



August 23, 2019

Kevin M. Guskiewicz, Ph.D.
Interim Chancellor
University of North Carolina - Chapel Hill
103 South Building
Chapel Hill, North Carolina 27599-9100

Re: Campus Crime Final Program Review Determination
OPE ID: 00297400
PRCN: 201330328424

Dear Chancellor Guskiewicz:

On February 7, 2017, the U.S. Department of Education (the Department) issued a Program Review Report regarding the University of North Carolina - Chapel Hill's (UNC; the University) failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*), the Higher Education Act (HEA) fire safety requirements, and the Department's regulations. The original text of that report is incorporated into this Final Program Review Determination (FPRD). The University submitted its initial response to the Department's report on July 31, 2017 and supplemented that response on several occasions with the final submission being received by the Department on May 15, 2019. The University's response and the supporting documentation submitted with the response are being retained by the Department and are available for inspection by the University upon request. Please be advised that this FPRD may be subject to release under the Freedom of Information Act and may be provided to other oversight entities now that it has been issued to the University.

Purpose:

Final determinations have been made concerning the findings identified during the program review. The purpose of this letter is to advise UNC of the Department's final determinations and to close the review. Please note that this FPRD contains several findings regarding the University's failure to comply with the *Clery Act* and the HEA fire safety requirements. Because these findings do not result in financial liabilities, they may not be appealed.

Due to the serious nature of several of these findings, this FPRD will be referred to the Administrative Actions and Appeals Service Group (AAASG) for consideration of a fine action pursuant to *34 C.F.R. §668, Subpart G*. If a fine action is initiated by AAASG, detailed information about the action and UNC's appeal rights will be provided under separate cover.

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

830 First St., N.E. Washington, D.C. 20202
StudentAid.ed.gov

Record Retention:

Records relating to the period covered by this program review must be retained until the later of the resolution of the violations identified during the review or the end of the regular record retention period applicable to all Title IV records, including *Clery Act*, HEA fire safety, and Drug-Free Schools and Communities Act-related documents as set forth in 34 C.F.R. §668.24(e).

We would like to express our appreciation for the courtesy extended by UNC officials throughout the program review process. If you have any questions concerning this FPRD or the program review process, please contact Ms. Janet Pearlman on 202-377-4845 or at Janet.Pearlman@ed.gov.

Sincerely,

Julian Schmoke, Ph.D.
Director
Clery Act Compliance Division

cc: Mr. Thomas C. Younce, Interim Chief of Police, UNC
Ms. Rachelle Feldman, Assoc. Provost and Director, Scholarships and Student Aid, UNC
Mr. James L. Moore, III, Senior Advisor, Clery Compliance/Campus Safety Ops, ED

Enclosure:

Final Program Review Determination

Prepared for:

University of North Carolina - Chapel Hill

OPE ID: 00297400

PRCN: 201330328424

Prepared by:

U.S. Department of Education

Federal Student Aid

Clery Act Compliance Division

Final Program Review Determination
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A. The Clery Act and DFSCA

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*), in §485(f) of the Higher Education Act of 1965, as amended, (HEA), 20 U.S.C. §1092(f), is a Federal consumer protection statute that provides students, parents, employees, prospective students and employees, and the public with important information about public safety issues on America's college campuses. Each domestic institution that participates in the Federal student financial aid programs under Title IV of the HEA must comply with the *Clery Act*. The institution must certify that it will comply with the *Clery Act* as part of its Program Participation Agreement (PPA) to participate in the Title IV, Federal student financial aid programs.

The *Clery Act* requires institutions to produce and distribute an Annual Security Report (ASR) containing its campus crime statistics. Statistics must be included for the most serious crimes against persons and property that occur in buildings or on grounds that are owned or controlled by the institution or recognized student organizations as well as on adjacent and accessible public property. These crimes are deemed to have been reported anytime such an offense is brought to the attention of an institution's campus police or security department, a local or State law enforcement agency of jurisdiction, or another campus security authority (CSA). A CSA is any institutional official who is 1) designated to receive reports of crime and/or student or employee disciplinary infractions, such as Human Resources and Alternative Dispute Resolution professionals and/or 2) an official that has significant responsibilities for student life or activities such as residential life staff, student advocacy and programming offices as well as athletic department officials and coaches.

The ASR also must include several statements of policy, procedures, and programmatic information regarding issues of student safety and crime prevention. The *Clery Act* also requires institutions to maintain a daily crime log that is available for public inspection and to issue timely warnings and emergency notifications to provide up-to-date information about ongoing threats to the health and safety of the campus community. In addition, the *Clery Act* requires institutions to develop emergency response and evacuation plans. Institutions that maintain student residential facilities must develop missing student notification procedures and produce and distribute an Annual Fire Safety Report (AFSR) containing fire statistics and important policy information about safety procedures, fire safety and suppression equipment, and what to do in the case of a fire. Finally, the *Clery Act* amendments that were included in Section 304 of the Violence Against Women Reauthorization Act of 2013 went into effect on July 1, 2015. These provisions are aimed at preventing campus sexual assaults and improving the response to these crimes when they do occur.

The *Clery Act* is based on the premise that students and employees are entitled to accurate and honest information about the realities of crime and other threats to their personal safety and the security of their property. Armed with this knowledge, members of the campus community can make informed decisions about their educational and employment choices and can take an active role in their own personal safety and to secure and protect their personal property. For that reason, the office of Federal Student Aid (FSA) must ensure that the information disclosed in each ASR and AFSR is accurate and complete. FSA uses a multi-faceted approach to ensure that institutions comply with the *Clery Act*, which includes providing technical assistance and

training programs and materials as well as monitoring and enforcement through program reviews and complaint resolution.

FSA may initiate a campus crime program review as a result of a complaint or on public reports about crimes and crime reporting and prevention at a particular institution. Program reviews entail in-depth analysis of campus police and security records and interviews with institutional officials, crime victims, and witnesses. During a program review, an institution's policies and procedures related to campus security matters are also examined to determine if they are accurate and meet the needs of the campus community.

Because more than 90% of campus crimes are alcohol and drug-related, the Secretary of Education has delegated oversight and enforcement responsibilities for the Drug-Free Schools and Communities Act (*DFSCA*), in §120 of the HEA, 20 U.S.C. §1011(i) to FSA. The *DFSCA* requires all institutions of higher education that receive Federal funding to develop and implement a comprehensive drug and alcohol abuse prevention program (DAAPP) and certify to the Secretary that the program is in place. The program must be designed to prevent the unlawful possession, use, and distribution of drugs and alcohol on campus and at recognized events and activities.

On an annual basis, each institution must provide a DAAPP disclosure to all current students (including all students enrolled for any type of academic credit except for continuing education units) and all current employees that explains the educational, disciplinary, health, and legal consequences of illegal drug use and alcohol abuse as well as information about available counseling, treatment, and rehabilitation programs, including those that may permit former students or employees to return following expulsion or firing. The distribution plan must make provisions for providing the DAAPP disclosure annually to students who enroll after the initial distribution and for employees who are hired at different points throughout the year.

Finally, the *DFSCA* requires institutions to conduct a biennial review to determine the effectiveness of its DAAPP to identify areas requiring improvement or modification and to assess the consistency of enforcement actions imposed on students and employees that are found to be in violation of applicable Federal, State, and local drug and alcohol-related statutes or ordinances and/or institutional policies and codes of conduct.

Proper implementation of the *DFSCA* provides students and employees with important information about the detrimental consequences of illicit drug use and alcohol abuse. The conduct of a meaningful biennial review provides the institution with quality information about the effectiveness of its drug and alcohol programs. Any failure to implement these requirements may contribute to increased drug and alcohol abuse on campus as well as an increase in drug and alcohol-related violent crime. The *DFSCA* is monitored and enforced by the U.S. Department of Education (the Department).

B. Institutional Information

University of North Carolina - Chapel Hill
103 South Building - CB 9100
Chapel Hill, North Carolina 27599-9100

Type: 4-Year Public

Highest Level of Offering: Doctorate

Accreditation Agency: Southern Association of Colleges & Schools - Commission on Colleges

Student Enrollment: 30,111 (Fall 2018)

Percentage of Students Receiving Title IV Funds: 67% (Approx.)

Title IV Funding - 2017-2018 Award Year¹

Direct Loan Program (DL)	\$ 189,094,709
Federal Pell Grant	\$ 20,452,854
Federal Supplemental Educational Opportunity Grant	\$ 817,599
Federal Work Study	\$ 4,259,431
Federal Perkins Loan Program (Perkins)	\$ 428,081
Total	<u>\$ 215,052,674</u>

DL Cohort Default Rate: 2015: 1.5%
2014: 1.8%
2013: 1.5%

Perkins Default Rate: June 30, 2017: 4.4%
June 30, 2016: 5.8%
June 30, 2015: 6.5%

Founded in 1789, the University of North Carolina - Chapel Hill (UNC; the University) is North Carolina's flagship state university and one of the first public universities in the United States. At the time of the initial site visit, UNC offered 71 Bachelor, 107 Master, and 74 Doctoral degree programs. The University's campus covers over 729 acres throughout the downtown Chapel Hill area. UNC has over 30,000 students, almost 50% of who live in University housing. The University's Police Department (UPD) is an accredited law enforcement agency.² UPD officers are authorized to carry firearms and have arrest powers. UPD maintains an expanded jurisdictional agreement with the Chapel Hill Police Department (CHPD), which permits UPD

¹ Source: Postsecondary Education Participants System

² UNC changed the name of its law enforcement agency from DPS (Department of Public Safety) to the University Police Department (UPD) between the commencement of this review and the issuance of this FPRD. Those two acronyms may be used interchangeably in this document.

officers to respond to crimes in some of the busiest parts of Chapel Hill where many of the University's students reside.

C. Background and Scope of Review

The Department commenced its campus crime program review of UNC in April 2013. The initial review period was expanded during a return trip to the University in April 2014. The program review was conducted by the Clery Act Compliance Division and was led by Ms. Janet Pearlman and Mr. Donald Tantum.

The focus of the review was to evaluate UNC's compliance with the *Clery Act* and the *DFSCA*. The review was commenced based on an analysis of credible complaints that alleged that the University was in violation of the *Clery Act*. Specifically, the two primary complainants, _____, alleged that UNC violated multiple provisions of the *Clery Act*, especially with regard to the requirements of 34 C.F.R. § 668.46(b)(11), commonly referred to as the "Campus Sexual Assault Victim's Bill of Rights." Other individuals then joined the complaint and took public positions against the University. This group included, but was not limited to, _____, and former Associate Dean of Students, Melinda Manning. Together, these former students and officials claimed that UNC persistently failed to develop and implement a functional sexual assault prevent, response, and disciplinary program that met the requirements of the *Clery Act* and Title IX of the Education Amendments of 1972 to the HEA. Finally, complainants also alleged that UNC failed to comply with other requirements of the *Clery Act* in terms of its policies, procedures, programs, and the accuracy and completeness of the University's crime statistics.

The Department initially reviewed samples of UNC's incident reports, arrest records, and student and employee disciplinary documents generated in the course of policing and student conduct operations during the 2009-2012 timeframe. The time period under review was expanded to conduct further testing of the accuracy and completeness of the University's crime statistics through the end of calendar year 2015. Both random and judgmental sampling techniques were used to select records. A sub-sample of police incident reports was also cross-checked against the DPS daily crime log to ensure that crimes occurring within the patrol jurisdiction were properly entered onto the log. As part of its response to the PRR, UNC was required to conduct a full file review that reported on certain compliance attributes through calendar year 2016.

Disclaimer:

Although this review was planned and conducted in a thorough manner, neither the review nor this FPRD can be assumed to be all-inclusive. The absence of statements in this report concerning UNC's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve the University of its obligation to comply with all of the statutory and regulatory provisions governing Title IV, HEA programs, including the *Clery Act*, the HEA fire safety requirements, and the *DFSCA*.

Although certain University officials and offices are referenced by title in this document, findings of violation are attributed solely to the UNC. The University is ultimately responsible

for complying with the *Clery Act* and other statutory and regulatory requirements and is responsible for the actions of its employees and agents. References to specific institutional employees, agents, or offices are included solely to improve the clarity of the document.

D. Findings and Final Determinations

During the review, numerous areas of noncompliance were identified. The findings identified in the Department's February 7, 2017 Program Review Report (PRR) appear in italics below. UNC submitted its official response to the Department's report on July 31, 2017 and supplemented that response on several occasions with the final submission received by the Department on May 15, 2019. A summary of the University's response and the Department's Final Determination appear at the end of each finding. Please note that certain non-substantive edits were made to the text of the initial report.

Finding #1: Lack of Administrative Capability

Citation:

To participate in any program authorized under Title IV of the HEA, an institution must demonstrate that it is capable of adequately administering the program under the standards established by the Secretary. Among other requirements, the Secretary considers an institution to have administrative capability if it administers the Title IV, HEA programs in accordance with all statutory provisions of, or applicable to, Title IV of the HEA, and all applicable regulatory provisions prescribed under that statutory authority. 34 C.F.R. § 668.16(a). The Secretary's standards of administrative capability require an institution to employ "an adequate number of qualified persons," as well as to ensure that program activities are undertaken with appropriate "checks and balances in its system of internal controls." 34 C.F.R. § 668.16(b)(2); 34 C.F.R. § 668(c)(1). An administratively capable institution also must have "written procedures for or written information indicating the responsibilities of the various offices with respect to... the preparation and submission of reports to the Secretary." 34 C.F.R. § 668.16(b)(4). These standards apply to all aspects of the Title IV program regulations, including the Clery Act.

Noncompliance:

UNC substantially failed to develop and implement an adequate Clery Act compliance program during the program review period. As substantiated by the violations identified in this report, the University did not have adequate policies, procedures, programs, training initiatives, and systems to comply with Title IV standards of administrative capability. These standards apply to all Title IV operations including the Clery Act. These findings also strongly indicate that UNC did not employ an adequate number of qualified staff and did not operate within a system of internal controls sufficient to reasonably ensure compliance with these requirements. The review team also found that these deficiencies were at least in part responsible for the University's failure to provide accurate and complete campus safety and crime prevention information to the students, employees, parents, and other stakeholders including the Secretary.

The University has failed to meet its regulatory responsibilities in numerous and serious ways. Such a failure calls into question the willingness and the ability of UNC to meet its

obligations not only to the Department under the PPA, but also to its students, employees, and the campus community. With regard to the Clery Act, such impairment resulted in the institution's systemic failure to provide students and employees with important campus crime information and services essential to their safety and security.

The Department has identified nine serious violations of the Clery Act that occurred during the 2009 to 2012 review period. The specific findings are interrelated, and all demonstrate the various administrative failures that are also interrelated and support this finding regarding administrative capability. The University failed to: 1) correctly identify its Clery Geography for crime log and statistical reporting purposes; 2) failed to issue timely warnings for certain ongoing threats; 3) failed to accurately compile and disclose crime statistics in annual ASRs and to the Department; 4) failed to reconcile the campus crime statistics that were included in its ASRs with the statistical data submitted to the Department; 5) failed to identify and advise CSAs for their reporting obligations and further failed to actually collect crime reports from these same CSAs; 6) failed to comply with the Clery Act's sexual assault prevention, response, and disciplinary requirements; 7) failed to retain records of potentially Clery-reportable crimes to the Honor Court for Clery reporting purposes; and 8) failed to comply with the Clery Act's fire safety requirements.

These findings indicate a general lack of adequate coordination, oversight, and supervision with regard to the University fulfilling its campus safety compliance obligations. Cumulatively, they demonstrate a lack of administrative capability. As noted above, these impairments resulted in the University's systemic failure to provide students and employees with important campus crime information and services that are essential to their safety and security.

Required Action:

As a result of this violation, UNC is required to take all necessary corrective actions to cure the violations identified in this finding. UNC is encouraged to analyze any organizational weaknesses that may have contributed to its noncompliance. Furthermore, the University must develop and implement a system of policies and procedure to address and rectify its administrative failings. In addition, the University must develop a comprehensive corrective action plan, which should include institutional self-study directed at identifying the root of its Clery compliance failures and how they can best be rectified. The University must provide the Department the results of its self-review and provide a copy of any new policies and procedures resulting therefrom.

Institutional Response:

In their official response, UNC management did not state whether it concurred with this finding. Instead, UNC acknowledged its obligation to make extensive assessments and changes to their previous policies and procedures, personnel, and other resources related to Clery compliance. The University stated that as a result of the Department's program review, it strengthened its Clery compliance in the following six major areas.

- 1) Providing *Clery Act* training to dozens of University employees, including members of Campus Health Services, Department of Athletics, Department of Housing and Resident

Education (“DHRE”), Equal Opportunity and Compliance (“EOC”) Office, Fraternity & Sorority Life and Community Involvement, Human Resource, LGBTQ Center, Office of the Dean of Students, Office of University Counsel, Student Conduct Office, Study Abroad Office, and the UNC Police.

