



# **Crisis Management & Communication: A Balancing Act**

Office of Legal Affairs

Christy Jackson, Director of Communications for Business Affairs

Buffie Stephens, Director of Issues Management and External Media Relations

---

# Today's Presentation

- Introduction
- Relevant Legal Standards
- Crisis Communication at UNC Charlotte
- Hypothetical Scenario





# Relevant Legal Standards

---

## Relevant Legal Standards

A number of federal and state laws govern the broad contours of mandatory and discretionary disclosures of information to students, parents and the general public (including the media) during a campus crisis.

1. The Clery Act
2. FERPA/HIPAA
3. Ethical Considerations
4. Law Enforcement Records
5. Other Legal Issues



---

# The Clery Act

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. 1092 (f)) is a federal law which mandates that all colleges and universities receiving federal financial assistance must disclose certain **timely and annual information** concerning campus crime and safety.

Information must be disclosed to current students and employees.





## The Clery Act (cont'd)

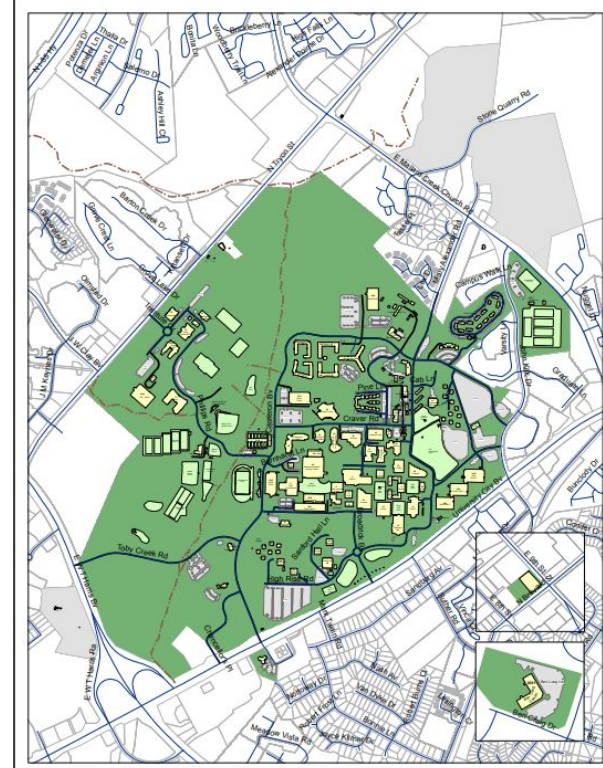
Requirements for Colleges and Universities:

1. Publish an **annual report** by October 1st of each year
2. Disclose **crime statistics** for the campus, public areas immediately adjacent to or running through the campus, and certain non-campus facilities and remote classrooms.
3. Provide “**timely warning**” notices of crimes that have occurred and pose an ongoing “**threat to students and employees;**”
4. Implement **emergency notification procedures** if there is an immediate threat to the health or safety of students;
5. Create a **crime log** that is available to the public.

# The Clery Act (cont'd)

## Geographical Map for Clery Crime Reporting

1. On campus;
2. On public property within or immediately adjacent to the campus; and
3. In non-campus buildings or property that the University owns or controls.





## The Clery Act (cont'd)

Timely Warnings and Emergency Notifications are provided to inform students and campus community members of a **threatening situation** and how they can best protect themselves from harm.

Every attempt is made to issue **Timely Warnings** as soon as is reasonably possible after the facts of the incidents have been established.

For threats that are considered particularly exigent, a Timely Warning may be issued **immediately** with any known facts and then **updated** with additional pertinent information until the threat is contained or neutralized.



---

# FERPA

The Family Educational Rights and Privacy Act (“FERPA”) prohibits colleges and universities that receive federal funds from releasing a student’s education record or personally identifiable information (“PII”) from a student’s education record without their consent.

An “**education record**” is any record, regardless of format, that is (1) “directly related” to the student & (2) “maintained” by the education institution.





