



March 17, 2020

Linda A Livingstone, Ph.D.  
President  
Baylor University  
One Bear Place #97096  
Waco, TX 76798-7096

**UPS Tracking #**  
**1Z37X7Y30103370516**

**Re:           Campus Crime Final Program Review Determination**  
**OPE ID:     00354500**  
**PRCN:      201730629725**

Dear President Livingstone:

On April 18, 2019, the U.S. Department of Education (the Department) issued a Program Review Report regarding the Baylor University's (BU; the University; Baylor) compliance with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) fire safety, and the Drug-Free Schools and Communities Act (*DFSCA*). The original text of that report is incorporated into this Final Program Review Determination (FPRD). The University submitted its response to the Department's initial report on September 16, 2019. Baylor'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 Baylor of the Department's final determinations and to close the review. Please note that this FPRD contains several findings regarding Baylor's failure to comply with the *Clery Act*. Because these findings do not result in financial liabilities, they may not be appealed.

Due to the serious nature 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. Part 668, Subpart G*. If a fine action is initiated by AAASG, detailed information about the action and Baylor's appeal rights will be provided under separate cover.

**Record Retention:**

*Dr. Linda A. Livingstone, President  
Baylor University (00354500)  
Campus Safety Final Program Review Determination Letter Page #2*

Records relating to the period covered by this program review must be retained until the latter 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* and *DFSCA*-related documents under 34 C.F.R. § 668.24(e).

We would like to express our appreciation for the courtesy extended by Baylor officials throughout the program review process. If you have any questions concerning this FPRD or the program review process, please contact Mr. Douglas Rose on 202-377-4200 or at [Douglas.Rose@ED.GOV](mailto:Douglas.Rose@ED.GOV).

Sincerely,



Robin S. Minor  
Deputy Chief Operating Officer for Partner and Participant Oversight  
Federal Student Aid  
U.S. Department of Education

cc: Mr. Christopher W. Holmes, Esq., General Counsel, Baylor  
Ms. Shelley Deats, Clery Compliance Manager, Baylor  
Ms. Lyn Kinyon, Assistant Vice President for Student Financial Aid, Baylor

Enclosure





START HERE  
GO FURTHER  
FEDERAL STUDENT AID

Prepared for:

**Baylor University**

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**OPE ID: 00354500**

**PRCN: 201730629725**

Prepared by:

**U.S. Department of Education**

**Federal Student Aid**

**Enforcement Office – Clery Act Compliance Division**

**Final Program Review Determination**  
**March 17, 2020**

## Table of Contents

<b>A. The Clery Act and DFSCA.....</b>	<b>3</b>
<b>B. Institutional Information .....</b>	<b>5</b>
<b>C. Scope of Review:.....</b>	<b>7</b>
<b>D. Findings: .....</b>	<b>8</b>
Finding #1: Lack of Administrative Capability .....	8
Finding #2: Failure to Report Crime Statistics Accurately to the Office of Post-Secondary Education and in Annual Security Reports.....	15
Finding #3: Failure to Issue Timely Warnings .....	24
Finding #4: Failure to Identify and Notify Campus Security Authorities for Crime Reporting and Timely Warnings.....	28
Finding #5: Failure to Maintain an Accurate and Complete Daily Crime Log .....	36
<i>Exhibit A.....</i>	<i>40</i>
<i>Exhibit B.....</i>	<i>41</i>

## 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 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) 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, procedure, and programmatic information regarding important issues of student safety and crime prevention. The *Clery Act* also requires institutions to maintain a daily crime log (DCL) 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 also 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 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 public reports about crimes and crime reporting and prevention at an institution. Program reviews entail in-depth analyses 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 safety matters are also examined to determine if they are accurate and meet the needs of the campus community.

Because more than 90% of serious campus crimes are alcohol and drug-related, the Secretary of Education 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 comprehensive drug and alcohol abuse prevention programs (DAAPP) and to certify to the Secretary that these programs are in place. The programs 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 to 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 rehabilitations 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 to employees who are hired at different points throughout the year.