The University noted that the outside trainer conducted three days of on-campus *Clery Act* training for several dozen members of the UNC Police Department, in addition to several dozen other University officials involved with student safety and *Clery Act* compliance. The trainings sparked conversations about ways staff members could assist in *Clery Act* compliance and submit Campus Security Authority (CSA) reports more efficiently. Additionally, the outside trainer reviewed the ASR, providing expert information on policies and assessed the University’s *Clery Geography*.

In January 2014, the University hired a full-time, designated *Clery* Coordinator. The position resides in the UNCPD and provides oversight of the ASR, the University’s network of CSAs, the annual training of CSAs, collection of incident reports from CSAs, updating the University’s *Clery* reportable geography when campus operations are expanded. UNC noted that the *Clery* Coordinator works with the UPD’s new full-time records manager, ensuring that UNC Police records are properly classified in accordance with the *Clery Act*.

The University stated that it has expanded the number of personnel involved in Title IX compliance. That team of Title IX professionals interfaces with the *Clery* Coordinator to ensure that survivors of sexual misconduct receive the resources they need.

In addition to training, the University noted that more than 1,000 CSA were identified and tasked with responsibility for reporting *Clery* crimes to the Coordinator, noting that UNC’s EOC staff and the new *Clery* Coordinator have been providing mandatory annual training. The University now requires those CSAs to complete training annually to ensure that they understand their responsibilities and are equipped with the knowledge and resources they need.

- 2) Improving policies and procedures to ensure compliance with the *Clery Act*. The University noted that as of 12/15/2016, the UPD updated its General Order to comply with the entirety of the *Clery Act*. The University created written procedures for assessing and communication Timely Warnings and Emergency Notifications, including a *Clery* Compliance Checklist, which sets forth the necessary steps for establishing *Clery* Geography, properly counting and classifying *Clery* reportable crimes from all necessary sources, updating relevant policy statements, drafting the ASR, and identifying and training all CSAs.
- 3) Implementing new policies and procedures for reporting and responding to complainants of Discrimination, Harassment, and Related Misconduct (the “procedures”).
- 4) Implementing, in 2014, a new student conduct software system with superior functionality for categorizing *Clery*-reportable offenses. The UNCPD created an online incident reporting form using the new software for all University’s CSAs to allows CSAs to make reports at any time, allowing the UNC Police to send prompt Timely Warnings.

- 5) The University convened the *Clery Act* Compliance Committee to strengthen the University's policies, procedures, and resources for addressing institutional *Clery Act* compliance. With representatives from major departments, this committee meets regularly to assist and advise the Clery Coordinator and the University.
- 6) The University reviewed Clery Geography and increased the University's Clery compliance by increasing information about the *Clery Act* with a dedicated page on the UNC Police website with links to the ASR, a Clery Geography Map, the Clery Incident Form and the Daily Crime Log.

Final Determination:

In Finding #1, the review team found that UNC lacked the requisite administrative capability required of a participating institution as a result of its failure to develop and implement an adequate *Clery Act* compliance program during the review period. The bases for this finding were noted throughout the program review process and were documented in the Department's initial PRR. Among other violations, and weaknesses, the report noted several institution-wide compliance exceptions, including: 1) a failure to correctly identify and categorize the institution's Clery Geography, including, as just one example, the inability of the University's own Police Department to ascertain that the Granville Towers complex was in fact owned and controlled by the University and was operated as an on-campus student residential facility throughout the review period. In fact, promotional materials for the housing complex inaccurately identified it as offering "the best off-campus housing possible." 2) a failure to compile and disclose accurate, complete, and fully reconciled crime statistics in its ASRs and in its responses to the Department annual crime statistics survey. Findings #4 and 5 of the PRR describe the range of discrepancies noted and formed the basis for the required file review that the University was required to conduct as part of its response. That file review clearly showed that statistical errors and discrepancies persisted throughout the expanded review period and had a detrimental impact on the accuracy and completeness of the statistical disclosures that were included in its ASRs, up to and including, at a minimum, the 2016 report. Moreover, the review team determined that these reporting, classification, compilation, and disclosure errors and omissions also cause the University's daily crime logs to be inaccurate and unreliable.

A third glaring indication of UNC's administrative impairments was demonstrated by its repeated failure to properly issue timely warnings in response to certain Clery-reportable crimes that may have posed a significant or ongoing threat to student and employee health and safety, including cases of sexual assault where the perpetrator was not immediately identified and apprehended. As a result of these violations, UNC was required to conduct a full file review to identify other cases where a timely warning was required. As was the case with the file review required under Finding #4, the University failed to actually conduct the file review as instructed. As a result, the University never actually evaluated the need for timely warnings in a large number of incidents reported to DPS and other CSAs across the University during the expanded review period that extended through the end of calendar year 2016. In spite of the UNC's inability or refusal to conduct a complete internal review, the results of the partial examination exposed multiple offenses, including at least three sexual assaults, two aggravated assaults, and a robbery where a time warning was required, but was not issued. At least three of these failures to issue required warnings occurred after the initiation of the onsite program review (two in 2014

and one in 2016). In other cases, the file review showed that warnings that were ultimately issued were delayed for as long as 24 hours, during which time the campus community was unaware of potentially serious threats to their safety. And, fourthly, the Department notes the University's longstanding failure to identify and notify Campus Security Authorities of the reporting obligations conferred upon them by Federal law and its ongoing failure to provide such officials with a simplified mechanism to report crime information to a central institutional repository. This violation also acted as an underlying and contributing factor to each of the other serious violations and weaknesses noted throughout this investigation.

The Department also found that no structured training was provided to CSAs until at least 2014. This, too, contributed to a range of organizational issues. While CSA training is not a Title IV requirement *per se*, it is, for all practical purposes, impossible for an institution to fully comply with the *Clery Act* without it. This is especially true for large institutions that are likely to have a relatively high number of CSAs. At a minimum, an institution must have a process for identifying its CSAs. The process of identifying and notifying such officials will typically result in the discovery of more CSAs. The process of notifying and training CSAs will not only improve their individual performance but typically leads to the identification of weaknesses in the process and can therefore facilitate the development and implementation of process improvements. No such processes were in place at UNC during the majority of the review period and certainly not before the Department commenced its investigation.

Additionally, the review exposed serious weakness in UNC's programs and procedures that were intended to address allegations of sexual violence. And, it is the Department's position that the complainants in this case were reasonable in their contention and belief that such failures had an detrimental impact on the willingness of sexual assault victims to come forward and report crimes and their willingness to seek redress through the University's disciplinary processes, including the Honor Court. Recognizing the limitations of its longstanding Honor Court process, UNC eventually developed new hearing procedures intended to provide a more appropriate venue for such cases. The University also enhanced its procedures for adjudicating certain disciplinary cases, including for cases involving allegations of discrimination, harassment, and sexual violence. While the University was ultimately able to answer Department's initial concerns about the Honor Court's record retention practices,³ the Department remains deeply concerned about the damage done to crime victims, especially sexual assault survivors, by the structural flaws in the Honor Court system and the limitations of the Instrument, particularly with regard to the system's inability to properly address cases involving student-athletes.

This finding is also supported by other serious, persistent, and systemic violations and weaknesses that were identified in the PRR as well as those that were observed by the review team throughout the investigative process. The most serious of these directly relates to the University's inability to produce an accurate and complete response to the PRR. Despite the Department's best efforts, it proved impossible to full reconcile the narrative response with most parts of the file reviews. The supporting documentation failed to include a manifest of supporting documents and was not produced to the Department in any type of cognizable order. Once the materials were taken apart and reordered by the review team, it became quickly apparent that UNC's calculations were wrong. The Department followed up with University

³ See the Final Determination for Finding #8.

officials on multiple occasions between October of 2017 and May of 2019 in an attempt to understand the meaning of the University's submissions. On several occasions, the review team requested additional information that should have been part of the initial submission. Ultimately, none of these efforts were sufficient to resolve all of the discrepancies, errors and omissions that were identified in the response. As a result, the Department was forced to require the University to substantially reconstruct its file review in early May of 2019. These documents were submitted to the Department on May 8, 2019. The documents submitted included five new spreadsheets for 2012, 2013, 2014, 2015, and 2016, all containing revised data. Additionally, the University submitted an updated narrative table to replace the data presented in Exhibit 12 of the Institutional Review. While not entirely accurate, these materials were adequate to permit the review team to complete its analysis and move forward with the drafting of this FPRD. However, on May 15, 2019, the University presented another set of revised spreadsheets that it claimed were inclusive of all incident reports from calendar years 2012-2016 and once again updated the Exhibit 12 materials. The Department utilized these documents in an attempt to reconcile all of the information presented. An institution's ability to adequately respond to a PRR and to otherwise produce information and reports requested by the Secretary are foundational elements of administrative capability.

The University's inability to produce such materials in an effective and efficient manner manifest evidence that the administrative impairments documented throughout the program review process continued well into 2019. Moreover, it is abundantly clear that the Department's intervention was the impetus for substantially all of the remedial steps that were taken by the University and that no such action would have been taken if the agency had not intervened by conducting this review.

For all of these reasons, this finding is sustained and remains a matter of serious concern for the Department. Numerous discussions between the Department and the University ensued in the lead up to the submission on the revised file review. During those discussions, University officials acknowledged the errors and omissions in the file review documentation and sought to assure the review team that improvements would be evident going forward. The regulations governing the Title IV, Federal Student Aid programs establish certain standards that all participating institutions must maintain to be considered administratively capable. To begin or continue participation in any Title IV, HEA program, an institution must demonstrate that it is capable of adequately administering that program by substantially complying with all statutory and regulatory requirements, including the *Clery Act*. Given the essential role that these standards play in the institutional eligibility process, it is imperative that the University take all actions that may be necessary to ensure that adequate policies, procedures, programs, training, and systems are in place and that these violations will not recur.

The Department carefully examined all available information, including UNC's narrative response and supporting documentation. Based on that review and the University's partial admissions, acknowledgements and regrets expressed in the response and in direct communications with the review team, the Department has determined that the violations identified in this initial finding are, as noted above, hereby sustained. As detailed above and throughout this report, the University manifestly did not employ an adequate number of qualified persons or operate within a system of checks and balances and in an environment of internal controls throughout the review period. Well into 2019, UNC showed that it was unable or

unwilling to produce an accurate, complete, fully reconciled, and well-organized response to the Department's initial report.

In upholding this finding, the Department notes that UNC has strengthened its *Clery Act* compliance program since the initiation of the review and that those remedial actions have resulted in process improvements that should result in better operations going forward. Nevertheless, due to UNC's difficulties in preparing its official response, the Department remains concerned about the institution's ability and willingness to fully comply and as such, will continue to monitor the University's progress through a post-review monitoring program. In consideration of the assurances proffered by UNC, the Department has determined that UNC's remedial action plan meets minimum requirements, and for that reason, has accepted UNC's response and considers this finding to be closed for the purposes of this program review.

The compliance concerns noted during the review period were significant enough to call UNC's ability and/or willingness to properly administer the Title IV, HEA, Federal Student Aid program into serious question. More information about the disposition of the other specific violations is included in the final determinations that follow. UNC is reminded that these exceptions constituted serious violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. An institution's ability and willingness to demonstrate adequate administrative capability is an essential part of participating in the Title IV, HEA, student financial assistance programs. UNC has represented that it has brought its overall campus safety operations program into compliance with the *Clery Act* and the HEA fire safety rules as required by its PPA. Nevertheless, UNC is advised that such actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding #2: Failure to Properly Define the Campus/Clery Geography

Citation:

The Clery Act and the Department's regulations require institutions to compile and publish separate crime statistics for each location or facility. The Department's regulations at 34 C.F.R. § 668.46(c)(4), establish a four-part definition to define the geographic locations for crime statistics, which includes:

- 1. On-Campus I: any building or property owned or controlled by the institution within the same reasonably contiguous geographical area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls;*
- 2. On-Campus II: any building or property owned by the institution that is within or reasonably contiguous to the area identified above, but is controlled by another person or entity;*
- 3. Non-Campus Property: any building or property owned or controlled by a student organization that is officially recognized by the institution; or any building or property owned and controlled by the institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution; and,*
- 4. Public Property: all public property that is within the boundaries of the campus or that is immediately adjacent to or accessible from the campus.*

In complying with the statistical reporting requirements of the Clery Act, an institution may provide a map to current and prospective students and employees that accurately depicts its campus, non-campus buildings or property, and public property areas, collectively referred to as "Clery Geography." 34 C.F.R. § 668.46(c)(8).

Noncompliance:

UNC failed to properly apply the geographical definitions of the Clery Act. The review team reviewed University records that purported to identify all buildings and properties that comprised the University's "Clery Geography" and found it to be deficient in several material respects. Proper identification of buildings and properties is a necessary and fundamental requirement for the collection and disclosure of accurate and complete crime statistics and for the proper issuance of timely warnings. UNC's failure to identify Clery Geography included the following:

1. Failure to Designate all "On Campus" Buildings and Properties as Clery Geography:

A residential building complex known as Granville Towers was purchased by the UNC Alumni Foundation from private owners in 2008. At the time of the program review, the Towers housed approximately 1,300 UNC students. Furthermore, the management company that runs the towers has partnered with UNC's Department of

Housing and Residential Education (DHRE). DHRE coordinates the residence life program in the towers. Furthermore, University affiliated organization such as the Office of Fraternity and Sorority life maintain their offices in the towers. These facts, along with statements collected during the review team's interviews indicate the University exercised a significant amount of control over the operation of Granville Towers and that the buildings were operating in support of/in relation to the University's institutional purposes. Accordingly, the Towers should have been included in the University's Clery Geography. At the time of the review, only the parking lots around the Towers were considered to be Clery Geography by the University.

2. Failure to Designate all "Non-Campus Property" as Clery Geography:

They University failed to identify several properties that should have been classified as non-campus Clery Geography. The Department has determined that at the time of the review the following locations likely should have been classified as part of the UNC's Clery Geography but were not:

- a. Hillel Center, located at: 210 West Cameron Avenue, Chapel Hill, NC;*
- b. Newman Catholic Student Center Parish, located at: 218 Pittsboro Street, Chapel Hill, NC;*
- c. The Daily Tar Heel office, located at: 151 E., Chapel Hill, NC;*
- d. UNC Chabad House, located at: 127 Mallette Street, Chapel Hill, NC;*
- e. Multiple fraternity and sorority houses, including for example: 207 Pittsboro Street, Chapel Hill, NC*

3. Failure to Include all Immediately Adjacent and Accessible Public Property as Clery Geography:

The University failed to include areas of public property immediately adjacent to the campus as part of the University's Clery Geography. For example, Porthole Alley is a public alley immediately adjacent to campus. However, a rape that occurred in this alley behind the Cosmic Cantina in 2012 was not included in campus crime statistics, nor was it reviewed for the issuance of a timely warning. See Chapel Hill Police Department (CHPD) Report #1203106.

The University's failure to properly identify all of its Clery Geography substantially impedes its ability to properly compile and report accurate crime statistics in the annual ASR and to the Department.

Required Action:

As a result of these violations, UNC must conduct a comprehensive review to identify and properly classify all buildings and properties that constitute its Clery Geography. After completing this review, the University must make all reasonable efforts to update its crime statistics reported for the last three years. UNC will then be required to produce a revised 2016 ASR and to actively distribute this report to the campus community. Necessary revisions to the

University's Clery Geography must be completed in advance of the conduct of the file reviews ordered in this report.

Institutional Response Summary:

In their official response, UNC management partially concurred with this finding. The University respectfully disagreed that they failed to properly define the campus' Clery Geography with respect to Granville Towers. Specifically, the University pointed to the 2009 ASR, which stated that Campus "includes all property on the central campus (including Granville Towers, residence halls, UNC Hospitals, and other campus buildings.). The University acknowledged that the 2009 Annual Fire Safety Report (part of the ASR) included mistakes as to Granville Towers' status as noted by the Department as part of Finding #9. Additionally, the University asserted that it included the rape that occurred in Porthole Alley, as reported in Chapel Hill Police Report #1203106, as part of the 2012 statistics.

The University tacitly concurred with the second part of the finding, which maintained that there was a failure to designate all non-campus property, including the Hillel Center, the Newman Catholic Student Center Parish, the Daily Tar Heel Office, the UNC Chabad House and multiple Greek Houses as part of their Clery Geography. UNC noted that it has taken remedial action to correct the above-referenced deficiencies; including initiating the process to identify what property is owned or controlled by recognized student organizations. More specifically, the University asserted that it has improved its reporting of crimes that occur on public property and non-campus geography by creating and making available a map of Clery Geography that assists CSAs to discern UNC's public property. Since the program review, the University's Clery Coordinator reviewed incident reports and consulted with UNC Police to determine exactly where incidents occurred, if there is a question as to the exact location of the crime.

