

# **BREAKOUT SESSION # 01**

## **The Clery Act: Common Mistakes And How To Avoid Them**

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U.S. Department of Education

2023 FSA Training Conference for Financial Aid Professionals

# DISCLAIMERS

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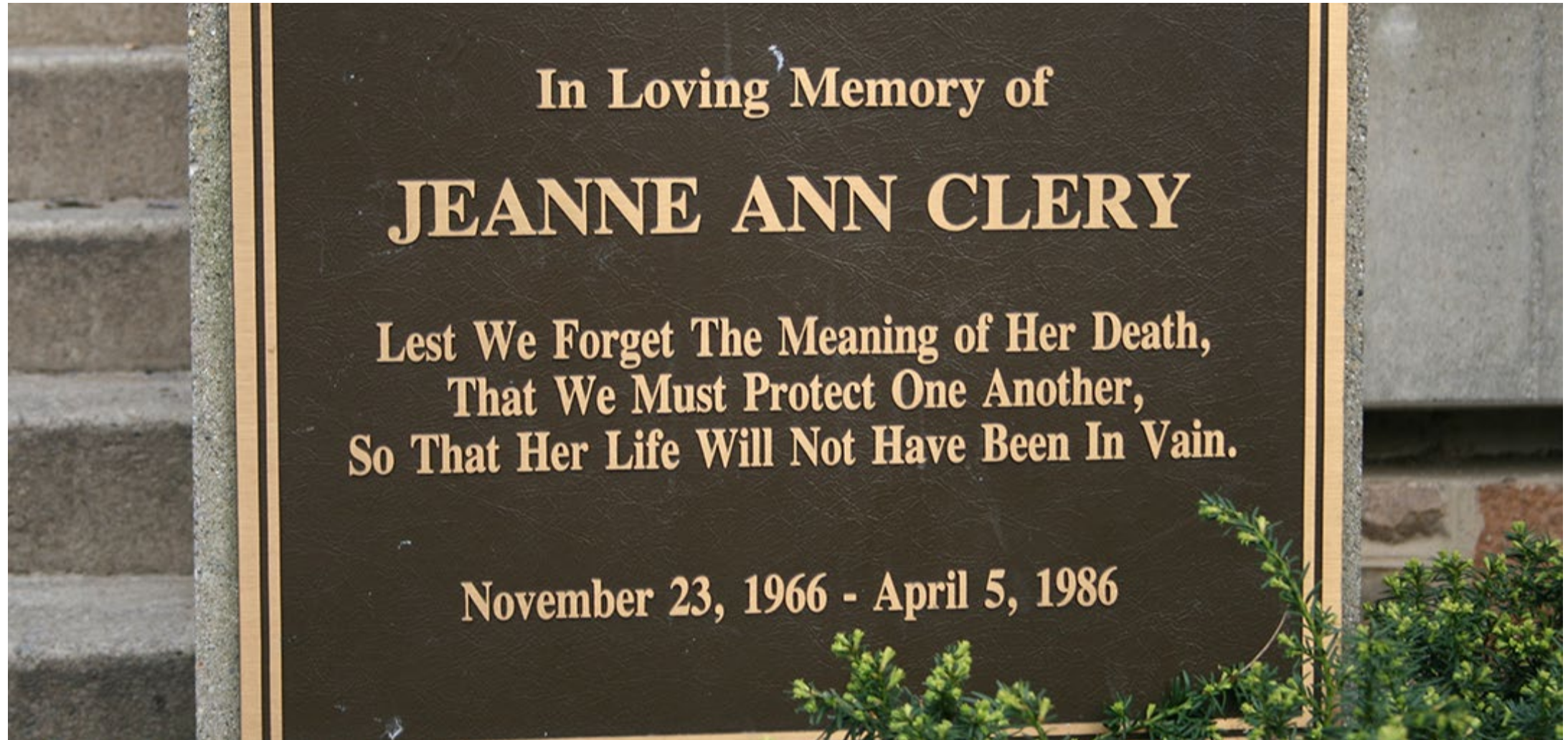
- This presentation includes discussion of violent crime and related topics that may be disturbing for some audience members.
- This session is intended to provide general information about the *Clery Act*, *Title IX*, and related laws. It does not represent a complete recitation of the applicable law or ED/FSA policies and is for discussion purposes only.
- This presentation is intended exclusively for participants in FSA's 2023 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

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# HOW IT ALL STARTED

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# THE CLERY ACT TODAY

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- **People, Not Paper**
- **Increasing Focus on Student Wellness - Anti-Hazing, 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 and wellness programming for all stakeholder groups
- Importance of strong partnerships with community & law enforcement
- Creating an environment that fosters a **“Culture of Transparency”**