Finally, the *DFSCA* requires an institution to conduct a biennial review to determine the effectiveness of its DAAPP in identifying areas requiring improvement or modification and assessing 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 Department.

## B. Institutional Information

Baylor University  
One Bear Place #97096  
Waco, TX 76798-7096

**Type:** Private, Not-for-Profit

**Highest Level of Offering:** Doctorate

**Accrediting Agency:** Southern Association of Colleges and Schools, Commission on Colleges

**Current Student Enrollment:** 16,969 (Fall 2016)

**% of Students Receiving Title IV:** 43% (2015-2016)

**Title IV Participation, Per U.S. Department of Education Database  
(Postsecondary Education Participants System):**

	<u>2015-2016 Award Year</u>
Federal Pell Grant	\$ 11,378,941
Federal Supplemental Educational Opportunity Grant (FSEOG)	\$ 1,342,875
Federal Work Study (FWS)	\$ 3,572,143
Federal Perkins Loan Program (Perkins)	\$ 616,000
Direct Loan Program (DL)	\$ 101,069,127
Federal Family Education Loan Program (FFEL)	\$ 0
<b>Total:</b>	<b><u>\$ 117,979,086</u></b>

<b>Default Rate FFEL/DL:</b>	2014	3.2%
	2013	4.1%
	2012	3.9%

<b>Default Rate Perkins:</b>	2016	14.3 %
	2015	12.7 %
	2014	7.0 %

## **The Institution**

Baylor University ("Baylor," "the University," "BU") is a private university. The University provides a campus community for more than 16,000 students. Chartered in 1845, Baylor is the oldest continually operating university in Texas, and enrolls students from all 50 states and more than 80 countries.

Baylor's main campus of approximately 1,000 acres is located in Waco, Texas. The University provides 12 residence halls, which house approximately 39% of Baylor students. There are approximately 330 clubs and organizations affiliated with Baylor, including approximately 40 national and local sororities and fraternities. Baylor participates in 19 varsity sports as part of the National Collegiate Athletic Association (NCAA), Division I.

In 2014 the University created the Baylor Department of Public Safety (DPS). DPS consist of the disciplines and services of Baylor University Police Department (BUPD), Fire Safety, Emergency Preparedness, and Parking and Transportation. BUPD has a staff of 62, including 37 police officers, 10 dispatchers, 13 Security Officers, an Administrative Manager and a Records Manager. Available 24 hours a day, seven days a week, officers with the BUPD respond to over 10,000 calls a year. The Department operates marked patrol vehicles on campus, a bicycle unit, a Criminal Investigation unit, and a Crime Prevention unit.

All Baylor commissioned peace officers and dispatchers must successfully complete a screening process as mandated by the Texas Commission on Law Enforcement (TCOLE). All officers and dispatchers who work for BUPD are licensed and certified by TCOLE as having met the minimum training requirements of the State of Texas for all peace officers or dispatchers. To remain certified, Baylor officers and dispatchers must complete mandatory continuing education bi-annually (40-hours for police officers and 20-hours for dispatchers), including courses mandated by the Texas Legislature. Although the mandate by the State is 40-hours every two years, BUPD officers receive 40-hours of training every year.

Neither security officers working at any of the branch campuses on a permanent basis nor security officers hired to work special events for Baylor has the authority of a Peace Officer to make arrests under the Texas Code of Criminal Procedure. These security officers may only make citizens arrests as authorized by the Texas Code of Criminal Procedure Article 14.01<sup>1</sup>.

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<sup>1</sup> <https://www.baylor.edu/dps/index.php?id=99379>.



### **C. Scope of Review:**

The U.S. Department of Education (the Department) conducted an on-site program review at Baylor from May 15, 2017 through May 19, 2017. The review was conducted by the Clery Act Compliance Division (CACD) and was led by Mr. Douglas Rose.