With guidance from outside consultants, the University noted that it has developed a master list of geographies that is regularly updated. Those consultants worked with the University to develop a map that allows the University to identify its core contiguous campus. In 2015, the University updated the map, allowing for more detail, including the labeling of residence halls and Greek houses. The University noted that it was still making improvements that would refine the map further and make it more interactive. The University's Office of Fraternity & Sorority Life and Community Involvement has now supplied a list, annually, to the Clery Coordinator detailing which houses are officially recognized as chapter houses. The list is shared, yearly, with the Chapel Hill Police Department, which provides the University with non-campus crime statistics for that jurisdiction.

Beginning in 2017, the University stated that it would develop a mechanism to annually survey its 800+ officially recognized student organization to determine if the organization owns or controls the property. The University relies on the student organization to self-report their owned/controlled properties and the Clery Coordinator will review those properties for Clery Geography purposes.

Final Determination:

Finding #2 cited the UNC for its failure to properly define its buildings, properties, and other parcels in conformity within the definitions of Clery Geography and the resultant failure to designate certain “Non-Campus Buildings and Properties” and immediately adjacent and accessible public property as Clery Geography, as outlined in the Noncompliance section above. Each of these failures contributed to a range of other *Clery Act* violations, including causing required entries to not appear in the University’s Daily Crime Log and a failure to assess incidents for the issuance of timely warnings and emergency notifications, as required. For example, as a result of the inconsistent guidance and support provided by UPD, the University was unable to document every crime that was reported as occurring at the Granville Towers complex. And as a result, incidents were not assessed to determine if a timely warning was required. The University noted that it learned from the 2016 edition of the Department’s Handbook for Campus Safety and Criminal Reporting that all alumni-owned housing was to be considered as part of the campus but also noted that they did consider Granville Towers to be part of campus.

The Department reminds the University that in 2013, the consumer information provided on the Granvilletowers.com website specifically indicated that Granville Towers was not “on-campus housing.” The website also indicated that “security guards patrol throughout the night” and promised that the management company possessed the expertise and resources to provide your student with “the best off-campus housing possible” (See www.GranvilleTowers.com/en/parents). The Department’s final determination is that the University failed to appropriately designate Granville Towers as part of the campus and, as a result, did not reference it as an on-campus student residential facility in its ASRs and AFSRs. The confusion contributed to other persistent failures to comply over many years.

This finding also cited the University for failing to designate certain other Non-Campus Properties as Clery Geography. Specifically, the review team identified four specific properties including the Hillel Center, the Offices of the Daily Tar Heel, and several buildings and properties that were owned or controlled by Greek letter organizations, that were not recognized as part of the University’s Clery Geography. This failure, in conjunction with a failure to identify all CSAs, affected the University’s ability to assess all incidents for the issuance of timely warnings and increased the likelihood that reported crimes were not included in the institution’s crime statistics. In this context, the Department notes that the insidious nature of these types of violations. With the passage of time, it is not possible to ascertain the precise effect of these violations but there can be no question that there was a detrimental effect.

The Department carefully examined UNC’s narrative response and supporting documentation. Based on that review and the University’s partial admissions, the finding is sustained. The Department reviewed the current website for Granville Towers (www.granvilletowers.com), entitled “Student Housing Near Campus Made Easy,” which notes that the property is “owned by the UNC Foundation and partnered with UNC Housing.” Going forward, the Department is satisfied with UNC’s explanation that all 911 calls for service can be routed to the University Police, and that those incidents will be assessed for timely warning and emergency notification purposes.

UNC is reminded that the exceptions identified above constitute serious violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly “correct” violations of this type once they occur. UNC asserted that it has taken adequate remedial actions, and that, by doing so, it is now in compliance with the *Clery Act* as required by its PPA. Nevertheless, UNC officials must understand that remedial actions cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose an adverse administrative action.

Finding #3: Failure to Issue Timely Warnings

Citation:

The Clery Act and the Department's regulations require institutions to issue timely warnings to the campus community to inform students and employees about Clery-reportable crimes that constitute an ongoing threat to students and employees. See § 485(f)(3) of the HEA. These warnings must be issued to the campus community in any case where an incident of crime listed in 34 C.F.R. § 668.46(c)(1) and/or (c)(3) that represents a threat to students or employees is reported to a CSA. 34 C.F.R. § 668.46(e).

Noncompliance:

UNC repeatedly failed to issue timely warnings to students and employees regarding Clery-reportable crimes that posed an ongoing threat to students and employees during the initial review period. The following timely warning violations were identified by the review team:

- 1) On January 19, 2009, a female student reported an event classified by DPS as “peeping;” see DPS Incident Report # 2009-000157; the report noted the unlawful entry into a residence hall suite bathroom by a perpetrator who used a cell phone to record the student in the shower. This incident should have been classified as a burglary, as the perpetrator unlawfully entering the suite with felonious intent to surreptitiously record the student in the shower. This occurred in a secure residence hall on campus and the perpetrator was not identified. Despite the ongoing threat posed to the campus community, no timely warning was issued. One month later, a similar incident occurred in the same residence hall on February 27, 2009.*
- 2) On January 27, 2011, a woman reported a forcible sexual offense that occurred in the campus library; see DPS Incident Report # 2011-000254; the victim indicated that the perpetrator circled around her twice before he fondled her buttocks; the victim reported the incident and provided a detailed description of the suspect who fled the scene; despite the ongoing nature of the threat posed by the perpetrator, no timely warning was issued.*
- 3) On February 17, 2011, two women reported that they were forcibly fondled on the buttocks at the campus library by a single male perpetrator; see DPS Incident Report #2011-000545; despite this being the second such report in a three-week period and the ongoing nature of the threat, no timely warning was issued.*

Failure to issue timely warnings regarding serious and ongoing threats deprives campus community members of vital, time-sensitive information to which they are entitled. Timely warnings are a primary means of providing updates about serious threats to the health and safety of campus community members. This essential information allows interested parties to make informed decisions regarding their own safety and security and supplements the longitudinal statistical data that is included in the ASR.

Required Action:

As a result of these violations, UNC must conduct a review of all Clery-reportable offenses reported from 2012 to 2016 to determine if a timely warning was required and whether or not a timely warning was in fact issued. If a warning was issued, the timing of the warning and the mode of communication must also be determined.

If a warning was not issued, UNC must indicate whether or not it now believes that a warning was required under the standards in the Department's regulations. If UNC determines that a warning was not required, it must explain its reasoning and provide any supporting documentation. In this context, the University is reminded that the mere fact that a subsequent crime of the same or similar type did not actually occur is not a justification for failing to issue a warning in response to an initial Clery-reportable offense that reasonably posed such a threat. The University must prepare a summary report containing this information and submit it with its official response to this report. Copies of any timely warnings sent during this period must accompany the University's summary report. The University may combine this review with the examination required in response to Finding #4.

UNC also must review and revise its timely warning and emergency notification policies, as needed, to ensure that they will provide for the immediate dissemination of information about threats to the health or safety of students, employees, and the wider campus community. The Department's interviews with UNC officials and students indicated serious and persistent deficiencies in the University's timely warning procedures. For example, DPS officials were not in regular close contact with the CHPD and only received copies of incident reports from the agency once per week. Such an arrangement impeded the University's ability to issue a timely warning for any incident that may have posed an ongoing threat to the campus community but was responded to by CHPD.

Procedures must be put in place to ensure that all CSAs are aware of their Clery-reporting obligations and that relevant incidents are reported in a manner that facilitates and ensures that timely warnings are issued for Clery-reportable crimes that pose an ongoing threat to the campus community in accordance with the Department's current regulations at 34 C.F.R. § 668.46 (e)(1). A copy of all revised policy statements must be submitted with the University's response to this finding.

Institutional Response Summary:

In their official response, UNC management affirmed that it has updated its timely warnings procedures and practices to improve its ability to issue all appropriate timely warnings under the *Clery Act*. The University has added a role for its full-time Clery Coordinator into the process for

issuing timely warnings. UNC Police shift supervisors are also required to document why they did or did not issue a timely warning for any Clery crime occurring in the University's Clery Geography. Beginning around 2013, the University stated that UNC Police, EOC Office, and Office of Dean of Students began having weekly meetings to discuss Clery crimes and ongoing situations that may require a timely warning including, for example, a pattern of crimes.

The University's claimed that its Maxient reporting system has also improved the University's ability to issue timely warnings. Staff in the University's EOC Office, DHRE, Student Conduct, and Office of the Dean of Students, as well as the Clery Coordinator, now can view and submit reports of Clery crimes. The University's Clery Coordinator makes a record of all Clery-countable crimes in the Maxient reporting system in UNC Police's records management system to ensure that all records of Clery crimes are in one location.

With regards to **DPS Incident Report #2009-000157**, The University argued that the breaking and entering into a suite in a residential hall on campus with the intent to peep under the shower curtain and photograph the student did not constitute a Clery crime under Federal or North Carolina law. The incident, classified as Peeping, was not a felony and therefore the University had no obligation to issue a timely warning.

The University concurred that incidents: **DPS Incident Report #2011-000254** and **DPS Incident Report #2011-000545** required timely warnings and the University regretted not issuing timely warnings for the two forcible sexual assaults.

In response to the Department's request, the University further evaluated their crime statistics for calendar years 2012 through 2016 to determine if there were any Clery-reportable crimes which required a warning, the University identified #7 incidents that required a timely warning, but no warning was sent. That information has been provided to the Department as part of the file review.

UNC asserted that it has improved its timely warnings procedures and practices by improving communication among the University's identified CSAs. The University has also hired a full-time Clery Coordinator, who is consulted regarding whether a timely warning needs to be issued. At the time of all of these aforementioned incidents, the University did not have a full-time Records Manager or Clery Coordinator. Both of these staff members now work to fulfill the University's obligation to issue timely warnings under the *Clery Act*.

Final Determination:

Finding #3 cited the UNC for multiple violations of the *Clery Act* and the Department's regulations, as outlined in the Noncompliance section above. Specifically, the review team found that the University failed to comply with the timely warning provisions of the *Clery Act* and to adhere to its own policy and procedures regarding the issuance of such warnings for three incidents, one peeping incident in 2009 and two forcible sexual offenses that occurred in 2011.

The University concurred with two of the three incidents cited in the PRR, noting that DPS Incident Reports **#2011-000254** and **#2011-00545**, forcible sexual assaults that occurred in the

University's Library required a timely warning and the University regretted not sending warnings for both of those two incidents.

The University argued that DPS Incident Report #2009-000157, an incident classified by UNC Police as "Peeping," did not require a timely warning because the offense is not a Clery-reportable crime. The incident report stated that an unknown male entered a suite in a residential hall for the purpose of videotaping students in the shower. The University rightly pointed out that the incident did not involve the commission of a felony or theft under North Carolina law and as such, could not be a Burglary. Under this rationale, the University concluded that it "had no obligation to issue a timely warning." The Department accepts that UNC is technically correct that a Timely Warning was not required. However, there is no question that the breaking and entering into a residence where female students were showering certainly posed an immediate threat to their wellbeing. In addition to the threat to their personal safety, the perpetrator's intent to make and retain images of naked students could have subjected them to various types of peril, including extortion and reputational harm, especially if the images were distributed electronically. Based on these facts, UNC was unquestionably required to issue an emergency notification even if the University determined that timely warning was not technically necessary.

As noted above, the Department's PRR required UNC to conduct a file review to identify any other cases where a timey warning was required. The results of the file review and institutional self-study uncovered additional crimes that required the issuance of a timely warning during the 2012-2016 time period.⁴ This review of UNC's records by institutional officials revealed seven incidents wherein a timely warning was required, but not issued. The bullet points below are organized by calendar year and provide additional details about the violations identified by the University during the file review:

In 2012, UNC failed to issue time warnings in response to at least four Clery-reportable crimes that posed a significant or ongoing threat. Each of these incidents were reported directly to the University Police:

1. Incident Report # 2012000022, an aggravated assault that occurred on campus, and
2. Incident Report # 2012000023, an aggravated assault that occurred on public property,
3. Incident Report # 2012000936, a robbery that occurred on campus, and
4. Incident Report # 2012002533, a sexual assault that occurred on non-campus property.

⁴ The Department substantially relied on UNC's reconstructed file review to determine the number of timely warning violations that occurred in the 2012-2016 timeframe. However, given the lingering concerns about the University's administrative weaknesses and its inability to conduct competent file reviews and the need for ongoing intercession and course correction by the review team, the Department has substantial reason to believe that other violations may have occurred during and after the file review period. Notwithstanding these ongoing concerns, the Department will recognize these findings as representing the minimum levels of noncompliance that occurred during the review period. UNC must take care to provide reasonable assurance that such violations will not continue. Compliance with the Department's requirements and the institution's own timely warning and emergency notification procedures will be a focus of the Department's ongoing monitoring program.

In 2014, UNC failed to issue time warnings in response to at least two Clery-reportable crimes that posed a significant or ongoing threat. Each of these incidents were reported directly to the University Police:

1. Incident Report #2014003542, a sexual assault that occurred on campus, and
2. Incident Report #2014000406, a sexual assault that occurred on campus.

In 2016, UNC failed to issue a time warning in response to on-campus robbery that posed a significant or ongoing threat. This incident was reported in a timely manner to the University, however, no warning was issued, even though no suspects were identified or apprehended. community.

The file review for calendar year 2013 showed that at least twelve incidents of crime occurred on Clery Geography that required the issuance of a timely warning. The internal review also showed that it took the UNC more than **five hours** to issue seven of these warnings. Given the specific circumstances surrounding many of these crimes, the University's delays subjected the campus community to discernible ongoing risks in contravention of the law. In other cases, warnings were delayed for 24 hours or more. Because the University repeatedly failed to evaluate every reportable incident during the file review period, as required, the Department has no way to assess whether or not timely warnings were issued in response to other offenses or the extent to which warnings were issued at all, whether or not the dissemination was carried out in a way that would likely prevent the occurrence of other similar offenses.

The Department carefully examined UNC's narrative response and supporting documentation, including its file reviews. Based on that analysis and the University's admissions concerning two of the three incidents noted in the PRR requiring TW and the seven additional TW violations identified in the University's file review, this finding is sustained. The review team's examination of the institution's response material indicated that the changes to its internal policies and procedures should result in the issuance of faster, and more informative notices going forward. For these reasons, the Department has accepted UNC's response and considers this Finding to be closed for the purposes of this program review. The University must continue to improve its timely warning and emergency notification processes to provide reasonable assurance that this finding will not recur.

UNC is reminded that the exceptions identified above constitute serious violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly "correct" violations of this type once they occur. Issuance of timely warnings and emergency notifications to advise persons who may be at risk as a result of serious crimes or other dangerous conditions are among the most important requirements of the *Clery Act* and are fundamental to the law's campus safety goals. The ongoing notification requirements of the *Clery Act*, timely warnings, emergency notifications, and crime log data provide vitally important up-to-date information that supplements the longitudinal statistical data that must be included in the ASR and the Department's online campus crime statistics database (CSSDACT). UNC asserted that it has taken adequate remedial action to comply with the *Clery Act* as required by its PPA. Nevertheless, the University is advised that such actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding #4: Failure to Properly Compile and Disclose Crime Statistics

Citation:

The Clery Act and the Department's regulations require that institutions participating in the Title IV, HEA programs compile and publish crime statistics for the three most recent calendar years regarding serious crimes that are reported to police agencies or to CSAs. Statistics regarding the following types of serious crimes must be reported: criminal homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. In addition, institutions must disclose arrests for liquor law violations, drug law violations, and illegal weapons possession. 34 C.F.R. § 668.46(c)(1). The Department's regulations require that, for Clery Act reporting purposes, participating institutions must compile crime statistics using the definitions of crimes provided in the regulations at 34 C.F.R. Part 668, Subpart D, Appendix A and the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Report Data Collection. 34 C.F.R. § 668.46(c)(7). Participating institutions must use the Federal Bureau of Investigation's UCR guidelines for reporting purposes.