## FERPA (cont'd)

FERPA includes a number of **exceptions** that allow a college or university to release information about the student to certain third parties without their consent. Examples include, directory information and information given:

1. To the **parents of dependent** students;
2. To an attorney or court official pursuant to a “**judicial order or lawfully issued subpoena;**”
3. To a “**school official with a legitimate educational interest;**” or
4. To appropriate parties during a “**health or safety emergency**”

# FERPA (cont'd)

## Health and Safety Exception

In some situations, a school may determine that it is necessary to disclose **non-directory information** to **appropriate parties** in order to address a disaster or other health or safety emergency.

FERPA permits “**school officials**” to disclose, without consent, education records, or PII from education records, to appropriate parties in connection with an emergency, if knowledge of that information is necessary to protect the health or safety of the student or other individuals.

This exception is limited in time to the period of the emergency and generally does not allow for a blanket release of information.





# FERPA (cont'd)

## Health & Safety Exception

Disclosures under the health and safety exception are made on a **case-by-case basis**, taking into account the **totality of the circumstances** pertaining to a threat to the **health or safety of the student or others**.

If the school determines that there is an **articulable and significant** threat to the health or safety of the student or other individuals and that another party needs information from student education records to protect the health or safety of the student or other individuals, it **may** disclose that information to such appropriate party without consent.

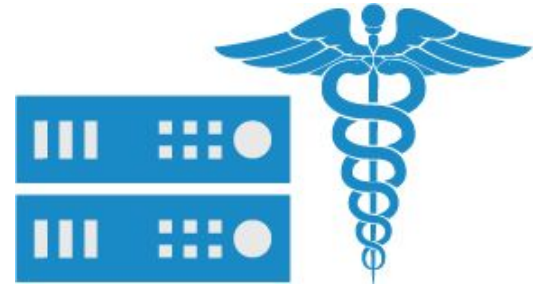
Flexible standard that gives great **deference** to school administrative decision-making, provided that there is a **rational basis** for the disclosure given the nature of the emergency.



# HIPAA

In certain situations medical or therapy information about a student may be critical to assessing the severity of a potential crisis situation.

The Health Insurance Portability and Accountability Act (“HIPAA”) regulates the disclosure of medical information and (like FERPA) generally requires consent before releasing protected health information.





## HIPAA (cont'd)

FERPA and HIPAA often intersect at the disclosure of a student's medical information.

**Treatment and counseling records** created by physicians, nurses, and therapists are generally not considered education records subject to FERPA.



# Ethical Considerations

Confidentiality is critical to successful treatment. Licensed physicians or counselors have a **primary** ethical obligation to keep confidential any information they have learned during the course of treatment.

National standards and State licensing rules govern ethical obligations.

Generally, confidential information **may** only be disclosed to third parties without consent if it is **mandated by law**, or where permitted by law for a valid purpose (e.g. **protect the health and safety of a patient or others**).

Generally disclosures should be limited to the **minimum amount of information necessary** to achieve the purpose of the disclosure.





# Law Enforcement Records

- NOT FERPA protected
  - Records created and maintained by police for law enforcement purposes do NOT fall into definition of “education record”
- N.C. Public Records Act
  - Records of criminal investigations
    - NOT public records
  - Certain information considered public record (unless otherwise prohibited by law)
    - Time, date, location, and nature of violation of the law
    - Name, sex, age, address, employment, and alleged violation of law of person arrested, charged, or indicted
  - Law enforcement agency recordings
    - Body cam, dash cam recordings
    - May only disclose and/or release to certain individuals, under certain conditions





## Other Legal Issues to Consider

- Americans with Disabilities Act
- N.C. Public Records Act
- Defamation claims



# University Policies & Processes



# Campus Behavioral Intervention Team

- Reports initially made to NinerCare Team
  - Reviewed by Dean of Students Office
- May then be referred to CBIT for further consultation and action
  - Action plan may include care and concern meetings with Student Assistance and Support Services, intervention, referrals to resources, referrals to student conduct process or involuntary protective withdrawal process, etc.
- Goal: assist student, protect University community
- Members include:
  - Dean of Students (Chair), Director of Counseling Center, Director of Police and Public Safety, Director of Housing and Residence Life, Associate Provost for Academic Services, Senior Associate Dean of Students, Dean of the Graduate School, General Counsel (as counsel), and other University community members deemed relevant to a particular conversation on an ad hoc basis