The focus of the program review, encompassing calendar years (CYs) 2011 through 2016, was to evaluate Baylor's compliance with the *Clery Act* and its implementing regulations at 34 C.F.R. §§ 668.41-668.46. Baylor was selected for a program review as the result of the Department's examination of over 30 media reports, chronicling a series of student-on-student sexual assaults on or near Baylor's campus, dating back to CY 2012. Furthermore, in approximately April 2016, CACD, along with the Department's Office of Civil Rights (OCR), received a complaint from the advocacy group "End Rape on Campus" alleging Baylor's noncompliance with the *Clery Act* during the period of April 2011 to August 2015. The allegations referenced several BU female students who had reported incidents to the BUPD of sexual assault by various members of the Baylor football team. The complaint further alleged that the University had failed to properly annotate these reports its daily crime log (DCL) or try to investigate these reported crimes. In addition, the complaint alleged that Baylor failed to annotate these incidents in its crime statistics ASR and to the Department. Finally, the complaint alleged that Baylor failed to make the required accommodations for the accusers and did not properly adjudicate these allegations within the institutional disciplinary process. Despite the allegations contained in the complaint, the crime statistics reported to the Department and included as part of the University's ASRs did not report a single instance of sexual assault from CY 2008 to CY2011.

The program review consisted of an examination of Baylor's police incident reports, arrest records, student conduct violation records, and policies and procedures related to the *Clery Act*. Staff interviews were also conducted. The Department also reviewed a sample of over 600 campus police incident reports, arrest reports, and disciplinary referral reports primarily from the review period. Files were randomly and judgmentally selected from a list of crimes reported to BUPD, the Student Conduct Office, and arrest records for crimes reported by the Waco Police Department.

### **Disclaimer:**

Although the program review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning Baylor'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 Baylor of its obligation to comply with all the statutory or regulatory provisions governing the Title IV, HEA programs as well as the *Clery Act*.

This program review is not intended to prove or disprove any specific complaints or incidents, particularly in light of the fact that some incidents included in the aforementioned complaint

actually occurred beyond *Clery*-geography.<sup>2</sup> Rather, a *Clery Act* program review evaluates an institution's compliance with Federal Student Aid requirements for institutional eligibility and administrative capability, which incorporates both the *Clery Act* and the Drug-Free Schools and Communities Act (*DFSCA*), and brings the focus of the review to one of overall campus safety and security. A *Clery Act* and *DFSCA* program review is intended to determine whether the institution has experienced process, policy, and/or procedure failures, and, therefore focuses on institutional processes, policies, and procedures.

#### **D. Findings:**

During this program review, several areas of noncompliance were noted. The findings of noncompliance refer to the applicable statutes and regulations and specify the actions Baylor was required take to bring operations of the programs affecting the *Clery Act* into compliance with legal requirements. The findings identified in the Department's April 18, 2019 Program Review Report (PRR) appear in italics below. Baylor submitted its official narrative response to the Department on September 16, 2019 and it included a file review report. A summary of Baylor'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 actual PRR as reflected in this FPRD.

#### **Finding #1: Lack of Administrative Capability**

##### **Citation:**

*To begin and to continue 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 also require that an institution employ "an adequate number of qualified persons," as well as 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). These standards apply to all aspects of the Title IV Program regulations, including the Clery Act.*

##### **Noncompliance:**

*Baylor failed to develop and implement adequate Clery Act-compliant programs during the review period. The overall compliance program evidenced a lack of supervisory oversight, and*

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<sup>2</sup> *Clery* geography as defined in 34 C.F.R. §668.46(a) and "The Handbook for Campus Safety and Security Reporting," Chapter 2, June 2016.