UNC failed to compile and correctly disclose the number of Clery-reportable crimes in its annual crime statistics for each year during the review period of 2009 to 2012. The review team analyzed incident reports from the University's DPS, Advocate Reports from the Office of the Dean of Students (DOS), and Advocate Reports from the Department of Housing and Residential Education. The Department's review indicated that some crimes were not properly reported because they were miss-classified in crime statistics by the University and other crimes were properly classified but not included in the crime statistics. The following are examples of such misreporting of crime statistics:

Noncompliance:

Crimes Not Accurately Disclosed for Calendar Year 2012 in the 2013 ASR:

- 1. Forcible Sexual Offense; 2/29/2012, DPS Incident Report #2012-000531; victim reported a forcible sexual assault to DPS; the incident was recorded as "Information"; the incident report incorrectly noted that the incident occurred in an off-campus housing, but it actually occurred in on-campus housing;*
- 2. Forcible Sexual Offense; 4/17/2012, Blind Report (no report # provided); a student reported that she was sexually assaulted in her on-campus dormitory room;*
- 3. Robbery; 4/5/2012, DPS Incident Report # 2012-000936; on-campus incident recorded as "Suspicious Condition"; victim was robbed at the Hanes Art Center by a man who forced her to withdraw \$100 from an ATM;*
- 4. Aggravated Assault; 7/21/2012, Advocate Report # 00487-01-2012; an on-campus incident was assessed as "Simple Assault"; however, the victim was rendered unconscious by attack, concussed, and required 12 stitches; and,*
- 5. Aggravated Assault; 9/22/2012, Chapel Hill PD Report # 1222114; a simple assault where one student at an on-campus parking lot punched two men; one victim had teeth knocked out.*

Crimes Not Accurately Disclosed for Calendar Year 2011 in the 2012 ASR:

1. *Forcible Sexual Offense; occurred on 11/4/2010, reported on 2/10/2011, CHPD Report # 1103309; this attempted rape was not in the forcible sexual offense count for the on-campus area in 2011, the year it was reported;*
2. *Forcible Sexual Offense; 1/27/2011, DPS Incident Report #2011-000254; on-campus incident recorded as "Assault on a Female"; student was forcibly fondled in the Davis Walter Library, but the offense was not included in the campus crime statistics;*
3. *Forcible Sexual Offense; 2/17/2011, DPS Incident Report #2011-00545; incident occurred on-campus at the Davis Walter Library; the report mentions that two victims, not one, were forcibly fondled, but only one was included in the Clery statistics;*
4. *Forcible Sexual Offense; 9/11/2011, DPS Incident Report #2011-002986; two victims of attempted forcible sexual offenses/forcible fondling in an on-campus bus; recorded by DPS as assault w/sexual motives, the report noted that assailant was trying to get a reaction from the women by touching them under their skirts; the two incidents should have been included in the crime statistics for 2011 as forcible sex offenses;*
5. *Aggravated Assault; 2/7/2011, DPS Incident Report #2011-000404; on-campus incident of dating violence included strangulation – leaving marks around the victim's neck, but the institution did not include this incident in its campus crime statistics;*
6. *Aggravated Assault; 3/18/2011, DPS Incident Report #2011-000966; on-campus incident recorded as "assault by strangulation/second degree kidnapping," but UNC did not include this incident in its campus crime statistics; and,*
7. *Aggravated Assault; 4/29/2011, DPS Incident Report #2011-001498; on-campus incident occurred at Kenan Stadium; recorded as simple assault, but assailant was armed with a knife and motioning with it, promising to get "a pistol to kill victim and his family"; since a deadly weapon was involved, this incident should have been counted as an aggravated assault and included in that category in the campus crime statistics.*

Crimes Not Accurately Disclosed for Calendar Year 2010 in the 2011 ASR.

1. *Aggravated Assault; 10/1/2010, DPS Incident Report # 2010-002532; on-campus incident recorded as "Assault Simple"; involved a group of six men who attacked the victim; victim was rendered unconscious during the attack and sustained a broken orbital bone and broken nose in an on-campus parking lot;*
2. *Hate Crime; 9/5/2010, DPS Incident Report # 2010-002217; the victim was walking with two other people when two men approached them making anti-homosexual comments; the assailant then punched the victim in the face; the report notes that both parties were advised on the process of taking out a warrant with a county magistrate.*

Crimes Not Accurately Disclosed for Calendar Year 2009 in the 2010 ASR.

1. *Forcible Sexual Offense; occurred on 3/6/2009, reported on 3/9/2009; DPS Incident Report # 2009-000666; on-campus forcible sex offense originally recorded*

- as "Suspicious Condition" and then updated to "Assault - physical assault with sexual motives";
2. *Forcible Sexual Offense; 4/1/2009, DPS Incident Report # 2009-000903; incident recorded as simple assault/harassment; student verbally harassed by the perpetrator for an extended period and he grabbed her buttocks;*
 3. *Forcible Sexual Offense; occurred on 5/8/2009, reported on 5/15/2009, DPS Incident Report # 2009-001220 and DOS # 00071-001-2009; this on-campus incident of forcible fondling was reported once in the crime statistics, but should have been reported twice as there were two separate victims;*
 4. *Aggravated Assault; 7/16/2009, DPS Incident Report # 2009-001759; one student punched another student in on-campus residential housing, incident recorded as "assault-simple," but Advocate Report #00044-2009 states that the victim's nose was broken; this incident should have been counted as an aggravated assault;*
 5. *Burglary; 1/19/2009, DPS Incident Report # 2009-000157; a female student reported an event classified by DPS as "peeping"; the report noted the unlawful entry into a residence hall suite bathroom by a perpetrator who then used a cell phone to record the student in the shower. This incident should have been classified as a burglary, as the perpetrator unlawfully entered the suite with felonious intent to surreptitiously record the student in the shower; this incident was included in Finding #3 regarding the lack of a timely warning; and,*
 6. *Burglary; 2/27/2009, DPS Incident Report # 2009-000560; a female student showering in her suite's bathroom reported an event classified by DPS as "peeping"; the report noted the unlawful entry into a residence hall suite bathroom by a perpetrator who then used a cell phone to record the student in the shower; this incident should have been classified as a burglary, as the perpetrator unlawfully entered the suite with felonious intent to surreptitiously record the student in the shower.*

Crimes Not Accurately Disclosed in the 2010 Calendar Year in the 2011 ASR due to Improperly Unfounding an Incident

1. *Forcible Sexual Offense; 12/8/2010; the victim offered details about her whose attempted forcible fondling incident at the _____ was captured as an "Assault - no physical assault with sexual motives"; this reported crime was unfounded incorrectly (based on the recommendation of the officer - "since there would be no criminal charge").*

Failure to compile and disclose accurate and complete campus crime statistics violates one of the most foundational requirements of the Clery Act. Violations of this type deprive interested parties of access to important campus safety information to which they are entitled and call the University's ability and willingness to properly administer the Title IV, FSA programs into serious question.

Required Action:

As a result of these violations, UNC must take all necessary action to address this violation and all others identified in this PRR. To accomplish this task, the University must address each of

the misclassifications, underreporting, and potential underreporting exceptions noted in this finding of noncompliance. In addition, the University must conduct a file review of relevant records to identify and correct errors in its campus crime statistics for calendar years 2012 through, and including, the end of calendar year 2016.

As part of the file review, UNC must:

- Conduct a full-file review to identify and correct all errors in its crime statistics. The University must examine all institutional records regarding incidents of crime reported to security-related officials and offices, any offices that students and employees are directed to report matters of crime or conduct and disciplinary matters such as the UNC Career Services, University Registrar's Office, Diversity and Multicultural Affairs, Office of Human Resources, Academic Services, the Department of Athletics, Campus Health Services, Carolina Women's Center, the University Ombudsperson, and the Office of Greek Affairs. Similarly, the University must contact all local enforcement agencies to request necessary records to ensure that all incidents of Clery-reportable crimes were identified and correctly classified. Once compiled, errors in past crime statistics disclosures must be corrected. Any corrections to the Department's online campus security database or to subsequent ASRs must contain a caveat explaining those corrections. The University must ensure that crimes reported to a local police agency or any CSAs that manifest evidence the victim was intentionally selected because of the perpetrator's bias against the victim are included in the statistics as hate crimes. This requirement applies to all crime statistics as published in the University's ASRs and all submissions to the Department's online campus crime statistics database that include statistical data for calendar years 2012 through 2016. As part of its response, UNC must also verify that the crime statistics for all Clery-reportable incidents were categorized and disclosed in accordance with the geographical classifications defined in 34 C.F.R. § 668.46(c)(4).*
- Review and improve its policies, procedures, internal controls, and training programs to ensure that all incidents of crime reported to CSAs and local law enforcement agencies are properly classified in accordance with the definitions in Appendix A to Subpart D of 34 C.F.R. Part 668 and are included in its ASR statistical disclosures and in the statistics provided to the Department.*
- The University must query the DPS's RMS and CAD database for any "notes to system," "Assist other Agency," "Informational Reports," and "CAD Full Reports," in addition to the personal e-mail directories of DPS staff to ensure that all Clery-reportable incidents are categorized and reflected in the statistics in the ASR and reported to the Department.*
- The University must search its records, databases, and e-mails from the athletic department and all senior administrators to ensure that Clery-reportable crimes occurring on or within its Clery Geography are reported to DPS. All incidents must be properly presented in the corrected crime statistics.*

- *Construct clear audit trails to substantiate the accuracy and completeness of its revised crime statistics for calendar years 2012 through 2016. The audit trails must support the corrected crime statistics for all Clery-reportable crime classifications including Part I Offenses, hate crimes, drug law violations, liquor law violations, and illegal weapons possession arrests and disciplinary referrals. The audit trail is required to ensure that revised statistics are supported with source materials. The audit trail must provide incident report numbers associated with each crime classification, and crime statistics must separate incidents by Clery Geography for each calendar year.⁵ The University must prepare a short narrative that explains the findings of the file review and a summary report in spreadsheet format that includes the following fields: incident report number, original classification, corrected classification, did the institution issue a timely warning in this case, was the institution required to issue a timely warning in this case, was this incident included in the daily crime log, and, if so, which classification was used.*
- *The University must develop procedures that will ensure that all crimes reported are correctly classified according to the applicable regulatory definitions. A copy of those procedures must be submitted with the University's response.*
- *Finally, UNC must provide the Department with the particular incident reports that support all disclosed Clery-reportable crime statistics for 2012 through 2016. In addition, the University must provide copies of incident reports that document any hate crimes (for the categories of simple assault, larceny-theft, intimidation, and destruction/damages/vandalism). Records must also be provided for any reported incidents of dating violence, domestic violence, and stalking incidents that occurred in 2015 or 2016 that manifest evidence of a hate crime as well. The University must ensure its current policies and procedures dictate that all crimes reported to CSAs and the DPS are correctly classified according to the definitions in Appendix A to Subpart D of 34 C.F.R. Part 668.*

Please be advised that the University will be required to produce a revised 2016 ASR to correct any errors in its campus crime statistics and or any omitted or inadequate statements of policy, procedure, or programs that were included in the 2016 report.

Institutional Response Summary:

In their official response, UNC management asserted that it has taken a number of steps to strengthen its Clery compliance program and to correctly compile and disclose statistics, in addition to those steps summarized in the Administrative Capability finding, the University has hired additional personnel, including a full-time Clery Coordinator and a Police Records Manager; developed new policies, procedures, practices, and resources; purchased and instituted new reporting software for CSAs to report Clery crimes. Additionally, the University developed mandatory training for its approximately 1,000 CSAs, worked a consultant with Clery Compliance expertise, created a Clery map to assist CSAs with Clery Geography; and improved

⁵ The Department emphasizes that Non-Campus Buildings and Properties category includes any parcels that are owned or controlled by recognized student organizations such as fraternities and sororities.

its Clery visibility and outreach across campus to assure that Clery offenses are properly reported, classified, and counted.

The University respectfully disagrees that the following four incidents required inclusion in the criminal statistics for the years in note:

- 1- For 2012, the Forcible Sexual Offense that occurred on 2/29/2012, DPS Incident Report #2012-000531 occurred off campus, although the first page of the report denoted "on-campus residential hall." The incident, classified as "information" had clarifying information from the University's Advocate Reporting System indicating that Incident Report was written when the Police visited the student on campus, but the offense had occurred previously, off campus. As such, the University disagrees that this report required inclusion in the 2013 Statistics.
- 2- For 2011, the Forcible Sexual Offense that occurred on 11/4/2010, CHPD Report #1103309. The University did not count this incident as a Clery crime because the address associated with the report indicates that the incident occurred in a private church parking lot.
- 3- For 2009, there were two incidents (DPS Incident Reports #2009-000157 and #2009-000560) that involved unlawful entry into residence hall suite bathrooms that were classified as "peeping." The Department indicated that these incidents should have been classified as burglaries, as the perpetrators unlawfully entered the suite and recorded students in the shower. The University respectfully disagreed, noting that "a Clery-reportable burglary requires that the perpetrator have engaged in unlawful entry with the intent to commit a felony, as noted in the relevant incident reports, a cell phone is generally on a person's body and it is unclear that the perpetrator entered the suite with the intent to record." Additionally, the University asserted that North Carolina law recognizes misdemeanor peeping as 'peeping while Possessing a Device Capable of Creating a Photographic Image.' Felony peeping in North Carolina requires a showing that the image created was used for the "purpose of arousing or gratifying the sexual desire of any person." For these reasons, the University disputes that these two incidents in the residential hall suite bathrooms should have reported as Clery-countable burglaries.

The University acknowledges that the following crimes occurred on Clery Geography and were reported to either the University Police or Campus Security Authorities and regrets the unintentional omission for:

- 4- Forcible Sexual Offense; 3/6/2009, reported 3/9/2009, DPS Incident Report #2009-000666; originally recorded as "Suspicious Condition" and then updated to "Assault – physical with sexual motives" was omitted from the campus crime statistics.
- 5- Forcible Sexual Offense; reported 5/15/2009, DPS Incident Report #2009-001220 and DOS #00071-001-2009; this on-campus incident involved two separate victims and should have been reported twice in the campus crime statistics.
- 6- Aggravated Assault; 7/16/2009, DPS Incident Report #2009-001759; this incident was recorded as "assault-simple," but Advocate Report #00044-2009 states the victim's nose was broken and should have been included in the campus crime statistics.
- 7- Forcible Sexual Offense; 4/1/2009, DPS Incident Report #2009-000903; incident recorded as simple assault/harassment was omitted from the campus crime statistics.

- 8- Forcible Sexual Offense; 12/8/2010; the victim offered details about her who attempted to commit a forcible fondling incident at the . The report was recorded as an "Assault - no physical assault with sexual motives" and was incorrectly unfounded. This incident was omitted from the campus crime statistics.
- 9- Aggravated Assault; 10/1/2010, DPS Incident Report #2010-002532; on campus incident recorded as "Assault Simple;" involved a group of six men who attacked the victim. Victim was rendered unconscious during the attack and sustained broken face bones. This incident was omitted from the campus crime statistics.
- 10- Hate Crime; 9/5/2010, DPS Incident Report #2010-002217; the victim was walking with two others when two men approached them making anti-homosexual comments. The assailant then punched the victim in the face. This incident was omitted from the campus crime statistics.
- 11- Forcible Sexual Offense; 1/27/2011, DPS Incident Report #2011-000254; on campus incident recorded as "Assault on a Female"; student was forcible fondled in the Davis Walter Library, but the offense was not included in the campus crime statistics.
- 12- Forcible Sexual Offense; 2/17/2011, DPS Incident Report #2011-00545; on campus incident at the Davis Walter Library; the report mentions that two victims, not one, were forcible fondled, but only one was included in the campus crime statistics.
- 13- Forcible Sexual Offense; 9/11/2011, DPS Incident Report #2011-002986; two victims of attempted forcible sexual offenses/forcible fondling in an on-campus bus; two incidents of forcible sexual offense should have been included in the crimes statistics but were not.
- 14- Aggravated Assault; 2/7/2011, DPS Incident Report #2011-000404; on campus incident of dating violence included strangulations was not included in the campus crime statistics.
- 15- Aggravated Assault; 3/18/2011, DPS Incident Report #2011-000966; on campus incident recorded as "assault by strangulation/second degree kidnapping" was not included in the campus crime statistics.
- 16- Aggravated Assault; 4/29/2011, DPS Incident Report #2011-001498; on campus incident occurred at Kenan Stadium; recorded as a simple assault; but assailant was armed with a knife. This incident was not included in the campus crime statistics.
- 17- Forcible Sexual Offense; 4/17/2012, Blind Report; a student reported that she was sexually assaulted in her on-campus dormitory room – was not included in the 2013 ASR.
- 18- The Robbery on 4/5/2012, DPS Incident Report #2012-000936; on campus incident. recorded as "Suspicious Condition" victim was robbed at the Hanes Art Center by a man who forced her to withdraw \$100 from an ATM – was not included in the 2013 ASR.
- 19- The Aggravated Assault on 7/21/2012, Advocate # 00487-01-2012, incorrectly assessed as a simple assault but rendered the victim unconscious by the attack, concussed, and requiring 12 stitches. This report was not included in the 2013 ASR.
- 20- The Aggravated Assault on 9/22/2012, Chapel Hill PD Report #1222114; was recorded as a simple assault but one victim had teeth knocked out – was not include in the 2013 ASR.

The University's full file review combined the full file review document with the timely warning document. The updated crime statistics were included in the file review.

Final Determination:

Finding #4 cited UNC for its persistent failure to compile and disclose accurate and complete campus crime statistics in its ASRs for calendar years 2009 - 2012, as outlined in the Noncompliance section above. Several contributing factors were identified, including a lack of basic policy and procedure, poor report writing practices, inadequate supervisory control of the report writing and approval process, inadequate internal controls over the statistical compilation process, nonexistent staff training (prior to the review team's first site visit in 2013), weak managerial practices, serious system deficiencies, inadequate communication and coordination between key University offices and external law enforcement agencies, and basic unchecked human error, among other areas of concern. In the initial file sample, the Department identified errors in 20 police incident reports that directly contributed to the University's failure to compile and disclose accurate, complete, and fully reconciled crime statistics during calendar years 2009 - 2012. These errors caused serious deficiencies in the UNC's ASRs through at least 2014.

