

LAW ENFORCEMENT PERMANENT WORKING GROUP

Enhanced Criteria for Institutions of Higher Education (IHE) Applicants

FEBRUARY 2016

The Recommendations Pursuant to Executive Order 13688 indicated that the “Permanent Working Group, in consultation with higher education leaders, organizations, including campus law enforcement organizations, will further consider the extent to which acquisition of controlled equipment via Federal programs by LEAs operated by institutions of higher education furthers the interests of student and campus safety.”¹ That process resulted in the development enhanced criteria described below, which must be satisfied in order for an IHE’s request for federally-provided controlled equipment to be approved. Evidence that the IHE has satisfied these criteria would include specific assurances or other documentation as part of the IHE’s application for such equipment.

1. **Civilian Governing Body’s Review and Approval (Rec. 3.1).** Explicit approval by the governing body of the IHE [e.g., Board of Trustees or Visitors, State Board of Regents] for the acquisition of the controlled equipment, the documentation of which must be included in the application. Silence (such as inclusion on consent calendar) or inaction by the governing body does not constitute approval.
2. **Detailed Justification (Rec. 3.1).** Information in the application to support an IHE’s assurance that the equipment is necessary, that could include, but is not limited to:
 - a. Information generated by the IHE’s threat assessment process as described in the IHE’s emergency operations plan that, among other factors, could include: (1) identification of the specific threat(s) that would necessitate the use of the controlled equipment; (2) the probability [e.g., highly likely, likely, possible, unlikely] that such an incident would occur; (3) the consequence [e.g., population, economic, infrastructure, etc.] if such an incident occurred; and (4) how this equipment mitigates the potential threat.
 - b. A description of the IHE’s need for the equipment in relation to the capacity or availability of such equipment through surrounding law enforcement agencies [e.g., if the campus LEA has a strong relationship with the local LEA (this could be evidenced by an MOU, mutual aid agreement or a consistent record of fast response times), and the local authorities have the appropriate equipment to respond to a potential threat or emergency, then the campus may not have a need for the equipment].
 - c. A comparison of the campus community in relation to the size and activities of the surrounding municipal or regional community, including an explanation of why the IHE needs the federally provided controlled law enforcement equipment rather than the local law enforcement agency.
3. **Community Input and Impact Considerations (Rec. 2.1).** Certification that campus LEA policies identify a mechanism that LEAs will engage members of the school community, including students and faculty. This includes how IHEs will provide members of the school community with information about controlled equipment, explanations from the IHE concerning the need for such equipment, as well as potential uses and benefits to the agency and the community. Information

¹ Recommendations Pursuant to Executive Order 13688, p. 14, fn 23 (available at https://www.whitehouse.gov/sites/default/files/docs/le_equipment_wg_final_report_final.pdf).

gathered from the community should be used to review trends related to the deployment of controlled equipment.

4. **General Policing Standards (Rec. 2.1).** Certification that campus LEA policies related to the controlled equipment include specific provisions and limitations on using equipment in a way that does not chill speech, is not disruptive to the educational environment, and does not foster a hostile climate among students, including:
 - a. A description of the prescribed purpose of the equipment, including how the IHE will limit the permissible law enforcement purposes for equipment to certain scenarios, such as those involving an active shooter or for rescue purposes [e.g., in the case of an Emergency Rescue Armored Personnel Vehicle, the policy could state that the exclusive operational purpose of the vehicle is for rescue and for the enhanced physical safety of the vehicle's occupants, and that use is limited to specific emergency situations described within the policy.]
 - b. A description of how, if applicable, the appearance of the equipment will be altered to (1) remove the militaristic appearance of any controlled equipment [e.g., painting vehicles a different color]; and (2) clarify the limited purpose of the equipment [e.g., displaying the words "Emergency Rescue" or "Emergency Response" on the vehicle].
 - c. A statement that equipment will not be used to inhibit the exercise of the First Amendment right of free speech or assembly, including public demonstrations.²
 - d. A description of the geographical limitations on where the equipment may be used, and under what, if any, circumstances it would be appropriate to use the equipment outside of the LEA's jurisdiction [e.g., when a natural disaster occurring outside the LEA's jurisdiction could require rescue with the vehicle].
5. **Training (Rec. 2.2).** Documentation that campus-specific LEA training is adequate, including evidence that:
 - a. The training is consistent with the allowable uses of the equipment for campus officers who are most likely to use it. [e.g. In the case of an Emergency Rescue Armored Personnel Vehicle, the training would include, at a minimum, engagement and deployment with the vehicle as well as use of the vehicle to successfully and safely rescue those requiring evacuation.]
 - b. Only those campus officers fully trained in the use of any controlled equipment have access to or will ever use the equipment.
 - c. The campus officers most likely to or authorize use the equipment have been trained on how to use the equipment in a manner that does not abridge the free speech, equal protection or other Constitutional rights or statutory civil rights of students and other members of the school community.
 - d. Training has been conducted in accordance with the general policing and specific controlled equipment standards noted in the guidance from the applicable federal agency.

² There may be, in rare instances, exceptions to this limitation in case of emergency, as defined by the institution's policy and consistent with First Amendment jurisprudence.