# THE CLERY ACT TODAY

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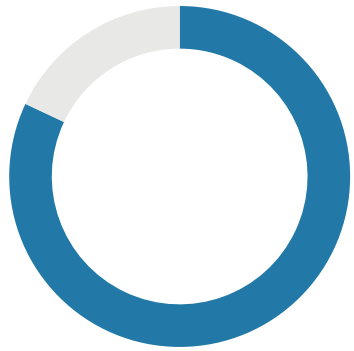
- Clery Geography
- Records
  - Timely Creation and Preservation
  - Destruction of Records
  - Fabrication of Records
- Yearly Distribution of
  - Annual Security Report (ASR)
  - Annual Fire Safety Report (AFSR)
  - Drug and Alcohol Abuse Prevention Programs (DAAPP) notification
- Retaliation
- *Title IX*
- New Guidance

# THE CLERY ACT TODAY

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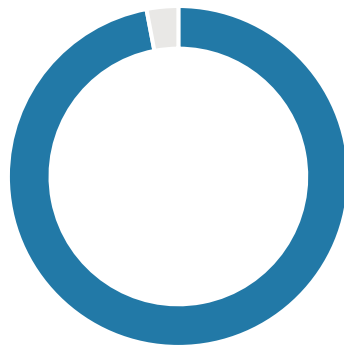
- Increased Inter-agency Cooperation
- *VAWA* and *Title IX* Intersections
- Enforcement and assistance
- Legal Requirements v. Best Practices
- Implicit Bias, De-escalation, and Use-of-Force

# COLLEGE STUDENT SAFETY PERCEPTIONS



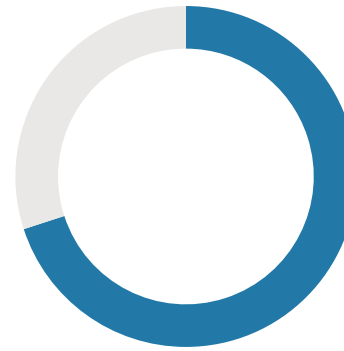
**82%**

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



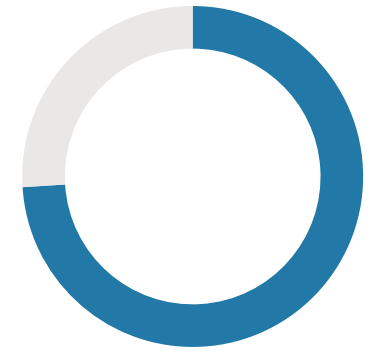
**97%**

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

*Source: 2021 College Safety Survey conducted by Clery Center and ADT*



# ADMINISTRATIVE CAPABILITY

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- To participate in any *Title IV* program, an institution must demonstrate that it is capable of adequately administering the program under the standards established by the Secretary, including:
  - Employing “an adequate number of qualified persons”
  - Ensuring that programs are administered with appropriate “checks and balances” in a system of “internal controls”
  - Implementing written procedures that document the responsibilities of institutional officials with respect to the “preparation and submission of reports to the Secretary”
- Does your school meet the mark?

# CURRENT LAW

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- 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 actively distribute an Annual Security Report (ASR) that contains all required statistical and policy disclosures (50+)
  - Submit required crime statistics to the Department of Education
  - Issue timely warnings and emergency notifications
  - Maintain a Daily Crime Log
  - Emergency evacuation and response procedures
  - Housing: Missing person notifications and fire safety
- *Violence Against Women Reauthorization Act of 2013*
  - Requires expanded reporting for incidents of sexual assault, dating violence, domestic violence and stalking (including cyber stalking)
  - Requires that the ASR include additional information about policies, procedures and training programs aimed at sexual assault prevention and response
  - Expands accommodations and protective measures requirements

# THE TOP FIVE MOST COMMON MISTAKES

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- Failure to Produce Accurate & Complete Annual Security Report (ASR)
- Misclassification/Underreporting of Crime & Inaccurate Incomplete Compilation of Crime Statistics
- Timely Warning & Emergency Notification Violations
- Campus Security Authority Violations (Identification & Notification)
- Clergy Geography Violations

# REQUIRED SCHOOL POLICY DISCLOSURES

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## *Clery Act Disclosure of Campus Safety and Crime Prevention Policies and Procedures*