Although UNC argued that four of those reports did not meet the criteria to be considered countable offenses for 2009-2012, the University acknowledged that the 16 crimes noted in the PRR occurred on Clery Geography and were reported to either the University Police or other CSAs, and stated regret that these incidents were not reflected in the ASRs, as required. The University characterized these reporting errors as "unintentional omissions." The source documents created and maintained by the institution validated the Department's initial determinations. However, as noted above and throughout this FPRD, the Department also recognizes that the University's processes were negatively affected by multiple, serious, and persistent administrative weaknesses during this time, and as such, the agency leaves room for the possibility that the information in the case files of these four incidents may have been so flawed or incomplete that it was not possible to conduct a competent classification and compilation review for these incidents.

As a result of the Department's review, UNC was required to take all necessary steps to revise its crime data in advance of finalizing its next ASR. As part of this process, the University was required to conduct a full file review of all incidents of crime that were reported to the institution (all CSAs and local law enforcement) during calendar years 2012 - 2016.

As noted in the Final Determination for Finding #1, there were serious defects in the University's response and file review documentation. First and most importantly, UNC did not review the entire universe of reported incidents, as clearly directed in the "Required Actions" section of this finding. Instead, UNC merely reexamined previously identified Clery-reportable crimes to see if any were misclassified or undercounted. Upon receipt of the Institutional Response in 2017, the Department made a diligent attempt to decipher the file review, to understand exactly what work was done, what findings were made, and the effect of the errors and discrepancies on the institution's campus crime statistics. Telephone conferences and numerous follow-up discussions were held with the institutional officials designated by the University to manage the program review. On other occasions, UNC was required to supplement the response by correcting obvious errors, providing explanations for various assertions, and by submitting additional documentation to substantiate its claims. On numerous occasions, University officials attempted to resolve issues and concerns raised by the review team, but in most cases, these efforts were not successful.

Finally, in May of 2019, the Department had no choice but to direct the University to reconstruct significant parts of the file review and to draft narrative language that explained the review process and its findings. The Department was ultimately able to trace most of the data in the revised file reviews to errors and omissions noted in the University’s ASRs that were produced from 2013 to 2017. The Department was also able to confirm that known errors were not corrected in the ASRs or in the institution’s responses to the Department’s annual crime statistics survey because UNC was apparently “waiting for the Department to provide the correct totals” to the institution.

UNC’s 2019 self-study identified 27 Clery-reportable incidents that were reported to UPD or other CSAs that were not included in the crime statistics that appeared in the institution’s ASRs and in its responses to the Department’s annual survey during the file review period. That information is summarized in the chart below.

Calendar Year 2013 Statistics			
All Geographies	Original Statistical Data Count in 2014 ASR	UNC File Review Results	New Totals for 2019 ASR with Caveats ⁶
Robbery	3	+4	7
Aggravated Assault	7	+1	8
Burglary	28	+1	29

Calendar Year 2014 Statistics			
All Geographies	Original Statistical Data Count in 2015 ASR	UNC File Review Results	New Totals for 2019 ASR with Caveats
Forcible Sexual Offense (Rape only)	26	+1	27
Robbery	4	+1	5

Calendar Year 2015 Statistics			
All Geographies	Original Statistical Data Count in 2016 ASR	UNC File Review Results	New Totals for 2019 ASR with Caveats
Aggravated Assault	10	+1	11
Burglary	25	+12	37
Drug Referrals	104	+5	109

Calendar Year 2016 Statistics			
All Geographies	Original Statistical Data Count in 2017 ASR	UNC File Review Results	New Total for 2019 ASR with Caveat
Aggravated Assault	10	+1	11

Additionally, the Department notes that the file reviews indicated that the University failed to compile and disclose accurate and complete crime statistics for calendar year 2012. These errors and omissions caused the University to underreport crime in its 2013 ASR.

⁶ UNC must include accurate, complete, and fully reconciled crime statistics in its 2019 ASR for calendar years 2014, 2015, 2016, 2017, and 2018. The statistical data for 2014 and 2015 may be presented as part of the statistical grid or in caveats and notes to the report.

Calendar Year 2012 Statistics			
All Geographies ⁷	Original Statistical Data Count in 2013 ASR	UNC File Review Results	New Totals to be included in the 2019 ASR with Caveats
Forcible Sexual Offenses	23	+2	25
Weapons Arrests	6	+1	7

Once again, the Department must reiterate that the substantive and procedural errors identified in the PRR and the additional violations that were exposed through the file reviews resulted in significant and compounding *Clery Act* violations over the course of nearly a decade. At various points in the process, University officials were told or otherwise became aware of material defects in its crime statistics, including instances of under and overreporting, and failed to make necessary corrections, apparently waiting for the Department to do this work for them. It is in this context that the Department must note that the omission of a single incident of crime from an institution’s ASR or its data submissions to the Department necessarily results in multiple years of underreporting. For example, in the chart above, the University’s own file review determined that the institution did not report a total of four (4) robbery incidents. While the chart shows that those four incidents of robbery were only omitted in the institution’s 2014 ASR, they were actually omitted in the 2014, 2015 and 2016 ASRs because the crimes occurred in calendar year 2013 and, therefore, were supposed to be included in the statistical disclosures that appear in the next three ASRs.

The Department carefully examined UNC’s narrative response and supporting documentation, including its file reviews. Based on that analysis and the University’s admissions, the Department has determined that the violations noted in the initial finding and the additional violations identified through the file review are all hereby sustained, with the exception of the four incidents that the institution challenged in its response.⁹ Notwithstanding these serious violations, the review team’s examination also indicated that that the University has, for the most part, adequately addressed these violations through its new and revised internal policies, procedures, training programs, and system reforms. For example, UNC claimed that it developed and implemented new systems to manage the reporting process within its Student Conduct and Residential Life programs. For these reasons, the Department has accepted the University’s response and considers this finding to be closed for the purposes of this program review. Nevertheless, the officials and directors of UNC including the institution’s *Clery* Compliance Officer and Police Records Manager, are advised that they must take any additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department, as well as those that were detected during the preparation of the University’s response to the Department’s report and/or as may otherwise be needed to ensure that these violations do not recur.

UNC is reminded once again that the exceptions identified above constitute serious and persistent violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly “correct” violations of this type once they occur. The compilation and disclosure of

⁹ As noted previously, the source documents related to the four incidents that were challenged by the University actually support the Department’s initial finding of a violation. However, given the unreliability of some of the institution’s own documents from this period, the Department will concede on these four incidents.

accurate and complete crime statistics is among the most basic requirements of the *Clery Act* and is fundamental to its campus safety goals. Access to this information permits campus community members and their families to make well-informed decisions about where to study and work and empowers individuals to play a more active role in their own safety and security.

Finding #5: Discrepancies between the Crime Statistics Included in the ASR and the Data Submitted to the Campus Safety and Security Data Analysis Cutting Tool

Citation:

The Clery Act and the Department's regulations require Title IV participating institutions to compile, publish, and distribute statistics concerning the occurrence on campus of the following crimes: criminal homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. In addition, institutions are required to disclose arrests and disciplinary referrals involving violations of Federal or State drug, liquor, and weapons laws. 34 C.F.R. § 668.46(c)(1). For Clery Act reporting purposes, participating institutions must classify incidents of crime based on the definitions in 34 C.F.R. Part 668, Subpart D, Appendix A. 34 C.F.R. § 668.46(c)(7).

A participating institution must also submit its crime statistics to the Department for inclusion in the online campus crime statistics database maintained by Office of Postsecondary Education (OPE). 34 C.F.R. § 668.41(e)(5).

Noncompliance:

UNC's ASRs included crime statistics that did not match the data that was submitted to the Department's Campus Safety and Security Data Analysis Cutting Tool (CSSDACT). To prevent confusion for users of this data, these data sets must match for each calendar year. The following discrepancies were identified during the review:

- 1. CSSDACT statistics for 2009 indicates six forcible sex offenses for on-campus, four for on-campus student housing, two for non-campus buildings; the 2010 ASR listed two forcible sexual offenses on-campus and four occurring in campus student housing;*
- 2. CSSDACT statistics for 2009 indicates two robberies in residential housing, while the 2010 ASR lists only one;*
- 3. CSSDACT statistics for 2009 indicate ten on-campus burglaries with two in the residence halls; the 2010 ASR indicates that eight burglaries occurred on-campus and two occurred in residential halls; and,*
- 4. CSSDACT statistics for 2009 indicate four motor vehicle thefts, while the 2010 ASR indicated three.*

Any failure to report accurate and complete crime statistics to the CSSDACT and to fully reconcile the crime statistics included in the ASR with the data submitted to the Secretary deprives campus community members and other stakeholders of access to accurate campus safety information to which they are entitled. Discrepant information may cause confusion for

users of the ASR and the CSSDACT and distorts information that is intended to allow interested parties to play a more active role in their own safety and security.

Required Action:

As a result of these violations, UNC must take all necessary action to ensure that all of its crime statistics for calendar years 2013, 2014, and 2015 as reflected in the 2016 ASR¹⁰ and the University's response to the Department's 2016 campus crime statistics survey are accurate, complete, and full-reconciled and that policies and procedures are in place that will provide reasonable assurance that the violations identified during the program review will not recur.

In furtherance of this objective, UNC must review and enhance its policies, procedures, internal controls, and training programs to ensure the crime statistics published in the ASR are identical to those submitted to the Department. These new policies and procedures must provide for adequate custody, control, and integrity of all Clery-reportable data and supporting documentation. A copy of these additional policies and procedures must accompany the University's response.

Institutional Response Summary:

In their official response, UNC management acknowledged the discrepancy between the crime statistics included in the ASR and the Data Submitted to the Campus Safety and Security Data Analysis Cutting Tool. In light of those errors, the University took a number of steps to strengthen its Clery compliance program and to correctly compile and disclose statistics. As summarized in the University's response to Finding #1, the University has hired additional personnel, including a full-time Clery Coordinator and a Police Records Manager; developed new policies, procedures, practices, and resources; purchased and instituted Maxient reporting software for all CSAs to report Clery crimes; increased the number of individually designated CSAs who report Clery crimes; developed mandatory training for its approximately 1,000 CSAs; worked with a consultant with Clery compliance expertise; created a Clery map to assist CSAs with Clery Geography; and improved its Clery visibility and outreach across campus to assure that Clery offenses are properly reported, classified, and counted.

Final Determination:

Finding #5 cited UNC for multiple discrepancies in the crime statistics that were included in its ASRs and survey responses during the review period, as outlined in the Noncompliance section above. Specifically, the review team found that the University failed to submit campus crime statistics to the Secretary for inclusion in the CSSDACT that matched the crime statistics that were included in its 2010 - 2012 ASRs. The University acknowledged the 2010 ASR contained errant information as a result of the improper geographical classification of the Granville Towers complex and the resultant failure to disclose incidents of crime that occurred there.

The Department carefully examined all the available information including UNC's narrative response and supporting documentation. Based on that review and the University's admissions

¹⁰ UNC must update its CSSDACT data to correct any statistical errors that were identified during the file review.

and acknowledgment of statistical discrepancies, the violations identified in the finding are hereby sustained. The examination also indicated that the identified violations were, for the most part, satisfactorily addressed by UNC's remedial actions and its new and revised internal policies and procedures. As such, the Department has determined that the University's remedial action plan meets minimum requirements and for these reasons, has accepted UNC's response and considers this finding to be closed for the purposes of this program review. Nonetheless, University officials and directors must take all other actions that may be necessary to address the deficiencies that were detected during the preparation of the response to ensure that these violations do not recur.

UNC is reminded that the exceptions identified above constitute serious and persistent violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. The inclusion of accurate, complete, and fully reconciled crime statistics in the ASR and the timely submissions of accurate crime statistics to the Department are among the most basic requirements of the *Clery Act* and is fundamental to its campus safety goals. Access to this information permits campus community members and their families to make well-informed decision about where to study and work and empowers individuals to play a more active role in their own safety and security. UNC has stated that it has brought its overall campus safety operations program into compliance with the *Clery Act* as required by its PPA. Nevertheless, UNC is advised that such actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding #6: Failure to Collect Campus Crime Information from All Required Sources

Citation:

The Clery Act and the Department's regulations require institutions to compile and publish accurate and complete statistics concerning the reported occurrence of the following crimes on campus: homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assaults, burglary, motor vehicle theft, and arson. Institutions must also publish statistics providing the numbers of arrests and disciplinary actions related to violations of Federal, State or local drug, liquor, and weapons laws. 34 C.F.R. § 668.46(c)(1). To comply with these requirements, institutions must develop a system that allows for the collection of incidents of crime reported to any CSA. 34 C.F.R. § 668.46(c)(2). A CSA is defined as a campus police department or campus security department of an institution, an individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses as well as any individuals who have significant responsibility for student and campus activities 34 C.F.R. § 668.46(a).

Noncompliance:

UNC substantially failed to gather statistics for incidents of crime reported to all CSAs and to include them in its campus crime statistics. This very serious, systemic, and persistent condition contributed significantly to UNC's ongoing failure to disclose accurate and complete campus crime statistics in its ASRs and to the Department throughout the review period. Department

interviews indicate that the few CSAs who were identified by the University had little or no training on Clery Act compliance.

In its response to the Department's request for a list of all CSAs, the University provided four lists, one for each year of the program review period (2009-2012). Those lists were wholly deficient and reflected that the University did not have a clear understanding of who was a CSA and that it had made no real efforts to identify and train such persons. In 2009, the University's General Counsel requested Clery crime statistics from the three CSAs that the institution designated at that time, two of whom were senior administrators. Those senior administrators were tasked with collecting reports from numerous offices on campus including Residential Housing, LGBTQ, Fraternity and Sorority Life, Campus Health Services, and the Judicial Programs Office. However, the Department was never provided with a comprehensive list of all the offices that should have forwarded reports. The administrators in those aforementioned offices who were required to forward incident reports had no Clery training, nor did hundreds of individuals who worked with students directly and met the regulatory definition of a CSA, including all of the Residential Assistants. After the Department's announcement of this program review, the University's 2012 list of CSAs only added several additional individuals to the 2009 list of CSAs. During the program review, the review team asked various officials, administrators, and RAs, all of whom met the definition of a CSA, about any Clery Act training they had received. Nearly all of them indicated that they had not received any significant training regarding the Clery Act while at UNC.

Each of the identified CSAs waited until the end of the year to report incidents to the Office of General Counsel for inclusion in Clery statistics; this reporting system did not allow all incidents to be reviewed for the issuance of timely warnings at the time of occurrence. Unfortunately, due to the systematic failure to identify and train the vast majority of CSAs on campus, the undercounting of Clery-reportable crimes for the review period is unknown.

Failure to request and disclose statistics for incidents of crime reported to CSAs and to include this information in an accurate and complete ASR deprives students and employees of important campus safety information to which they are entitled. This vital information empowers interested campus community members to be better informed and to play a more active role in their own safety. This information also serves as an important resource for the media, researchers, policymakers, and other stakeholders.

Required Action:

As a result of these violations, UNC must accurately identify all individuals who meet the definition of a CSA. Once identified, the University must compile a list of these individuals and their titles and provide a copy of that list to the Department. In addition, UNC must develop detailed policies and procedures and implement adequate internal controls to ensure that officials charged with compiling crime reports from CSAs and local law enforcement agencies carry out these duties in a manner that will result in the compilation and disclosure of accurate and complete crime statistics and otherwise provide reasonable assurances that these violations will not recur. The University must also design and deploy an effective crime statistics data request and collection mechanism for CSAs to use. Such procedures must provide for the proper classification of incidents, in accordance with the definitions in Appendix A to Subpart D of the

General Provisions Regulations and ensure that accurate and complete statistics for these offenses are included in the ASR and submitted to the CSSDACT. In addition, UNC must take steps to ensure that CSAs are properly identified and that they receive appropriate training concerning their reporting obligations and are given a simplified method to report incidents to the designated officials. Finally, UNC must provide a good faith estimate of the number of CSAs that it believed to be in place during each calendar year from 2010-2016. A current list of actual CSAs by department and job title must be submitted as well. This information will be used to estimate the effect of this violation.

Institutional Response:

In their official response, UNC management disagreed with this finding, noting that the University's previous method of identifying CSA was an effective method for the collection of crime incidents across campus.

The University stated that prior to the on-site review, there were a small number of offices across campus identified as CSAs that were required to report statistics to the Office of University Counsel for purposes of compiling the ASR. The University designated individual offices, rather than individuals, in order to ensure efficiency in reporting and to minimize the number of duplicate reports. Individual offices maintained reporting structures with one individual employee responsible for tracking and aggregating the final numbers to share with the Office of University Counsel.