# Protective Tools in a Crisis

## Judicial Mechanisms

- Search Warrant
- Arrest
- Trespass Order
- Protective Order

## Internal Mechanisms

- No Contact Order
- Student Conduct process
  - Interim Suspension
- Sanctions
- Involuntary Protective Withdrawal (medical, non-disciplinary)
  - University Policy 408
  - Emergency Interim Protective Withdrawal



# Involuntary Protective Withdrawal Policy

- Establishes process and procedures for the involuntary withdrawal of students who, for reasons pertaining to mental or physical health, engage in behavior that present a direct threat of harm to the health or safety of others
- Student will be subject to involuntary protective withdrawal if Coordinator, in consultation with CBIT, concludes student is suffering from medical or psychological disorder and, as a result, poses direct threat to health or safety of others
  - Individualized assessment relying on current medical knowledge or best available objective evidence
- Overview of Process:
  - Report of student behavioral concerns
    - Emergency Interim Protective Withdrawal
  - Meet with student
  - Evaluation by mental health professional (Selected by University)
  - Consultation with CBIT
  - Coordinator makes determination then meets with student
  - Hearing and recommendation of Hearing Panel
  - Decision by VC for Student Affairs



# **Crisis Communications at UNC Charlotte**



## Things to Consider in a Crisis

- What are the risks and vulnerabilities for the University?
- Who are our audiences?
- How will they be affected?
- Do we need to prioritize our communication flow?
  - What communication needs must be met first?
- How will we reach our audiences?
- How do we want to “show up” for them?
  - What are our guiding principles?



# Decisions Guided by Clear Principles

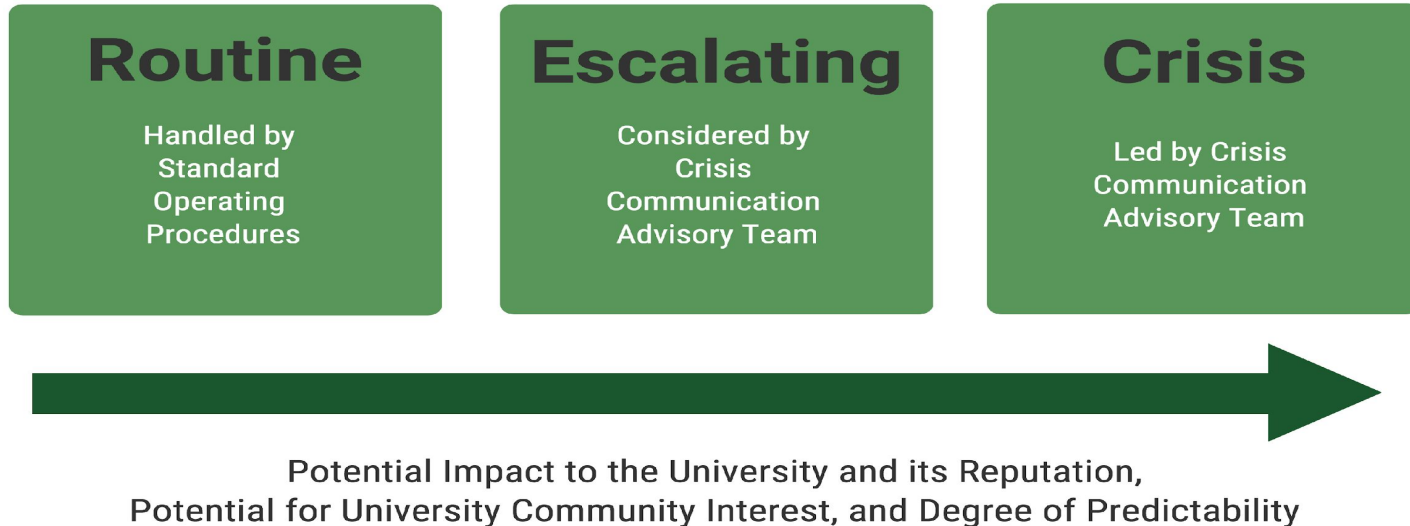
- Compassion
- Honesty
- Leadership
- Agility and Responsiveness
- Collaboration
- Accountability and Accuracy
- Timeliness and Consistency



