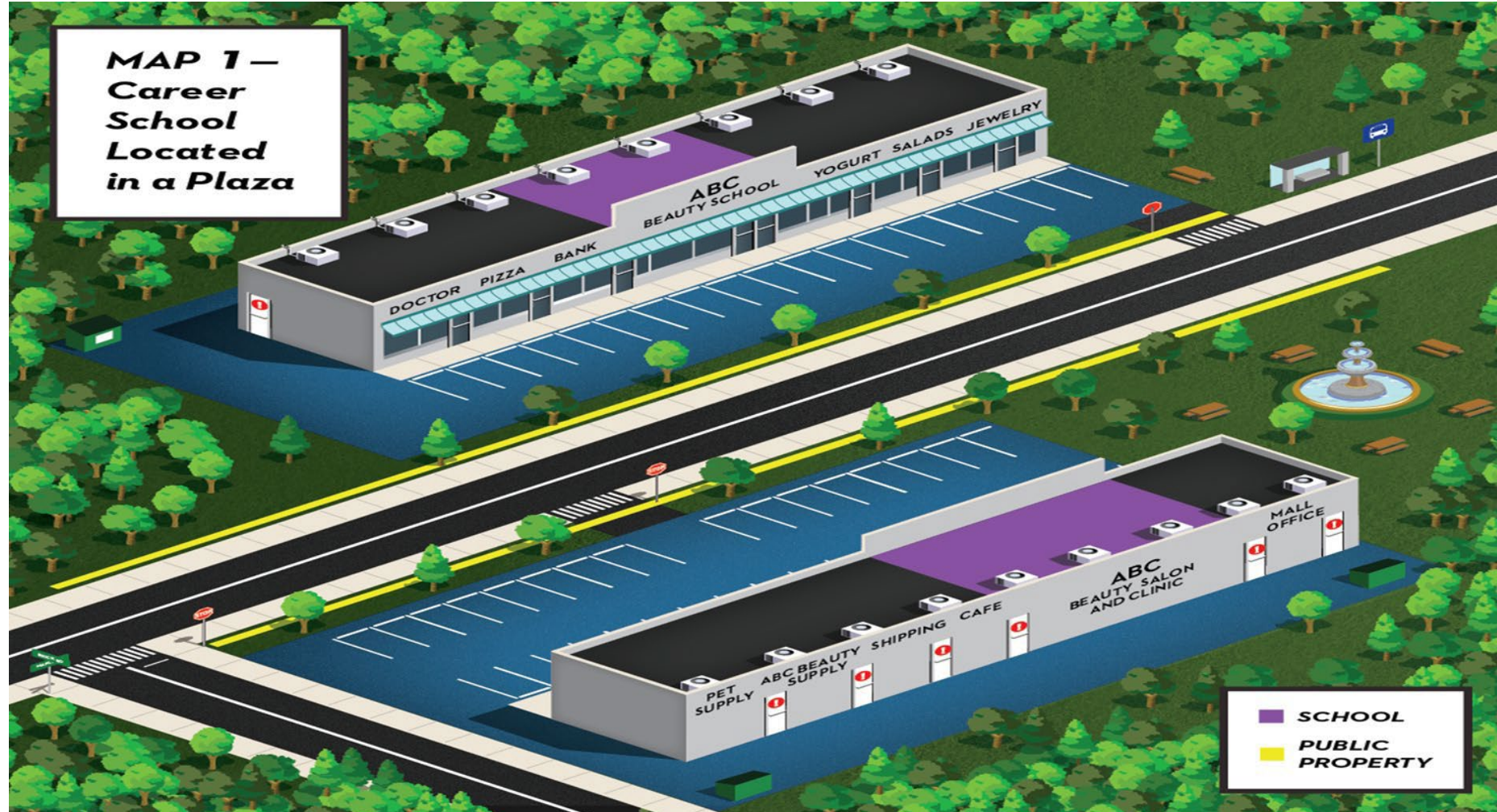
- (1) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or
- (2) any building or property (other than a separate campus) owned or controlled by an institution that is used in direct support of, or in relation to, its educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area - “mobile” campuses and sea-faring vessels.