In order to assure that the designated offices appropriately gathered and forwarded applicable incident numbers to the Office of University Counsel, the University provided each office with a copy of the Clery Handbook every year when requesting statistics. These individual offices then worked with their staff members to make sure these designated offices reported all Clery crimes.

Regardless, the University, in response to feedback from the Clery investigators, made modifications to its CSA practices as quickly as possible. These modifications included designating more than 1,000 individual employees as CSAs. In accordance with the designation criteria, UNC-Chapel Hill's CSAs include, but are not limited to:

- All sworn officers in the UNC Police Department
- Non-sworn personnel who provide security services at performing arts and athletic events
- Staff members to whom the University community is advised to report crimes, including: the EOC Office and the Office of the Dean of Students;
- High level administrators, including the Chancellor, Vice Chancellors, Deans, Department Chairs, and unit Directors;
- The Athletic Director
- All varsity athletics coaches and player personnel:
- All professional staff in the Office of Fraternity & Sorority Life and Community Involvement
- All professional staff in the Carolina Union
- All professional staff in DHRE, including Resident Advisors ("RAs")
- All professional staff in the Study Abroad Office

The CSAs listed above are members of the campus units that routinely reported criminal and other suspicious acts to the UNC Police Department and to the University's Dean of Students. The University has compared the number of crimes reported before and after individually identifying CSAs and has not seen a measurable difference in the number of crimes being reported. Individuals on campus acted to report crime in accordance with the University's culture and values, regardless of having received formal CSA designation.

A listing of all University employees designated as CSAs is enclosed as Exhibit 15. The University has also taken proactive steps to ensure that its CSA list remains current and accurate. In 2016, University staff presented detailed information about the criteria for being designated as a CSA to the members of the University's Human Resources ("HR") Council. Each University administrative unit has a representative on the HR Council who then worked collaboratively with staff from the EOC Office to generate a comprehensive list of CSAs across the University.

This training has enabled HR Council representatives to proactively assist with keeping the CSA list current and accurate by notifying EOC Office staff when currently-designated CSAs leave the University or change positions or when a new position is created that meets the criteria for being a CSA. Further, staff members from the EOC Office worked with the Office of Human Resources to develop the capacity to track the CSA designation of a given position in the University's personnel management software. Positions can be "flagged" with the CSA designation, enabling the University to begin populating an up-to-date CSA list annually. The Clery Coordinator also analyzes Clery reports with an eye to who at the University is reporting crimes and whether those reports are coming directly from CSAs. If others employees appear to be receiving reports of Clery crimes, then the University reviews job descriptions and roles to determine if someone who has not officially been designated a CSA should receive that appointment.

The University's full-time Clery Coordinator and members of the EOC Office and Office of Human Resources work to assure that the CSA list is complete, accurate, and current. The Clery Coordinator also ensures that all CSAs receive training by tracking who has received training in an online module. Each year, the University's Clery Coordinator sends an annual reminder to all CSAs to take the required Clery training and then utilizes a site to track who has taken the training so that the Clery Coordinator can contact CSAs who have not taken the training. The University is committed to continuous improvement of its CSA program and is particularly interested in technological tools to facilitate the tracking and training of CSAs.

UNC has addressed the requirement to identify all individuals who meet the definition of a CSA. The University has developed a system for identifying CSAs and has hired a full-time Clery Coordinator who receives all crime reports submitted by CSAs and ensures the incidents are correctly classified.

In 2014, the University developed an online reporting form for CSAs to use to report incidents. Using this form, CSAs can provide the UNC Police Department with all information necessary for correctly classifying an incident, including the location and type of crime. The Clery Coordinator reviews each submitted form and contacts the CSA when necessary to gain additional information about the incident. The Clery Coordinator also sends an email to all CSAs

to request that they send any CSA reports they may not have submitted through the Maxient system.

The University has ensured that all CSAs are properly identified, and they have received appropriate training concerning their reporting obligations. The University notified all individuals regarding their CSA designation in Spring 2014 and instructed them to complete an online training module created by staff members in the UNC Police Department. Following the implementation of an updated Policy on Prohibited Discrimination, Harassment and Related Misconduct, staff members in the EOC Office designed and implemented a combined training module for all employees who are both CSAs under the *Clery Act* and Responsible Employees pursuant to Title IX. This mandatory training is required annually and remains available for CSAs and Responsible Employees to access at any time, should they have questions or wish to re-visit the information. The University launched this combined training in May of 2016.

All CSAs and Responsible Employees are provided the opportunity to attend this training in person, and in-person training is mandatory for some key constituent groups, including: 1) All Resident Advisors and Community Directors; 2) Students employed by Safewalk, a Student Government initiative that provides safety escorts to students walking otherwise alone at night; and 3) all Sworn officers in the UNC Police Department.

The University has provided the Department with the training materials and documents, as well as the University's lists of CSAs for 2013 through 2016. In addition to a standard CSA training for all CSAs, the University has developed CSA training that is tailored for the Department of Athletics as well as for sworn University police officers.

Final Determination:

Finding #6 cited UNC for multiple deficiencies in its process for identifying and notifying CSAs, as outlined in the Noncompliance section above. Specifically, the review team found that the University failed to establish a systematic process for the collection of Clery-reportable crime data from all CSAs, leading to the failure to include all Clery-reportable crime data in the University's crime statistics during most of the review period. The Department notes that more than 25 years ago, the drafters of the *Clery Act* correctly realized that students and others in a higher education environment do not always report crimes to the police, at least not initially. Students will often report crimes to residence life staff, coaches, or advocates; employees will often report to Human Resources or advocates that are likely to understand their plight. The University's failure to understand the role and importance of CSAs and to implement a proper reporting structure caused a systemic failure, the scope of which will never be definitively known.

In their official response, UNC management "respectfully disagreed" with the Department's finding, maintaining that the previous method for collection of reports (utilized prior to the Department's first visit in 2013) ensured efficiency in reporting and minimized the number of duplicate reports. The University also maintained that it compared the number of crimes reported before and after individually identifying CSAs and providing training about Clery crimes and "had not noticed a measurable difference in the number of crimes being reported"

avowing that “individuals on campus acted to report crime in accordance with the university’s culture and values, regardless of having received formal CSA designation.”

The Department notes that the program review process serves the dual purpose of affording an institution an opportunity to respond to findings of violations before a final determination is reached by the Department and to allow the institution to develop a substantive plan to bring operations into compliance and then remain compliant going forward. The Department takes some comfort in the details provided in the Institutional Response about modifications made to its CSA practices which occurred “as quickly as possible.” These modifications have hopefully addressed the severe deficiencies in the process that the review team observed during its site visits. At that time, the review team interviewed over 25 senior administrators, DPS officers, Residential Housing and Education administrators and Judicial Affairs administrators and General Counsel Attorneys, all responsible for *Clery Act* administration, including the identifying and counting crimes. Not one person interviewed during the 2013 on-site review had ever received CSA training while at UNC.

While the *Clery Act* does not set out training as a separate requirement, the identification and training of CSAs and the implementation of a simple and effective CSA reporting system are necessary conditions for enabling CSAs to fulfill their reporting obligations. In this context, the Department must emphasize that as a matter of basic administrative capability, it is very difficult for a large institution to communicate a common understanding of its CSA reporting process without a training program of some type. Moreover, the charging of UNC administrators with the task of identifying *Clery*-reportable crimes without a working knowledge of the law’s crime categories, geographical rules, and basic information on how to evaluate if an incident may pose some significant or ongoing threat to the campus without some sort of training component is, for all practical purposes, impossible, if the institution reasonably expects to maintain minimal levels of compliance. While some members of the Office of General Counsel demonstrated a working knowledge of basic *Clery Act* requirements, a strategy that relied in significant part, on staffers reading the Department’s Handbook, as some were instructed to do, was not an adequate plan for achieving such compliance thresholds. If, as the University stated, ensuring a culture of *Clery* compliance is a top priority, the following examples of underreported incidents, should serve as an incentive for continuous improvement and additional support for the *Clery* compliance program that has been rolled out in recent years.

CSA-related failures can adversely affect every aspect of an otherwise reliable *Clery* compliance program. For example, in 2014, DPS provided the review team with a list of Incident Reports which were unfounded during calendar years 2009, 2010, 2011 and 2012. A total of 473 incident reports were unfounded for that time period. The Department selected a sample of 122 unfounded incidents. This analysis yielded sufficient data to determine that DPS had unfounded multiple incident reports incorrectly. Specifically, the review team found two incidents that should have been classified as forcible sexual offenses, under the definitions in place at that time. In DPS Incident Report # 2011-001391, the Investigator stated in the report that the victim was “all drunk and (did not) report the assault immediately” and the “rape kit (would not) probably produce any usable physical evidence.” If the Investigator had received even the most basic *Clery* training, that officer would have known that the student’s level of inebriation and the timing of the report or the results of the rape kit test were not reasons to unfound this report. The Investigator also documented that the UNC student was told “if at this point (the assailant) was

charged and this case went to trial, it would not be pleasant for you in court.” Again, the Investigator’s behavior and compartment aside, the report provided no information that would fit the UCR standard for unbounding an incident, which is a case where the available information shows that a report is “*false or baseless*,” meaning that no crime occurred.

In Incident Report 2010-002512, the victim reported that while engaging in consensual sex, her allowed to have sex with her without her consent or knowledge. The documentation associated with this incident, involving ; contained no evidence that would substantiate that the case was false or baseless. Disturbingly, it does not appear that any investigation was conducted or if it was, no supplemental report(s) were ever produced to the review team, despite repeated requests. Like the previous example, this incident was unfounded without any credible information or evidence that this incident of nonconsensual sex did not occur.

Another example of the improper application of the unbounding disposition occurred on December 8, 2010. According to a DPS report, a stated that a had made numerous sexually suggestive remarks and inappropriate requests to her. She also reported that he often appeared to become sexually aroused after brushing against her body. As noted throughout the PRR and this FPRD, DPS’s reports were often lacking essential information and as such, it is not always possible to determine if a Clery-reportable crime had occurred. In this case, there is a possibility that this incident should have been classified as a case of Fondling, but that is not entirely clear. What is clear, at least from the scant details in the report, is that this incident, which was reported directly DPS, should not have been unfounded. Nevertheless, it appears that the officer’s recommendation to close the case was based on nothing more than his assessment that the case should be “closed unfounded since there would be no criminal charge.”¹¹ The improper use of the unbounding disposition in these and other cases is yet another example of the compounding problems that can result from a lack of a formal CSA identification, notification, and training program.

Additionally, the Department points to CareNetwork Report/C00407-2011 as an example of the effects of an inadequate CSA program. This report indicated that on October 2, 2011, spoke with an RA about that had been sexually assaulted at an off-campus party, mentioning that was already upset after being the victim of an assault and battery. The RA documented that she discussed the attack with another RA, seeking “advice on the incident.” The second RA offered to “ask how their weekends’ went, hoping that maybe would hint at the incident from Saturday night.” The victim’s RA mentioned that “no pressure should be placed on to press charges, or even describe the events of the night.” This incident was never captured in a numbered Advocate report, nor was any information about the sexual assault and battery collected. In this case, a lack of adequate documentation and reporting protocols for RAs, together with the training deficiencies and other systemic failures and weaknesses, likely contributed to another case of underreporting and certainly resulted in a lost opportunity to provide information about accommodations,

¹¹ This case raises an additional concern for the Department as there was no indication that the incident was ever referred to the Title IX office or any other institutional official or entity for evaluation or to ensure that the student received information about available accommodations, services, and/or options to seek redress through the University’s disciplinary processes.

services, and other options to campus community members who were adversely affected by crime.

As mentioned above, the CSA provision recognizes that not all crimes that occur at an institution of higher education will necessarily be reported to public safety officials in a timely manner, if at all. Research data and evidence from the Department's own investigations show that students, employees, and other persons on campuses often choose to report incidents of crime and other safety concerns in the manner that they find most comfortable, such as coaches, RAs, and advocates. The CSA reporting requirement has two primary objectives: 1) to acknowledge these reporting trends by providing multiple reporting options and thereby improving the quality of an institution's crime statistics and, 2) to better ensure that reports, especially those about incidents or conditions that may pose some significant or ongoing threat, are brought to the attention of designated officials so that timely warnings and/or emergency notifications can be issued to the campus community when needed.

It is for these reasons that a compliant CSA program is so essential and that failures to comply can have such insidious effects. To put the situation in proper perspective, the University has conceded that, since the initiation of the Department's investigation, it has had to identify and train a large number of institutional officials who qualify as CSAs. Prior to this effort, which did not start in earnest until at least 2014, the University believed that it had far fewer CSAs than it actually did. The purpose of this finding is to document the process failures in terms of identifying CSAs and to emphasize the harm created by those failures.

One of the most insidious aspects of such failures is that that it is not entirely possible to reconstruct the effects that persistent CSA violations have on the accuracy and completeness of an institution's crime statistics or the ability of crime victims to learn about and request accommodations and services that they often need to remain enrolled in school. The following incidents further illustrate the detrimental impact of these violations. Among other problems, these cases highlight the ignorance of many UNC CSAs in terms of knowing what information must be captured to correctly classify an incident report and determine if such incident is a Clery-reportable crime. This problem was evident in records from the Department of Housing and Residential Education (DHRE). The review team immediately noticed that many of these reports did not contain essential case facts. In an attempt to learn more about the report-writing and approval process in DHRE, interviews were conducted with several UNC officials. In one interview, a subject specifically stated that administrators are "actively encouraged to sanitize Advocate¹² reports." Other employees corroborated this claim by stating that they were told that certain reports were "not to contain harm statements."

The Department points to two incidents, both which occurred on campus prior to the Department's first on-site visit, that illustrate our concerns: one is an Advocate Report and one is a CareNetwork Report. Neither incident was included in the University's annual crime statistics as presented in its ASRs or in its reporting to the Department, however, the first incident was identified in Finding #4 of the Department's PRR.

¹² "Advocate" is the records management system used by DHRE.

A. On 7/16/2009, an RA received information about an assault on campus: “At approximately 10:20pm, _____ were engaged in a verbal dispute regarding some pranks that had been occurring between them. When _____ attempted to mediate the situation. At this point, ‘A’ reacted negatively and questioned ‘C’s’ involvement in the discussion. Per the report, ‘B’ reacted by punching ‘A,’ who was seated at the time, in the face several times. When ‘A’ attempted to stand up and defend himself, ‘B’ threw ‘A’ to the ground, landing on his shoulder. ‘B’ then left the scene and ‘A’ and ‘C’ went to the hospital.”

Based on the available case facts, this incident was classified improperly by DPS and DHRE as a simple assault, even though the Advocate report clearly showed that emergency medical care was required, and that the victim had sustained at least “a hairline fracture in his nose.” The victim also required additional testing at the _____ to further assess damage to his shoulder. Based on the totality of the facts, this incident should have been classified as an Aggravated Assault and therefore, was required to be included in UNC’s crime statistics. It is noteworthy that the report details that other CSAs were aware of this incident and stated that “_____ were apprised of the situation and transported resident _____ off the campus.” Moreover, a timeline of events indicates that the DHRE staff took almost two hours to bring DPS “into the situation.” This report also indicated that what appear to have been disciplinary meetings were scheduled by _____ rather than Honor Court or Student Conduct officials. Later, “B” was simply informed through a letter that he had to leave the residence hall as a result of this incident. Per the report, the athletic department official who oversaw the disciplinary case stated that the parties “both regret the incident and have been disciplined internally.” This case raises numerous *Clery Act* concerns and highlights several of the CSA-related weaknesses, within, at a minimum, DPS, DHRE, and athletics. In this regard, the review team notes that the information contained in DPS’s report on the incident (20090001759: Classification: “Assault- Simple”) did not contain any information about the victim’s injuries, an essential element of any assault report.

B. On September 29, 2012, an incident coded as a “Domestic Dispute” was reported to the Campus Director by the RA on duty. The RA reported that she heard a male enter an apartment with a raised voice followed by thumping noises and a raised female voice coming from a specific room. The available information about this incident indicated that DPS had already responded to the scene and that two officers had entered the apartment. Although the situation warranted police involvement, the only student identified in the section of the report entitled “Involved” was the female victim, whose name, birthdate, student ID were recorded. The Department notes that the report failed to include any information about the alleged assailant, even though the man’s identity was known to the DHRE administrator and the DPS officers. Whatever the reason, it appears that DHRE officials may have “sanitized” this report by selectively excluding pertinent information. The report stated that the male told the officers that “he was going home to cool off a bit.” This incident, under current *Clery Act* rules, would likely have to be classified either as a Dating or Domestic Violence offense,¹³

¹³ This Department’s statements about this incident and the associated report are intended to serve as one example of the types of deficiencies and omissions that were observed in reports generated across the enterprise, not just in DPS. In making this point, the Department is not suggesting that UNC was in any way required to apply the VAWA

depending on certain facts that were not elaborated upon in the report. As such, under rules put in place in 2014, the incident would also have to be assessed to determine if a timely warning was required. Even under the standard in place at that time, the report does not include basic information that would be needed to determine if an Aggravated Assault had occurred. Due to these deficiencies discussed in this finding and the failure to actually draft a report in the RMS, it is not possible at this point for the Department or anyone else to determine the correct classification. This information appears only in a CareNetwork report. Notably, the review team could not find an entry for this incident in DPS's daily crime log.