# Highlights of the New Plan

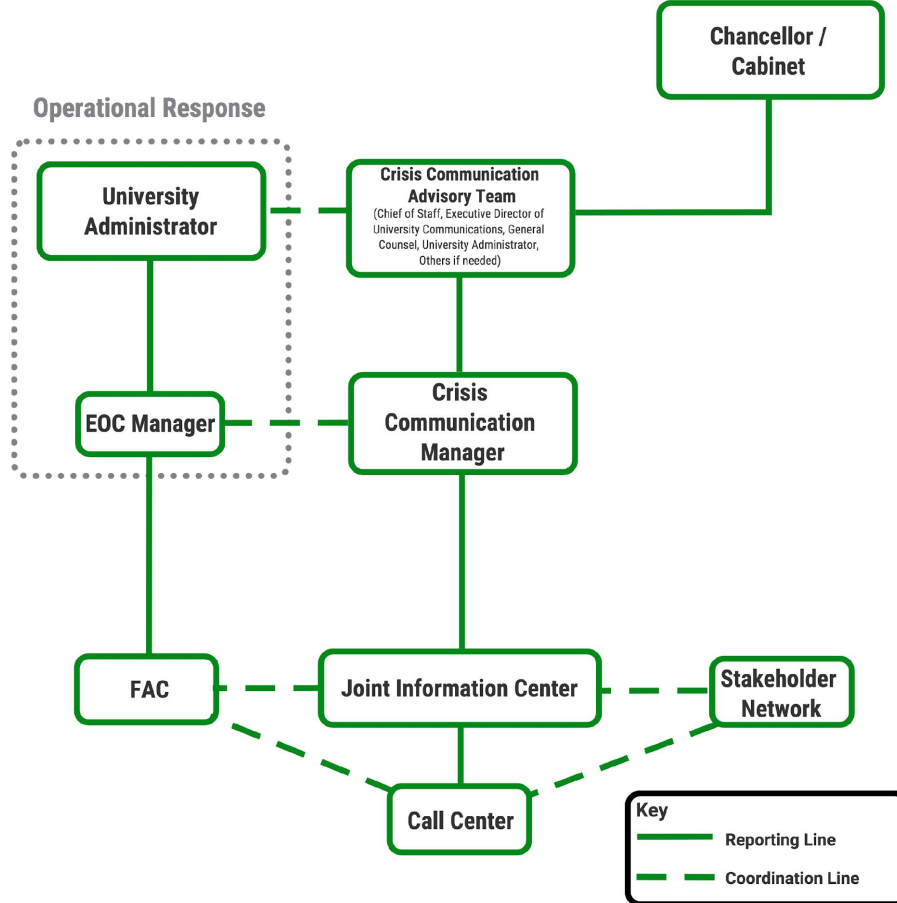
## Definitions: Crisis Levels

A situation that has the potential to impact the health and safety of the institution or its reputation. As risk escalates, so does decision making.