*affected personnel were largely unaware of their obligations to ensure substantive compliance with the Clery Act.*

*The regulations that govern the Title IV, Federal Student Aid programs establish certain standards that all participating institutions must maintain to be considered administratively capable. The findings detailed in this report indicate multiple deficiencies and weaknesses in Baylor's internal control structure and overall compliance program during the review period. The identified violations are interrelated and show that Baylor failed to compile and disclose accurate and complete crime statistics, to develop and implement adequate campus safety and crime prevention policies and procedures, and to otherwise ensure that the requirements of the Clery Act were followed. Moreover, the program review team identified several contributing factors that further compromised Baylor's campus safety operations, including, but not limited to: a persistent failure to adequately train staff and ensure that they understood the responsibilities conferred upon them by Federal law, and to ensure the requisite communication, coordination, and supervision of campus safety and compliance functions. The consequences of these preventable failures are serious as they contributed to the general failure to inform students, employees, stakeholders, and the general community at-large of the realities of crime on Baylor's campus and in the near-campus community.*

*The findings detailed in this PRR indicate that Baylor failed to develop and implement an adequate system of internal controls that contributed to the Clery Act compliance failures that occurred during the review period. The evidence reviewed by the Department shows that Baylor failed to comply in numerous ways, as detailed in the findings of this report. The evidence also demonstrates that Baylor employees and contractor staff did not receive adequate training in Clery Act compliance, and that the University failed to exercise sufficient oversight, governance, and coordination of those University officials and departments that were responsible for campus safety, student and employee conduct, and the delivery of other safety-related services. The result of these breakdowns was a general failure to keep students, employees, other stakeholders, and the larger campus community informed of crime and other threats to their safety and security.*

*Specifically, in September 2014, Baylor was informed, by its retained consultant,<sup>3</sup> of several areas of non-compliance. The resulting assessment specified four broad areas of Clery Act noncompliance that "required immediate attention," including: 1) identification of, and notification to, Baylor's Campus Security Authorities (CSAs) regarding their roles and responsibilities; 2) records management software that was deficient in providing an accurate count of Clery-reportable offenses; 3) compliant Annual Fire Safety and Security Report (A FSR) production; and 4) general deficiencies in ownership of Clery Act compliance.*

*Despite the fact that Baylor's consultant presented this information to the institution in September 2014, the University did not begin to implement changes for at least ten months after the issuance of the assessment's recommendations. In fact, significant efforts to adhere to*

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<sup>3</sup> Baylor University, Title IX Program Review & Clery Act Compliance Assessment, September 2014.



*certain Clery Act compliance requirements, such as the identification and training of CSAs, were not fully implemented for nearly two (2) years after those recommendations for “immediate” action were made. More specifically, according to interviews conducted and documentation gathered, as of May 2017, six months after BDPS’s campaign to identify and train CSAs, there were still approximately 50 CSAs yet to be trained. Some of these CSAs were identified as athletic coaches, professors, and senior administrators.*

*Additionally, deficiencies in the collection and dissemination of Clery-reportable data went unaddressed for 18 months following the production of the above-referenced compliance assessment. As will be discussed further in this PRR, as of the Department’s on-site visit, BU was still experiencing unresolved data-reporting issues due to its inability to accurately and efficiently identify crime statistics. Furthermore, the evidence developed and examined by the Department indicated that Baylor specifically failed to: 1) compile and disclose accurate, complete, and fully-reconciled crime statistics for calendar reporting years 2011-2016; 2) maintain an accurate and complete daily crime log; 3) adhere to required campus safety and crime prevention policies and procedures; 4) issue timely warnings for certain ongoing threats; 5) produce and distribute a revised ASR in a timely manner for CYs 2011-2016; and 6) properly identify and train all CSAs, thereby hindering the University’s ability to effectively provide necessary services to crime victims, and hampering its ability to issue timely warnings and to present accurate annual crime statistics. Such failures call into question Baylor’s ability and/or willingness to properly administer the Title IV, HEA, Federal Student Aid programs as agreed upon in its signed PPA.*

*For the above reasons, the Department finds that Baylor lacked the ability and/or willingness to properly administer the Title IV Federal Student Aid programs in accordance with its Program Participation Agreement (PPA). Compliance with the Clery Act, DFSCA, and the Department’s regulations are specifically required by the terms and conditions of Baylor’s PPA, under which the institution participates in Title IV programs. The institution’s current PPA, which was signed by current Baylor University President, Dr. Linda Livingstone, is effective through December 31, 2020. The PPA requirements can be found at 34 C.F.R. §668.14(c).*