The identification and training of CSAs and implementing a simple and effective CSA reporting system are necessary conditions precedent for enabling CSAs to fulfill their responsibilities under the *Clery Act*. Like most regulatory regimes, the *Clery Act* tells institutions what they must do to be compliant, but it does not specify exactly how they must do it; that is left up to the institution. This flexibility does not mean, however, that the University can simply ignore their regulatory obligations and fail to create a functioning system. The Department regulates over 6,000 institutions that operate more than 11,000 campuses with incredibly diverse institutional structures and educational missions, ranging from major research universities to single classroom career schools. Accordingly, it would be impossible for the Department to articulate a single standard for a Clery compliance program. Each institution must develop and implement a campus safety and crime prevention program that makes sense given its makeup.

Although UNC's response contended that its method for identifying CSAs during the majority of the review period was both compliant and effective, it is worth noting that the institution has wholly abandoned its former approach, not only because of the Department's mandates but because it did not work. Hopefully, this is a sign of increased sophistication and a byproduct of the Systems Office's ongoing efforts to develop *Clery Act* expertise on the campus level across all UNC campuses. Clery compliance requires an institution-wide undertaking that can only be accomplished with intentional information sharing, coordination, and communication.

For all of the reasons set out above, each of the violations noted in the initial finding are hereby sustained. The additional violations noted in this FPRD and the statements about other associated compliance concerns, further support and reinforce this determination. In reaching this determination, the Department emphasizes the point that UNC-Chapel Hill is a complex and interdependent organization. The University enrolls more students than any other public institution in the state. It has a vast constellation of student organizations, including social fraternities and sororities. It operates a large and multi-faceted housing and residential life program. UNC also competes at the highest level of intercollegiate athletics. All institutions, regardless of their size, must put adequate controls in place to make sure that officials do not deviate from the policies that allow an institution to comply with the *Clery Act* and otherwise run an effective campus safety program. The Department's regulations provide flexibility, but not unfettered latitude, to develop a workable system that will facilitate compliance and meet the institution's needs. Unfortunately, UNC substantially failed to establish such a system during most of the review period.

requirements to this incident in 2012. Rather, we note the consequences of the University's failure to implement basic report writing and approval processes that should have already been in place long before 2012.

Notwithstanding the seriousness of these violations, the Department's examination also indicated that the identified violations were, for the most part, satisfactorily addressed by UNC's remedial actions and its new and revised internal policies, procedures, training programs, and systems. As such, the Department has determined that the University's remedial action plan meets minimum requirements and for these reasons, has accepted UNC's response and considers this finding to be closed for the purposes of this program review. Nonetheless, University officials and directors must take all other actions that may be necessary to address the deficiencies that were detected during the preparation of the response to ensure that these violations do not recur.

Once again, UNC is reminded that the aforementioned violations represent serious violations of the *Clery Act*, which by their nature, cannot be cured. There is no way to correct a violation of this type once it occurs. This especially true of CSA-related deficiencies. The University is advised that any remedial actions, whether already completed or taken pursuant to this FPRD, cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose an adverse administrative action as a result.

#7: Failure to Follow Institutional Policy in a Case of an Alleged Sex Offense

Citation:

The Clery Act and the Department's regulations required that an institution's procedures for campus disciplinary actions in cases of an alleged sex offense must include a clear statement that (a) the accused and the accuser are entitled the same opportunity to have others present during the proceeding and (b) both the accuser and the accused must be informed of the outcome of any disciplinary proceeding brought alleging a sexual offense. 34 C.F.R. § 668.46 (b)(11)(vi).

In addition, the Clery Act provides that nothing in the Act shall be construed to permit an institution, or an officer, employee, or agent of an institution, participating in any program under this title to retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual with response to the implementation of any provision of this subsection. §485(f)(17)(18) of the HEA, 20 U.S.C. § 1092(a)(17).

Noncompliance:

UNC violated the Clery Act when it used its Honor Court as a method of retribution against a student who reported an incident of sexual assault and battery.

The Clery Act's Campus Sexual Assault Victim's Bill of Rights states that procedures for campus disciplinary actions must include a clear statement that (a) the accuser and accused are entitled the same opportunities and (b) both accuser and accused must be informed of the outcome of any institutional disciplinary proceedings brought alleging a sexual offense. As described above, the Clery Act specifically reminds institutions and their officers and agents not to retaliate against any individual in connection with the individual's actions in regard to implementation of the Clery Act. See the Department's Handbook for Campus Safety and Security Reporting.

Required Action:

As a result of this violation, UNC must respond with specificity to the finding that the University's conduct violated the Clery Act as a result of its treatment of this former student. The case is well-documented in the University's records, but if there is any question as to the identity of the former student referenced above, UNC officials may inquire with the Department and additional information will be provided. The University also must review its existing policies and procedures for responding to an alleged sex offense and address any and all weaknesses in its sexual assault response and disciplinary policies and procedures to provide reasonable assurance that such a violation will not occur in the future. Moreover, the University must address the specific weaknesses in its administrative and training infrastructure that may have contributed to this condition. After undertaking these steps, UNC officials must use the information collected during this internal review to develop and implement a system of policy and procedural improvements that will position the University to comply with all Clery Act requirements going forward, with special attention to the requirements of Section 304 of the Violence Against Women Reauthorization Act of 2013. This new internal guidance should also address how the University will comply with the related requirements of Title IX. A copy of all new or revised policies and procedures must accompany the University's response.

Institutional Response Summary:

In their official response, UNC management disagreed with the finding.

This provision previously appeared in section II.C.1.c. of the Honor Code and prohibited: Disruptive or intimidating behavior that willfully abuses, disparages, or otherwise interferes with another (other than on the basis of the protected classifications identified and addressed in the University's Policy on Prohibited Harassment and Discrimination) so as to adversely affect their academic pursuits, opportunities for University employment, participation in University-sponsored extracurricular activities, or opportunities to benefit from other aspects of University Life.

The particular Honor Code provision

(i.e., section

II.C.1.c.) has been deleted in its entirety from the University's Honor Code. Additionally, the University implemented a new policy and procedures to respond to and address reports of harassment, discrimination, and sexual violence on August 28, 2014.

As described above, the University has instituted a new policy and process for addressing Title IX reports and has created a new office to respond to those reports. With respect to training, the University has developed a number of programs to educate all students, faculty, and staff about Title IX response, including the prohibition against retaliation. The University has contracted with a compliance e-learning company to develop an online training module regarding prohibited harassment, discrimination, and retaliation that can be broadly distributed to the campus community. This module provides information about: How to identify sexual and gender-based harassment and violence, dating and domestic violence, and stalking; How to report and respond to incidents of sexual and gender-based harassment and violence, dating and domestic violence, and stalking; The requirements of Title IX; The University's prohibition against retaliation; and The University's Policy and Procedures.

The University unveiled this training module to employees in December 2014 and to students in January 2015. The University now requires that every student complete the training annually. Faculty members, staff members, and post-doctoral fellows are also required to complete the training on a biennial basis. Additionally, the University regularly provides training to faculty, staff, students, and community members regarding Title IX response, including the right of reporting parties to be free from retaliation.

As previously noted, the University implemented new policy and procedures to respond to and address reports of harassment, discrimination, and sexual violence on August 28, 2014. The policy and the procedures reflect significant input from the University's 22-member task force, which met for more than a year to develop recommendations and to draft specific language for the Policy and Procedures that not only satisfied the requirements of applicable federal and state law and OCR guidance but that also incorporated trauma-informed practices and reflected the values of the campus community.

In particular, the University's Policy and Procedures are compliant with Section 304 of the violence Against Women Reauthorization Act of 2013. A chart detailing the requirements of Section 304 and the corresponding provision of the University's Policy is included as Exhibit 27.

Final Determination:

Finding #7 cited the UNC for violating the *Clery Act's* anti-retaliation provision when it charged a complainant with an Honor Court violation, as outlined in the Noncompliance section above. A former UNC student stated that the University permitted a case to be initiated by the Honor Court as a means of retaliating against the student for raising concerns about public safety and *Clery Act* compliance.

The Department acknowledges that the University has instituted new policies and procedures for addressing allegations of sexual violence and has also modified the process that allowed the student to be charged by the University, through the Honor Court, in the first place. UNC's new policy and procedures entitled "the Policy on Prohibited Discrimination, Harassment and Related Misconduct (the "Policy")" should prevent this finding from reoccurring. Additionally, the University's annual training module regarding Title IX responses, required for employees and students, should prevent future reporting parties from retaliation by the University.

¹³ In addition to asserting that the Honor Code has "the support of students, faculty, and staff," the Instrument itself claims that The Chancellor of the University remains solely responsible for all matters of student discipline (<https://facultyhandbook.unc.edu/files/2018/02/Instrument.pdf>).

The University's decision to dismiss the Honor System charge against the student does not undo what occurred.

As such, the Department found that the University, through the Honor Court, violated the retaliation provision of the *Clery Act*. The Department's regulations specifically prohibit any act by an institution or any person acting on behalf of an institution to "retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual" for acting in accordance with the *Clery Act* or in response to a person's efforts to see that the *Clery Act* is effectively enforced.¹⁴

As noted, the Department carefully examined all available information included in UNC's narrative response and supporting documentation. Based on that review, the violation identified in the initial finding is sustained.

All by itself, this was a problem. It is clear that, at the time that the action was filed, the Honor Court was a primary mechanism for adjudicating matters of student conduct. The facts of the case could easily lead a reasonable person to believe

¹⁴ "The Instrument of Student Judicial Governance" is the name given to the codes of conduct that were enforced by the Honor Court. The document also set out the adjudication procedures used by the Honor Court during the review period.

that the institution will initiate disciplinary action against a campus community member simply for filing a complaint with a government agency in an attempt to raise a safety concern or to vindicate her own rights under Federal law.

Although this finding is serious, the review team's examination indicated that the identified violation was, for the most part, satisfactory addressed by UNC's responsive documents and its new and revised policies and procedures and especially by its reforms to its student conduct system. As such, the Department has determined that the University's remedial action plan now meets minimum requirements and for these reasons, has accepted UNC's response and considers this finding to be closed for the purposes of this program review. Nonetheless, University officials and directors must take all other actions that may be necessary to address the deficiencies that were detected during the preparation of the response to ensure that these violations do not recur.

UNC is reminded that the exception identified above constitutes a serious and persistent violation of the *Clery Act* that, by its nature, cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. Basic protections for whistleblowers and other persons with concerns about campus safety are essential to the proper functioning of the *Clery Act*. Any retaliatory action that is taken against a complainant stands in direct opposition to the law's purpose. The *Clery Act* is first and foremost a public safety and consumer protection law based on the premise that access to accurate, complete, and timely information about campus safety and crime prevention will make campuses safer. To achieve the Act's goal of making campuses safer, everyone must play a part. Members of each campus community must be vigilant and responsible to help ensure their own safety and that of others as well. The Department depends on concerned students, parents, employees, the media, and other stakeholders to inform us when they become concerned about dangerous conditions or when they have good reason to believe that an institution is not in compliance.

To protect employees and students from mistreatment as a result of reporting compliance concerns to the Department, the *Clery Act* specifically prohibits any act by an institution or any person acting for the institution to "retaliate, intimidate, threaten, coerce or otherwise discriminate against any individual" for acting in accordance with the *Clery Act* or in response to a person's efforts to see that the *Clery Act* is effectively enforced.

A controlling principle of the *Clery Act* is that students, employees, parent, and the public are entitled to accurate, complete, and transparent information about campus safety and crime prevention. The law relies on institutions to make campuses as safe as possible and on the vigilance of campus community members to call attention to safety concerns. The Department encourages campus community members to make informed decisions about their own safety and to act in the security interests of the larger

community as well. For the *Clery Act* to be truly effective, students and employees must be assured that they can come forward with concerns about campus safety issues without fear of retaliation or other negative outcomes.

Finding #8: Failure to Disclose Accurate and Complete Disciplinary Referral Statistics - Failure to Retain Records Needed to Substantiate *Clery Act* Compliance

Citation:

The Clery Act and the Department's regulations require that institutions participating in the Title IV, HEA programs compile and publish statistics concerning the occurrence of the following crimes: criminal homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. In addition, the institution is required to disclose arrests and disciplinary actions related to violations of Federal, State, or local drug, liquor, and weapons laws. 34 C.F.R. § 668.46(c)(1). Furthermore, an institution is required to maintain records in a systematically organized manner and must make its records available for review by the Secretary or the Secretary's authorized representative. 34 C.F.R. §§ 668.24(d)(1) and (d)(2). An institution must keep the records until the end of the retention period applicable to that record. 34 C.F.R. § 668.24(e)(3). Records that document compliance with the Clery Act must generally be kept for seven years. This is required since all supporting records must be kept for three years following the publication of the last ASR to which they apply. 34 C.F.R. § 668.24(e)(3)(ii). Records that should be maintained include any and all records that document compliance with the Clery Act.

Noncompliance:

UNC failed to compile and disclose accurate and complete disciplinary referral statistics during the review period. The review team found that the University's failure to retain records was a major contributing factor for this condition. Allegations of student misconduct were presented to the student-run Honor Court by various departments at the University. Often, it was determined that the incidents referred were not worthy of a charge. If the Honor Court made a "no charge" decision, the referral record was not retained and was purged from the system.

The allegations presented to the Honor Court may have included incidents of Clery-reportable crimes. The student officials that run the Honor Court are also CSAs. Therefore, a report of an alleged crime to the Honor Court must be reflected in the University's crime statistics. The Honor Court's practice of purging incidents makes it impossible to determine if all Clery-reportable incidents are included in the crime statistics. This failure to maintain all records regarding reported incidents of potential Clery-reportable crimes referred to the Honor Court for the Department's review violates the record-keeping requirements of the Clery Act and may cause undercounting and underreporting of such incidents in the ASR. As well, it inhibits the ability of the Department to audit such statistics to ensure Clery Act compliance.

A controlling principle of the Clery Act is that students, employees, parents, and the public are entitled to accurate, complete, and transparent information about campus safety and crime prevention. The law relies on institutions to make campuses as safe as possible and on the vigilance of campus community members to call attention to safety concerns. For the law to be

truly effective, students and employees must be assured that they can come forward with concerns about campus safety issues and to seek redress through campus disciplinary systems and other venues without fear of reprisal or other negative outcomes. Any act of retaliation or inappropriate treatment of a victim or witness serves to undermine the intent of the Clery Act.

Required Action:

As a result of these violations, UNC must develop policies and procedures to ensure that all records of student conduct violations sent to the student Honor Court are maintained by the University and reviewed for Clery-reportable crimes so that accurate crime statistics are properly reported annually by the University and available for audit by the Department. A copy of the University's new and revised policies and procedures must accompany the University's response.

Institutional Response:

In their official response, UNC management argued that the disciplinary referrals to the Honor System, which may originate from several sources, including staff review of law enforcement citation and arrest reports; written or verbal submissions from students, faculty, or University staff; or, more rarely, from individuals not affiliated with the University, are all referrals from other CSAs. UNC maintained that all disciplinary referrals to the Honor System are entered into an electronic database by professional staff members in the Office of Student Conduct ("Student Conduct") or by an outside party using our online reporting process. Moreover, all disciplinary referrals relating to the Campus Alcohol Policy or DHRE's Community Living Standards are also entered into the same electronic database.

The University maintained that no student members of either the Honor Court or the Student Attorney General's staff had access to any of those databases. Any direct report of a disciplinary matter to the Student Attorneys General or to other student representatives of the Honor System (which would not be common) was relayed to the professional staff members in Student Conduct for entry into the electronic database, which is a predicate to generating a physical case file. It is the electronic entry which generates a file number for the particular case which is then reflected on the physical case file in lieu of using a name or other personally identifying information. Only after entry into the electronic database and generation of a physical file is the disciplinary referral presented to the Student Attorney General for investigation and determination of what, if any, charges should be brought under the Instrument. The University asserted that the corresponding electronic entry relating to the disciplinary referral are never erased, purged, destroyed, or otherwise made inaccessible. The University cited compliance with statutory or administrative mandates, including the *Clery Act* report, as the primary reason and rationale which necessitated retention of electronic entries of all disciplinary referrals regardless of the ultimate case disposition. As such, the University concluded that that Student Conduct does not delete or remove any entry from the Maxient or Advocate databases even if a disciplinary referral results in no charge or the student is later found not guilty or not responsible following a hearing.