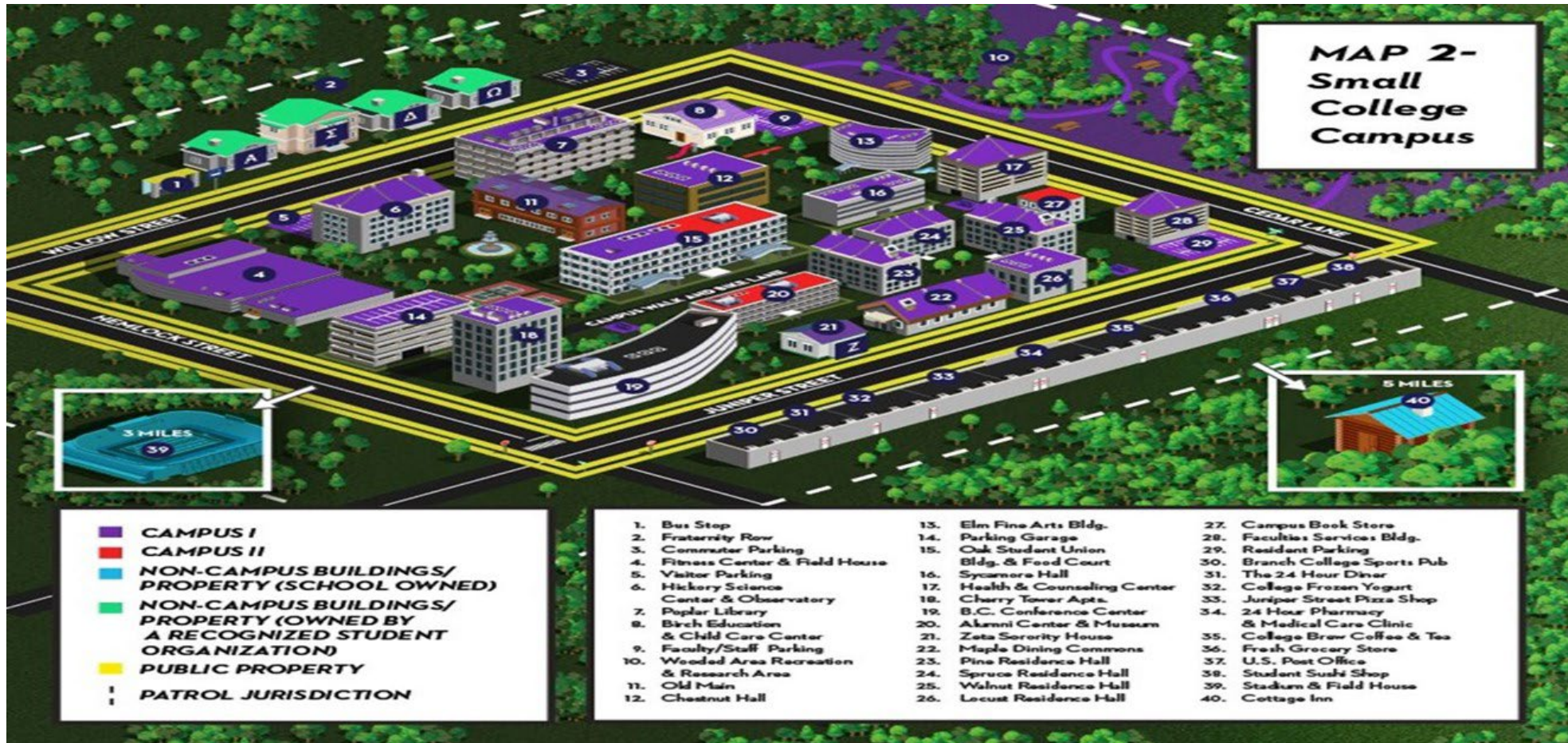
PUBLIC PROPERTY

All public property including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus, or immediately adjacent to or accessible from the campus.