# Crisis Communications Plan Model

Clear Reporting Lines  
in Crisis Situations





# Key Roles and Functions

- *Crisis Communication Advisory Team* leads decisions
- *Crisis Communication Manager* leads execution
- *University Administrator* provides expertise and link to operational response
- *JIC Roles* write, monitor, respond and manage relationships
  - Content Creation
  - Media Relations
  - Social Media Monitoring and Response
- *Points of Coordination* ensure consistency
  - Family Assistance Center
  - Call Center
  - Stakeholder Network



# Communication Tools in a Crisis

## NinerAlerts

- Text
- Alertus (on-campus screens)
- Website
- Email
- Sirens
- Social media

## NinerNotices

- Email ONLY
- Social media
- EM website

## Other methods of communication

- Inside UNC Charlotte
- Video
- Town halls
- Other interpersonal communication
- Print materials



## 2018 Issues to Date

**Sexual assault near campus**  
Alleged sexual assault Witherspoon Hall **Weather closures** Confucius Institute concerns

**Student threatens gun violence on campus community**  
**Light rail security concerns** UNC Chapel-Hill basketball win sign near campus  
Sexual assault reported, victim declined to file charges

**Sex week**  
Proposed parking permit cost increase

**Forced fondling at Greek Village** Wall Street Journal FOIA request for sexual assault settlements  
FOIA request for athletics revenue and expense reports **Waffle House chase and shooting at Lot 27**

**Student Polly Rogers death** Racist flyer on campus  
**WBTV requests more emails related to coal ash** Request for Trustees' closed session minutes

**Armed robbery of Students** Sexual assault at apartment complex **Football stadium name**  
**WCNC TV request info and contracts for top ten earning employees** Arrest of robbery suspect, weapon recovered

**WRAL TV FOIA request for FERPA protected data**



# Hypothetical Scenario

## Hypothetical Scenario

As the following scenario grows in complexity, consider each of the following questions about when, how, and to whom the university communicates:

1. What are the *legal* implications?
2. What are the *safety* implications (for both the student and the community)?
3. What are the *public relations* implications?



...and in here you'll find our  
hypothetical emergency planning  
department!



## Hypothetical Scenario

UNC Charlotte senior John Smith is two weeks away from graduation. He was diagnosed with anxiety and depression in high school and has been successful in managing the symptoms through a combination of medical treatment and counseling. At his latest on-campus counseling appointment through CAPS, John confides to his counselor that his girlfriend broke up with him last week, he's incredibly stressed out about his upcoming finals, and has recently been fantasizing about ending his life and "taking a bunch of people down with him." John lives on campus with three other UNC Charlotte students in Belk Hall.





# Hypothetical Scenario

Within two days of John's counseling appointment, two separate Maxient reports are submitted:

- A faculty member reports that John submitted a disturbing essay in which he vividly described shooting fellow students in Fretwell;
- A student at the library reported someone matching John's description watching videos of the Columbine massacre and taking notes.

Additionally, John's now ex-girlfriend presented to the Title IX Office seeking accommodations after seeing John on campus. John didn't approach her, but made a figure of a gun with his hand, pointed at her, and moved his thumb like he was pulling the trigger.



## Hypothetical Scenario

On the Tuesday before Reading Days, a screenshot of a Snapchat photo begins to circulate widely on social media. The picture is of an unidentified individual in a mask and Charlotte 49ers baseball cap holding what appears to be an assault rifle. The caption below the picture simply says “COMING THIS FRIDAY.”

The university is inundated with emails and social media posts demanding to know who the student is and what will be done about him.



## Hypothetical Scenario

On Wednesday, one of John's roommates reports to PPS that John bragged to him about making the Snapchat post. John is arrested in his residence hall for "making a false report concerning mass violence on educational property." In a subsequent search of John's room, PPS finds a hand-drawn map of Fretwell noting all of the entrances and exits from the building. They also recover a water gun painted to look like an assault rifle. Upon inspection, the water gun appears to match the gun in the Snapchat photo.

UNC Charlotte immediately begins receiving media inquiries about John, and all major news outlets plan to run stories based on the arrest report later that evening.



## Hypothetical Scenario

Several months later, after the media furor has died down, John's case is dismissed for lack of evidence. The Dean of Students receives a request from John for his reinstatement to the university, with an accompanying professional mental health evaluation stating that the entire episode was likely triggered by stress in combination with a new medication John had been prescribed. The evaluation goes on to say that John has been stable for months with a different medication, and that he is ready to return to campus and is unlikely to pose a threat to himself or others.

Any Questions?