- A statement of policy regarding procedures for reporting crimes and other emergencies
- Encourage accurate and prompt reporting and options for confidential reporting
- Compilation of the annual disclosure of crime statistics and the ASR
- Timely warning, emergency notification, emergency management procedures
- CSAs: ID persons/offices to whom students & employees should report crimes
- Building access controls, especially student residential facilities
- Enforcement authority and jurisdiction of campus safety officials

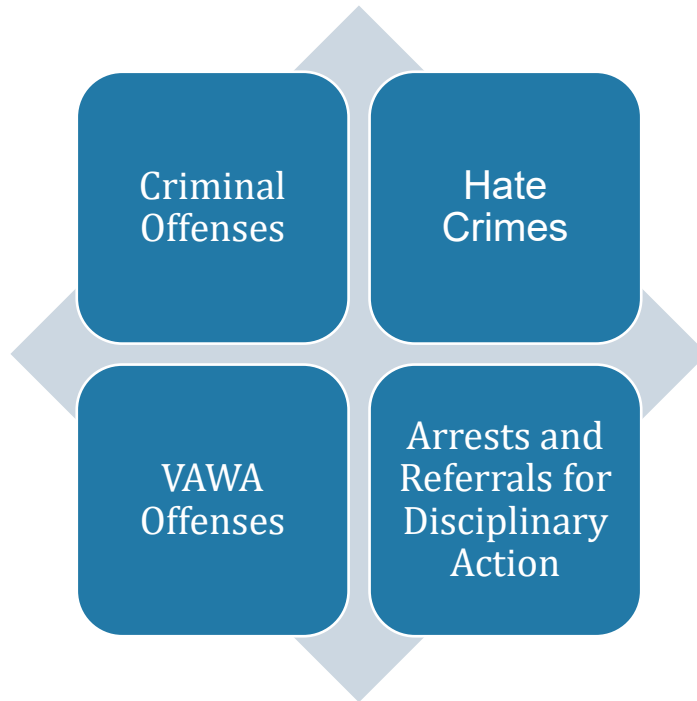
# REQUIRED SCHOOL POLICY DISCLOSURES (CON'T)

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- *Clery Act Disclosure of Campus Safety and Crime Prevention Policies and Procedures*
- Inter-agency agreements and working relationship with State and local police agencies
- Type and frequency of training programs about campus safety and crime prevention
- Monitoring & recording of criminal activity by students at non-campus locations
- Missing student notification procedures
- Public laws & institutional policies regarding possession, use, sale of drugs and alcohol
- Drug or alcohol-abuse education programs including those required by the Drug-Free Schools and Communities Act (Special cross-referencing flexibility)
- Sexual assault prevention, response, investigation, and adjudication
- Awareness & prevention programs - dating and domestic violence, and stalking
- Special disclosures for victims of sexual violence – “The Survivors Brochure”

# CLERY-REPORTABLE CRIMES

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- Crime is everywhere
- Crime moves
- 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

# SAFETY ALERTS

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- Emphasis on Transparency and Need
- **Timely Warnings and Emergency Notifications:** 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** must be issued for **Clery-reportable crimes** that may pose a significant or ongoing threat (*Clery Geography*)
  - **Emergency notifications** must be issued upon the confirmation of any significant **emergency or dangerous situation** that may pose an immediate threat to student and employee health or safety (*Campus Only*)
- On April 3, 2020, the Department issued an Electronic Announcement related to these requirements entitled “Notifications Regarding an Immediate Threat to Health or Safety” – Effectively rescinded with the end of the National Health Emergency

# CAMPUS SECURITY AUTHORITIES

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## 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

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## MOST COMMON CSA CATEGORIES