CLERY GEOGRAPHY SIMPLIFIED

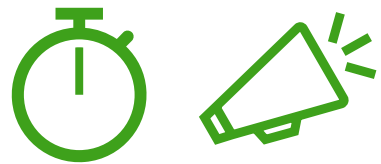


CLERY GEOGRAPHY SIMPLIFIED (CONT.)



RIGHT TO KNOW

Safety Alerts - Focus on Clarity and Transparency



Institutions must issue two types of safety alerts to provide students and employees with important information about significant and/or ongoing threats due to crime or other dangerous conditions



TIMELY WARNINGS

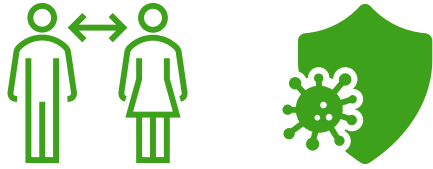
Issued for Clery-reportable crimes that may pose a serious ongoing threat (Clery Geography)



EMERGENCY NOTIFICATIONS

Issued upon confirmation of any significant emergency or dangerous situation that may pose an immediate threat to health or safety (Campus Only)

NATIONAL PANDEMIC EMERGENCY



IMMEDIATE THREAT TO HEALTH OR SAFETY

April 3, 2020, Electronic Announcement “Guidance for interruptions of study related to Coronavirus (COVID-19)”

- Must notify campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or staff occurring on campus.
 - Not requiring regular, on-going updates on COVID-19 or to proactively identify positive COVID-19 cases within the campus community.
- **Two Notification Options:**
 - Provide students and employees a single notification through the regular means of communicating emergency notifications informing them about COVID-19 and necessary health and safety precautions, as well as encouraging them to obtain information from health care providers, state health authorities, and the CDC’s COVID-19 website; or
 - Create a banner at the top of the institution’s homepage containing the information, including a statement about the global pandemic and a link to the CDC’s website.

IS YOUR SCHOOL PREPARED?



At least 33 die in Virginia Tech shootings

Bloodied campus asks: Where were the warnings?

7:15 a.m.

Two students shot and killed in Virginia Tech dormitory

9:26 a.m.

E-mail tells of shooting on campus and urges student to "be cautious."

9:40 a.m.

Thirty people killed and 15 wounded at engineering building across campus

9:50 a.m.

Another e-mail: "Please stay put. A gunman is loose on campus."

10:17 a.m.

E-mail cancels all classes, tells students to stay where they are.

AP/WIDEWORLD

RIPPED FROM THE HEADLINES

June 10, 2022

Uvalde school police chief defends shooting response, says he didn't know he was in charge

CHRISTINE FERNANDO | USA TODAY

RESPONDING TO BOMB THREATS



READY TO RESPOND

There is a significant increase in the number of bomb threats directed toward institutions of higher education.

Be ready to respond in a manner that will mitigate safety risks and limit disruptions to campus life and the education process.

- Stay calm
- Listen carefully
- Write it down - memorialize key facts; phone numbers; etc.
- Keep them talking – be kind, respectful, show interest
- If you can, record the discussion
- Note word choices, voice patterns, accents, inflections, and intonations
- Pay close attention to background noise

RESPONDING TO BOMB THREATS (CONT.)



EXTRACT INFORMATION

It is important to extract as much information from the caller as possible. Here are some questions to ask:

- What is your name and location?
- Are you part of a group or are you acting alone? If part of group, what is your group's name, goals and objectives, strategies for success?
- What type of device did you use and what does it look like?
- What type of detonator and what will make it go off? When?
- Is the device volatile?

RESPONDING TO BOMB THREATS



EMERGENCY MANAGEMENT

Every school needs to have an emergency management and response plan.