*Administrative impairments, such as those identified during this program review, increase the likelihood that the statutes and regulations that govern the Title IV programs will not be followed. With regard to the Clery Act, such impairments may result in an institution’s systemic failure to provide students and employees with accurate and important campus crime information and services that are essential to their safety and security. Impaired administrative capability and weak internal controls are indications that an institution lacks the ability or willingness to comply with Federal regulations.*

**Directive from PRR:**

*As a result of these violations, Baylor was required to take all necessary corrective actions to cure the areas of noncompliance identified in this PRR, and to adequately address the organizational weaknesses that contributed to these violations. In addition, the University was to develop and implement a system of policy and procedural improvements ensuring these*

*violations do not recur. As part of that process, the University developed and implemented a comprehensive remedial action plan.*

*In carrying out that plan, the University conducted an institutional self-study of its Clery Act compliance for CYs 2011 through 2017. Baylor appointed an institutional official with sufficient knowledge and authority to coordinate this study; said official acted as the point of contact for the program review team. The self-study included a comprehensive appraisal of campus security policies and procedures, with specific attention to the following:*

- *Identification of reportable incidents;*
- *Classification of criminal incidents;*
- *Collection, compilation, and disclosure of crime statistics;*
- *Identification and coordination of and communications with CSAs;*
- *Coordination of and communications with the local law enforcement agencies that have concurrent jurisdiction;*
- *Production and distribution of the ASR;*
- *Issuance of timely warnings and emergency notifications; and*
- *Maintenance of the Daily Crime Log (DCL). <sup>4</sup>*

*The University prepared a detailed report of its findings and submitted it to the Department as part of its official response to this PRR.*

*Based on an evaluation of all available information, including Baylor's response, the Department was to determine appropriate additional actions, and advise the University accordingly in its FPRD.*

**Institutional Response:** In its official response on September 16, 2019, Baylor concurred in part and disagreed in part with this finding. The University stated that the institution lacked proper administrative capability in CYs 2011-2014.<sup>5</sup> Baylor also claimed that in CYs 2014-2016 it worked diligently to improve its administrative capabilities concerning the institution's compliance with the *Clery Act*.<sup>6</sup> Finally, the University stated that from CY 2017 to the present, it achieved administrative capability and continues to proactively improve its *Clery Act* compliance programs.<sup>7</sup>

Baylor asserted that up until 2014, the supervisory configuration for monitoring the *Clery Act* was not properly structured. However, in late CY 2014 the institution started to hire and train personnel to actively manage the *Clery Act* program. The Department verified the hiring, throughout the review period of additional personnel who actively manage the *Clery Act*

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<sup>4</sup> Some of the items identified above are to be worked concurrently with the "Required Actions" outlined in the following Findings.

<sup>5</sup> Baylor University Response, p. 7.

<sup>6</sup> *Ibid*, p. 7

<sup>7</sup> *Ibid*, p. 11.

program. Baylor filled one of the more significant positions, Clery Act Specialist, in February 2015. Once the Clery Act Specialist came onboard, and was trained, the specialist started working closely with other newly appointed personnel, such as the BUPD Chief, who was hired in September 2014. Baylor's Clery compliance started to improve, as reflected in Findings #2-5, by the decreasing number of violations committed by Baylor from CY 2016 and forward.

Baylor increased its information flow with the members of the institutional community as BU's new Clery administrators replaced previous administrators or as new positions were created. This is evident by the information communiques between the Clery administrators with members of the institutional community. The following list depicts the number of communiques shared with the institutional community during the years encompassed by the review:

- CY 2011 – 58 communiques
- CY 2012 – 18 communiques
- CY 2013 – 22 communiques
- CY 2014 – 52 communiques
- CY 2015 – 181 communiques
- CY 2016 (through mid-year) – 104 communiques

This increased communication actively informed the Baylor community of not only timely warning and emergency notifications, but overall situational awareness.