The University noted that it takes seriously its obligation to collect and publish accurate and complete disciplinary referral statistics and to maintain records evidencing the same.

Final Determination:

Finding #8 cited UNC for its failure to compile and disclose accurate and complete disciplinary referral statistics and to maintain program records that substantiate its statistical disclosures. Records. As a result of the violation, UNC was required to develop policies and procedures to ensure that all records of student conduct violations sent to the student Honor Court are maintained by the University and reviewed for Clery-reportable crimes so that accurate crime statistics are properly reported annually by the University and available for audit by the Department.

The review team's main concern arose when its research indicated that there was information provided to the Honor Court and work product generated by the Honor Court that was not provided to UPD or the Office of Student Conduct. See for example, Incident Report # 201200219 – 00108-001-2012 that is detailed in Finding # 4 of this FPRD. In this case, the victim reported during her testimony before the Honor Court that she required medical attention and was treated for a concussion at the University Hospital Emergency Room. That detail alone required the incident to be classified as an Aggravated Assault, rather than a simple assault but this relevant information that was available to the Honor Court was not given to any other University offices. As a result, the incident was not included in the annual disclosure of crime statistics. Furthermore, the Department notes that the information about the Honor Court files procedures contradicts information provided by an UNC administrator during the on-site program review in 2013 and 2014, who indicated to the review team that pertinent information was being destroyed by Honor Court officials. The Department, however, accepts the University's explanation that the documents that were in the possession of the Honor Court were copies and that procedures were in place to ensure that the originals were maintained properly.

In their official response, UNC management registered their disagreement with every aspect of the Department's finding and asserted that the institution was in full compliance with the Department's record retention requirements throughout the program review period. Moreover, the University claimed that the Honor Court did not have access to any original records that would have to be retained for compliance purposes. Instead, UNC asserted that all disciplinary referral information that was transmitted to the Honor System were first entered into an electronic database by professional staff members in the Office of Student Conduct ("Student Conduct") or by an outside party using the online reporting process. Moreover, the University maintained that no student members of either the Honor Court or the Student Attorney General's staff had access to any of those databases. Based on these claims, the institution posited that no remedial action was necessary.

The Department carefully examined all available information, including UNC's narrative response and supporting documentation. Based on that review, the Department accepts the University's claims and has determined that the institution was likely in at least minimal compliance with the record retention standards that apply to all Title IV-related program records, including the *Clery Act*. Therefore, the finding is not sustained. This examination also indicated that the Department's concerns were, for the most part, satisfactorily addressed by the changes to UNC's student conduct process. As such, the Department has determined that the University's remedial action plan meets minimum requirements and for these reasons, has accepted UNC's response and considers this finding to be closed for the purposes of this program review.

Nonetheless, University officials and directors must take all other actions that may be necessary to address the deficiencies that were detected during the preparation of the response to ensure that these violations do not recur.

Finding #9: Failure to Include Required Information in the Annual Fire Safety Reports

Citation:

The HEA fire safety requirements and the Department's regulations state that institutions that maintain any on-campus student residential facility must publish an annual fire safety report that includes fire statistics for each on-campus student housing facility for the previous three years. The statistics must include the number of fires, the cause of each fire, the number of persons who received fire-related injuries, the number of deaths caused by fires as well as the value of any property damage caused by fire. The report must additionally contain, at a minimum, a description of the fire safety system in each housing facility, the number of fire drills held during the previous year, and the institution's policies and procedures pertaining to fire safety. The policy statements must address any rules regarding electrical appliances, smoking, and open flames in student housing and provide the procedures that students and employees should use in the case of a fire as well as procedures for evacuation during a fire. Statements must also include any policies regarding fire safety education and training programs provided to students and employees and any plans for future improvements in fire safety. In addition, an institution that provides on-campus housing must maintain a fire log, which must record the reporting of a fire by date, nature, and general location. Entries on the fire log must be documented within two business days and the fire log for the previous 60 days must be made available to the public for inspection. 20 U.S.C. §1092; 34 C.F.R. § 668.49.

An institution may choose to publish its fire safety report with its ASR concurrently and may do so if the title of the report clearly states that the report contains both the ASR and the annual fire safety report. If an institution chooses to publish the annual fire safety report separately from the ASR, it must include information in each of the two reports about how to directly access the other report. 34 C.F.R. § 668.41(e)(6).

Noncompliance:

UNC violated the HEA fire safety requirements by failing to disclose required information in its AFSRs. Specifically, the review team found that the University did not disclose required fire information for Granville Towers Complex, a property that became part of the University's residential housing operation in 2008. The complex is comprised of three buildings - Granville Towers East, Granville Towers West and Granville Towers North. At a minimum then, UNC's AFSRs for 2010, 2011, 2012, and 2013 were materially incomplete with regard to the statistical and informational disclosures for these three properties.

Regarding the 2010 AFSR - The report did not describe the fire safety system (as was provided for all other residential housing) and list the number of fire drills held at the three Granville Towers during the previous calendar year. Furthermore, the AFSR failed to include the number of fires, the date of fires, the number of injuries related to fire resulting in medical treatment, and the number of deaths related to fire for the three Granville Tower buildings.

Regarding the 2011 ASFR - The report did not describe the fire safety systems and list the number of fire drills held at the three Granville Towers for the previous calendar year. Furthermore, the AFSR failed to include the number of fires, the date of fires, the number of injuries related to fire resulting in medical treatment, and the number of deaths related to fire for the three Granville Tower buildings.

Regarding the 2012 AFSR - UNC did include some information for "Granville Towers;" however, the disclosure presented the property as one residence hall, rather than a three-building complex. The report also did not describe the student housing facility fire safety systems and indicated that no fire drills had been held during the previous calendar year. The 2012 AFSR also failed to include the number of fires, the date of fires, the number of injuries related to fire resulting in medical treatment, and the number of deaths related to fire for the three Granville Tower buildings.

Although the University's 2010, 2011, and 2012 ASRs note that all RAs attend fire safety trainings in August before students move into residence halls, the review team cannot confirm that the RAs for Granville Towers were included in this important safety training. Furthermore, the AFSR failed to indicate that fire safety education and training programs were provided for students.

The CSSDACT notes a 2012 electrical fire at Granville Towers East, which occurred on 11/4/2012, but was not included in the 2013 ASFR. That fire caused between \$500,000 and \$999,999 in damages. Information submitted to the Department's online CSSDACT must match the information provided to the campus community in the AFSR.

The HEA fire safety requirements provide students, employees, and other community stakeholders with important information about campus fires, fire prevention, detection, and suppression as well as evacuation procedures and safety drills. Any failure to comply with these important requirements deprives campus community members, especially those living in campus housing, of vital information to which they are entitled.

Required Action:

As a result of these violations, UNC must develop and implement policies and procedures to govern the preparation, publication, and distribution of the AFSR to ensure that all fire information for residential housing is correctly included in the published information in the AFSR and to the Department's online CSSDACT. All statistical information about fires in residential housing must be captured, compiled, and accurately described. A copy of all new and revised policies and procedures must accompany the University's response.

Institutional Response Summary:

In their official response, UNC management acknowledged that it did not meet minimum compliance standards with the HEA fire safety requirements under at least 2014, especially with regard to the classification of the Granville Towers complex as an on-campus student residential facility, until at least 2014. The University regretted this error, noting that that Granville Towers was not originally a University-owned building, and the University was unsure whether it should

report the fire safety services available to the Complex. The University appreciated the additional clarification provided the Clery Handbook which noted that buildings owned by an “institution-associated foundation, holding company, subsidiary, alumni association, athletic booster club, or any other institution-associated entity.” This provision of the Handbook was directly applicable to the Granville Towers Complex and addressed the University’s prior confusion.

Also, the University acknowledged that the 2010 and 2011 AFSRs did not include the Granville Towers Complex. The Town of Chapel Hill served as the fire marshal for Granville Towers, and the private management company running the apartments provided the fire safety. During this period, there were University RAs who served Granville Towers and who had received fire safety training from the University, a standard part of the training the University provides to all RAs regardless of where they will be stationed.

Additionally, the University acknowledged that the 2012 and 2013 AFSRs, Granville Towers was mistakenly identified as a single complex rather than as three individual buildings. The University regretted this error and corrected the issue, ensuring proper reporting for future reports. The University created Standard Operating Procedure (“SOP” - #4), detailing the process by which fire alarms are entered into the University’s record keeping system and established a consistent process for the investigation and billing of accidental fire alarms. Included in this new SOP was the specification that each Granville Towers building (East, West and South) was to be considered a separate building, and data was to be listed and reported separately.

After reviewing its submission, the University concurred that the 2010 Annual Fire Safety Report (“AFSR”) did not include all the fire safety information required by the HEA. In response to this error, the University developed new policies to assure that it will be fully compliant with all required regulations. Specifically, the University created standard operating procedures, which detail the procedure for maintaining the Department of Education’s requirements for campus fire safety reporting, including guidance on maintaining fire log records, the annual submission of fire statistics to the Department of Education, and the AFSR.

Specifically, the University’s new SOP #1 outlined all data required for the AFSR, including but not limited to a description of the fire safety systems serving each student housing facility. As defined in SOP #5, the fire safety system was defined as any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire. The new procedures required that specific information be provided for each student housing facility, including but not limited to the number of evacuation (fire) drills per year, the total number of fires, the number of injuries related to fire resulting in medical treatment, and the number of deaths related to fire, as required by the Department’s regulations.

The University acknowledged that the 2011 AFSR did not describe the fire safety systems or list the number of fire drills held at the three Granville Towers during the previous calendar year, but addressed this issue with standard operating procedures to address those failures, including a description of the fire safety system, the number of injuries related to fire resulting in medical treatment, and the number of deaths related to fires.

The University concurred that in 2012 and 2013, the AFSRs listed the Granville Towers Complex as a single structure rather than three separate buildings. However, the University has created a specification that each Granville Towers building (East, West, and South) is considered a separate building and that data must be listed and reported separately. Additionally, after reviewing its submission, the University regrettably concurs that the reports did not include information regarding fire drills or recordable fires; however, the University respectfully disagrees that the facility fire safety systems were not described. Rather, the University submits that a description of the facility fire safety systems was included in the 2012 AFSR for the year 2011.

The University has confirmed with DHRE that the Granville Towers Complex RAs have been included in the University-provided RA safety training since University RAs began serving Granville Towers in 2009 and provided the Department with information to substantiate that claim.

Additionally, the AFSRs in question (i.e., 2010, 2011, 2012) all include a section listing fire safety education that was available to all University students. As Granville Towers residents are required to be UNC-Chapel Hill students, they had access to any training listed in this section of the report. However, to address this matter further, the University created procedures which included a discussion of the necessity for assuring that fire safety education and training programs are provided to all students and employees.

The University admitted that Granville Towers was mistakenly identified as a single complex between 2012 and 2013; and the 2013 AFSR listed a 2012 fire incident as occurring in the Granville Towers Complex, rather than in Granville Towers East, specifically. However, the University stated that any student or parent consulting the AFSR to assess the safety of any one of the buildings in the Granville Towers Complex would have seen this reported fire and would have learned about this fire, regardless of the individual building of concern to the parent or student. The University acknowledged that it should have listed the buildings separately. The 2014 AFSR corrected that error. Finally, the University denied that any student or parents was deprived of information about the buildings due to this reporting error.

Final Determination:

Finding #9 cited the UNC for multiple violations of the HEA fire safety requirements and the Department's regulations, as outlined in the Noncompliance section above. The review team found that the University violated the HEA fire safety requirements by failing to include all required informational disclosures in its AFSRs. Specifically, the review team found that the University failed to disclose required fire information for the Granville Towers Complex in the 2009, 2010, and 2011 AFSR, a property that became part of the University's residential housing operation in 2008. The University also failed to include several required statements regarding fire safety and fire prevention in the 2010, 2011, and 2012 AFSRs, including information about fire detection and suppression equipment and the conduct of safety drills.

Additionally, the University only provided a single line of information for Granville Towers, failing to provide separate information for the three separate buildings in the 2012 and 2013

AFSR. As a result of these violations, UNC was required to review and revise its internal policies and procedures related to its fire safety and develop and implement any new policies and procedures needed to ensure that these violations do not recur. In its response, UNC provided the Department each of the standard operating procedures that were created to address each of the violations included in this finding.

The Department carefully examined all the available information including UNC's narrative response and supporting documentation. Based on that review and the University's admissions, the violations identified in the Noncompliance section of the initial finding are sustained. The examination also indicated that the identified violations were, for the most part, satisfactorily addressed by UNC's remedial actions and its new and revised internal policies and procedures. The majority of the review team's concerns about fire safety compliance starting in 2009 and continuing through 2013 related to the treatment and management of the Granville Tower Buildings, which were ignored in earlier reports and inaccurately described in the 2012 and 2013 combined ASR/AFSR reports as off-campus housing. Although the University acknowledged the Towers as part of campus, three findings (including these violations) focused, at least in part, on the University's failure to properly define the Granville Towers complex as Clery Geography. In light of institution's actions to address these deficiencies, the Department has determined that the University's remedial action plan meets minimum requirements and for these reasons, has accepted UNC's response and considers this finding to be closed for the purposes of this program review. Nonetheless, University officials and directors must take all other actions that may be necessary to address the deficiencies that were detected during the preparation of the response to ensure that these violations do not recur.

UNC is reminded that these exceptions constitute serious violations of the HEA fire safety rules that, by their nature, cannot be cured. There is no way to truly "correct" violations of this type once they occur. The production and distribution of accurate and complete ASRs and AFSRs are fundamental to the law's crime prevention and fire safety goals. Any failure in this regard deprives students and employees of important fire safety information to which they are entitled. The fire safety requirements are especially important for students residing in student residential facilities. UNC asserted that it has taken adequate remedial actions, and that, by doing so, is now in compliance with the HEA as required by its PPA. Nevertheless, the University is advised that its remedial actions cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Summation:

The Department's objective in conducting this and all campus crime program reviews is to improve the safety of America's college campuses. The development and implementation of a substantive remedial action plan is the first step to moving UNC toward full compliance with the *Clery Act* and the HEA fire safety rules as soon as possible.

In their official response and supplemental productions, UNC management asserted that its remedial actions, inclusive of its new and revised internal policies and procedures, will facilitate the institution's efforts to get into full compliance with the *Clery Act*, the HEA fire safety requirements, and the *DFSCA*.

The violations identified throughout the review process triggered a special concern for the Department. Compliance with the *Clery Act*, the HEA fire safety requirements, and the *DFSCA* are an essential part of effective campus safety, crime prevention, and substance abuse prevention programs. Access to accurate, complete, and transparent disclosures of safety information help students, employees, and other stakeholders to make well-informed decisions about where to study, work, and live. The transparency created by these disclosures also empowers campus community members to play more active roles in their own safety and security. UNC asserted that it has taken adequate remedial actions and that, by doing so, it is now in compliance with the *Clery Act* and the HEA fire safety requirements, as required by its PPA. Nevertheless, UNC officials must understand that the violations documented here deprived students, employees, parents, the media, and other interested parties of access to important campus safety, crime prevention, fire safety, and substance abuse prevention information to which they are entitled. For these reasons, the University is, once again, advised that its remedial actions cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department may require additional actions as a result.

Given the serious consequences of a compliance failure, the Department also strongly recommends that UNC officials re-examine its campus safety, substance abuse prevention, fire safety, and general Title IV policies and procedures on an annual basis to ensure that they continue to reflect current institutional practices and are compliant with Federal requirements. To that end, University officials are encouraged to consult the Department's "Handbook for Campus Safety and Security Reporting" (2016) as a reference guide on *Clery Act* compliance. The Handbook is online at: www2.ed.gov/admins/lead/safety/handbook.pdf. The Department also provides a number of other *Clery Act* training resources. UNC officials can access these materials at: www2.ed.gov/admins/lead/safety/campus.html. The Department's regulations governing the *Clery Act* can be found at 34 C.F.R. §§ 668.14, 668.41, and 668.46. The HEA fire safety rule appear at 34 C.F.R. § 668.49. The *DFSCA* regulations can be found in Part 86 of the Department's General Administrative Regulations.

Finally, UNC management are strongly advised to take immediate action to ensure that the University is in full compliance with Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA). VAWA amended the *Clery Act* to require institutions to compile and disclose statistics for incidents of sexual assault, dating violence, domestic violence, and stalking. VAWA also requires institutions to include new policy, procedural, and programmatic disclosures regarding sexual assault prevention and response in its ASRs. Because the Department issued Final Rules regarding the VAWA amendments on October 20, 2014, these regulations went into effect on July 1, 2015, per the Department's Master Calendar. Because of the timing of the initial site visit and the initial time periods under review, the University's early VAWA compliance was not a major focus area of this investigation. Compliance with these requirements will be a primary focus area of the Department's post-review monitoring. UNC officials may access the text of the Final Rule at: <http://ifap.ed.gov/fregisters/attachments/FR102014FinalRuleViolenceAgainstWomenAct.pdf>.