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

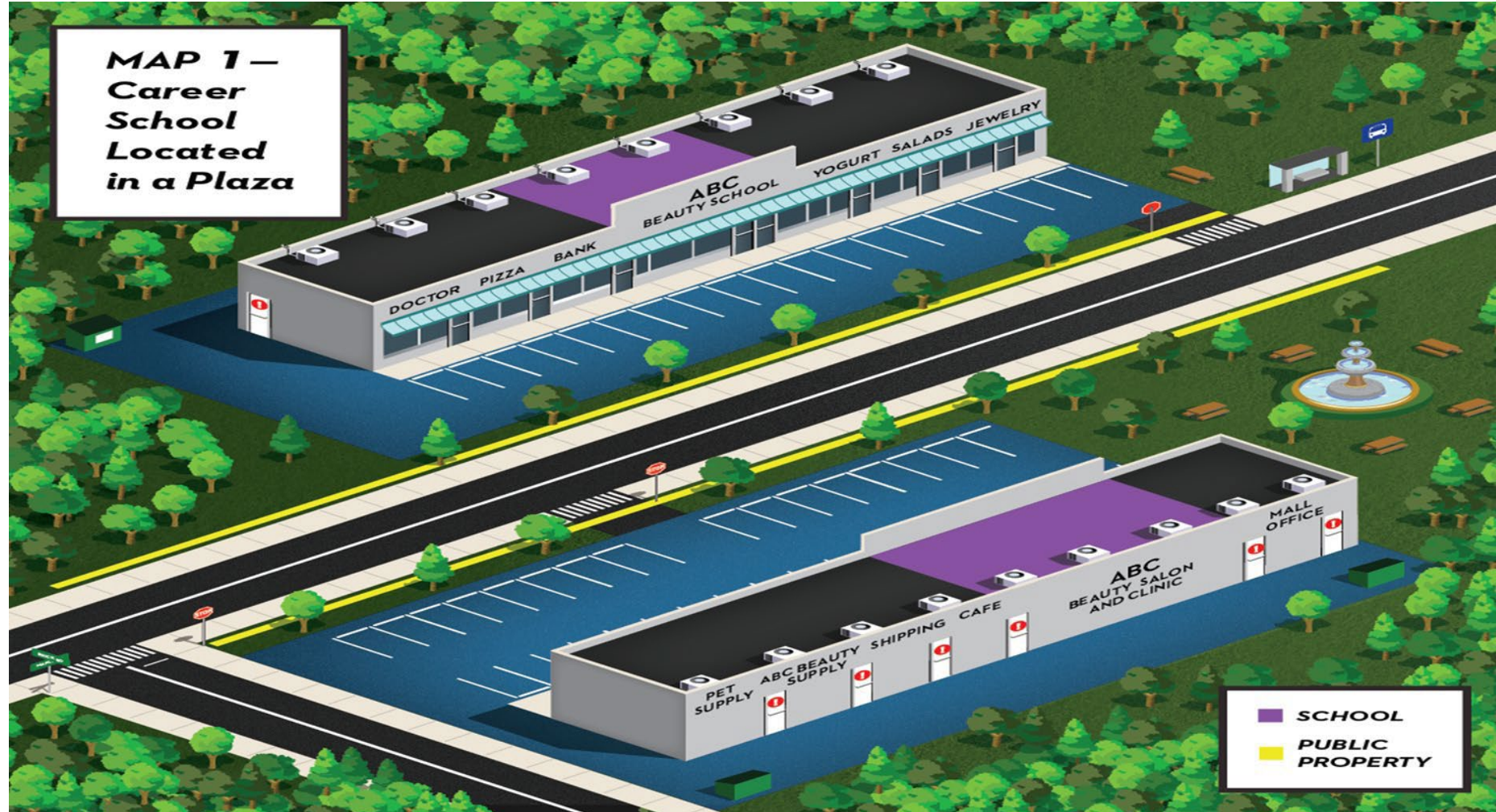
- Campus Law Enforcement and Campus Public Safety Professionals
- Campus Leadership and Administrators
- Residence Life Staff including Resident Assistants
- Athletic Directors and Coaches
- Study-Abroad Program and Foreign Campus Administrators
- Student Life and Student Organizations Staff, including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