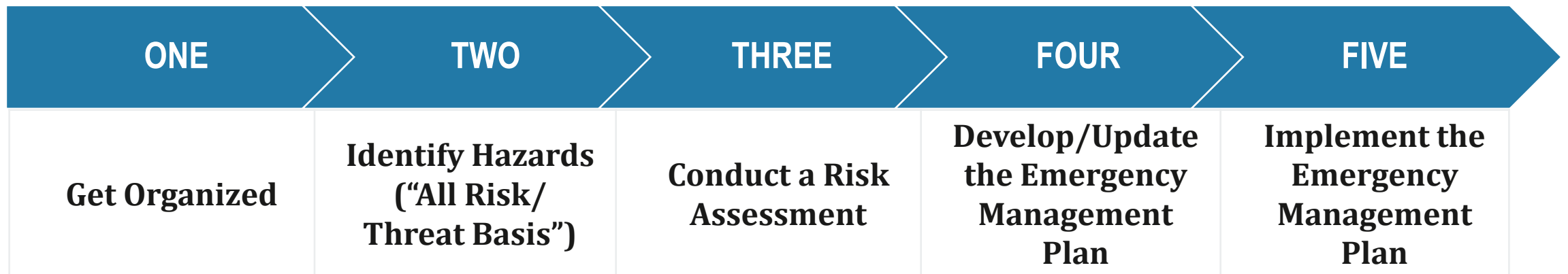
Here are a few plan components to consider:

- Train communication hub staff on threat intake
- Coordinate with local law enforcement and emergency managers
- Develop and implement a comprehensive emergency management plan
- Maintain a “close hold” on key components of the plan
- Customize plans for each campus to account for differences (size; location; etc.)
- Plan for foreseeable contingencies
- Use technology to improve emergency operations
- Conduct after-action reviews and adjust policies and procedures as needed

EMERGENCY MANAGEMENT



How do we develop an Emergency Management Action Plan?



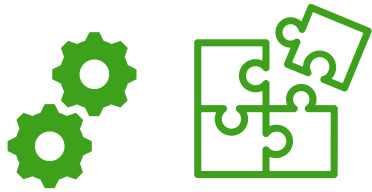
"Action Guide for Emergency Management at Institutions of Higher Education"
<https://files.eric.ed.gov/fulltext/ED504389.pdf>

CAMPUS SEXUAL ASSAULT

VIOLENCE AGAINST WOMEN ACT (VAWA)

- Supplemented & enhanced the Campus Sexual Assault Victim's Bill of Rights
- Expanded reporting for incidents of sexual assault, dating violence, domestic violence, and stalking (including cyber-stalking)
- Additional information about policies, procedures, and programs focused on sexual assault prevention and response
- Awareness campaigns and expanded training on primary prevention, risk reduction and bystander intervention
- Expanded academic and living accommodations and other protective measures
- Electronic Announcement "(General) Subject: Final Regulations Implementing the Violence Against Women Act"
 - <http://ifap.ed.gov/eannouncements/102014ViolenceAgainstWomenAct.html>

CLERY ACT AND VAWA



KEY PROVISIONS

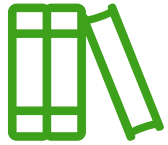
Enhanced Rights and Options for Students and Employees
(Reporting Options, Protective Measures, and Accommodations)

Added Gender Identity and Perceived Gender to Hate Crimes

Required Specialized Training for Disciplinary Hearing Officials

- Disciplinary Proceeding process reforms:
 - Explanation of all conduct processes
 - Fair, prompt, and impartial process
 - List of all possible sanctions (example of a disclosure requirement changing school behavior)
 - Description of available accommodations and protective measures and how to secure them
 - Explicit right to timely notice of all meetings (including appeals)
 - Advisor of choice
 - Equal opportunities to be heard, present evidence, and have others present
 - Unconditional and simultaneous notice of outcomes reached and sanctions imposed

IMPORTANT RECENT RESOLUTIONS



2020 - CONSISTENT POLICIES

An institution violated the Clery Act when it changed the sexual misconduct policy that applied in open cases.

An institution can only have one policy at a time and that policy is the one in its ASR..



2021 - WRITTEN NOTIFICATION REQUIREMENTS

An institution violated the Clery Act by not providing simultaneous written notification to both parties in a disciplinary case arising from an alleged act of sexual violence.



2022 - DUE PROCESS CONSIDERATIONS

An institution violated the Clery Act by excluding a party in a case of alleged sexual violence from fully participating in all aspects of the appellate process.

QUESTIONS?

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Clery Help Desk campussafetyhelp@westat.com 1-800-435-5985