# CSA KNOWLEDGE CHECK AND DISCUSSION

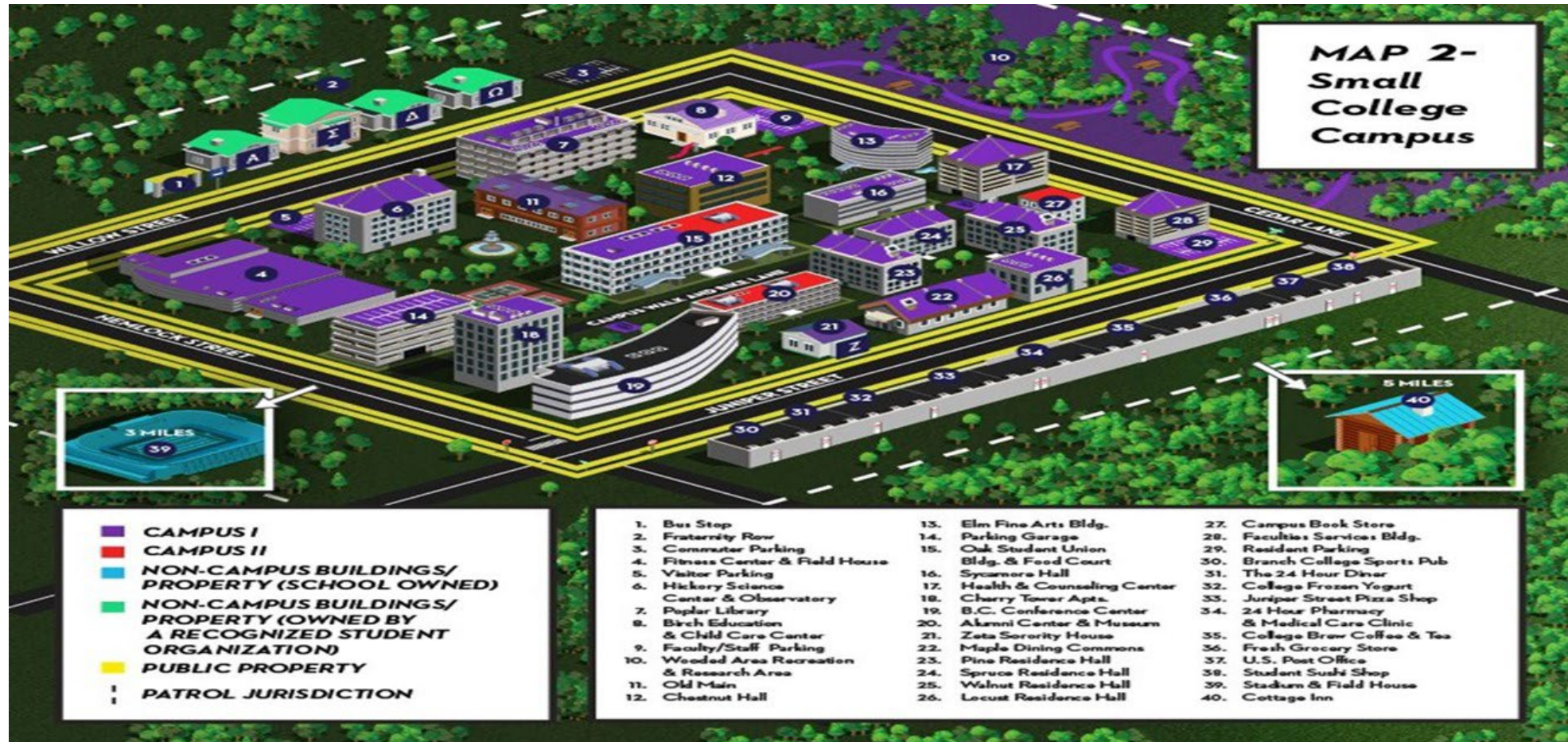
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- How many CSAs does your school or campus have?
- How does your school notify CSAs of their reporting responsibilities?
- What documentation does your school keep to show that CSAs have been notified of their reporting responsibilities?
- Do CSAs at your school receive any training?

# CLERY GEOGRAPHY SIMPLIFIED



# CLERY GEOGRAPHY SIMPLIFIED



# CLERY & THE VIOLENCE AGAINST WOMEN ACT

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- Enhanced Rights and Options for Students and Employees (Reporting Options, Accommodations and Protective Measures)
- Adds Gender Identity and Perceived Gender to Hate Crimes Provision
- Requires Specialized Training for Disciplinary Hearing Officials
- Reforms the Disciplinary Proceeding process:
  - 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

# VIOLENCE AGAINST WOMEN ACT (VAWA)

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- 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
- [fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2014-10-20/general-subject-final-regulations-implementing-violence-against-women-act](https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2014-10-20/general-subject-final-regulations-implementing-violence-against-women-act)

# LET'S REVIEW...

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- Review your institution's campus safety and crime prevention policies and procedures – “3-pronged test”
- Let's start with a BONUS topic. It's time to (finally) get into compliance with VAWA
  - Multiple reporting options
  - Rights and options (Survivor's Brochure)
  - Accommodations, Protective Measures, Support Services
  - Intersection with Title IX
  - Don't forget about Accessibility
- Campus Security Authorities
  - Identification and Notification
  - Data Collection and Compilation
  - Compliance Monitoring and Analysis
- Youth and Visitor Protection
- Domestic Partner Protection

# LET'S REVIEW...

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- Make sure your Campus Crime Statistics are accurate and complete
  - Classification, Counting, Compilation
  - De-Duplication
  - Proper Use of “Unfounding” and Worst Practices
  - Using Data and Intelligence for Good
- Timely Warnings and Emergency Notifications
  - Significant or Ongoing Threat
  - Emergency or Dangerous Condition
  - Actively Look for Threats
  - Take Charge and Take the Wide View
- Closing Thoughts



# QUESTIONS?

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