Even though Baylor admitted that up until 2014, the institution lacked administrative capability concerning the *Clery Act*, it claimed improvement in the following areas that enhanced its administrative capability. First, the institution started to hire personnel for multiple positions who could and were empowered to perform the necessary duties required. Some of these personnel included, an Associate Vice President for Public Safety and Security, a new BUPD Chief of Police, a Clery Act Specialist, a full-time Title IX Coordinator, and multiple other relevant positions. Second, the organizational structure was changed to ensure that personnel with Clery responsibilities were reporting to senior Baylor officials. Third, programs were established to identify, notify and train CSAs, activate new automated systems to assist in tracking Clery relevant information, and increase communications across the campus community. Finally, these enhanced processes, policies, procedures and programs were actively tracked by the Chief Compliance Officer ensuring a risk assessment could be scored against each for relevancy and content concerning the operational and administrative requirements for the institution's *Clery Act*.

**Final Determination:** In its official response on September 16, 2019, Baylor concurred in part and disagreed in part with the administrative capability finding. Baylor asserted that since the consultant's analysis and report in late 2014, the institution invested personnel, both existing and new hires, resources, and focused effort in resolving all *Clery Act* discrepancies. Furthermore, Baylor admitted that prior to 2014, there were administrative capability discrepancies with performing *Clery Act* functions. However, since the identification of the discrepancies and the



Department's issuance of the PRR, Baylor continues to improve its *Clery Act* duties and responsibilities.

Baylor acknowledged to the Department that the institution faced significant challenges in compiling and disclosing accurate crime statistics<sup>8</sup> until mid-2015, as described in Finding #2 below. Baylor expended significant resources, both in staff hours and financial expenditures, to recover and provide a full audit trail to support its statistical reporting for CYs 2011 through 2016. After numerous attempts, in August 2019, Baylor, in coordination with the Department, ceased its efforts to recreate lost information for CYs 2011 through 2015 and instead focused on accurately reporting its statistics from CY 2016 forward. Since CY 2017, Baylor has improved in documenting and maintaining accurate crime statistics as part of its ASRs and reporting to the Department's Office of Postsecondary Education (OPE).

Even so, after several interviews and careful analysis of documentation, the Department found Baylor's compliance lacking, as presented in detail in Finding #2. Crime statistics reported on the ASR and to OPE should be the same. Furthermore, as indicated in the institution's response, for at least CYs 2011 through 2014, and likely well before that, the poor record keeping, and the actions of Baylor's administration significantly limited the institution's capacity to accurately report crime statistics. Accurate disclosure of crime statistics is the very foundation of the *Clery Act*, dating back to 1990.

When researching Finding #3, the Department carefully examined the communication structure between key Clery administrators and the campus community in the context of timely and emergency warnings, crime prevention information, and other communiques concerning the safety, security, and well-being of the campus. The Department determined that Baylor failed to provide critical timely warnings concerning incidents that occurred on the main campus and within its patrol jurisdiction surrounding the main campus that could potentially affect the community's safety and security. The purpose of issuing a timely warning is to immediately increase the situational awareness of the community, specifically those near the location of the incident. Baylor's ASR provides the community and other interested parties, the expectations of receiving immediate and relevant information for their own protection and awareness. Even though Baylor improved its capabilities of issuing emergency notifications and timely warnings, based on instances identified in Finding #3, and with which Baylor concurred, it is imperative that the institution continually monitor and improve its communication processes.

Concerning Finding #4, the Department recognizes the effort and resources Baylor has invested in enhancing its CSA programs, especially since 2015. However, prior to 2015, although the institution issued an annual request to CSAs for reported crime statistics, this effort lacked the necessary two-way active information flow concerning serious incidents at the time an incident occurred, especially if an incident occurred that warranted the need to generate a timely warning. Baylor has since developed and worked to manage an active CSA program for the safety of the institutional community.

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<sup>8</sup> Ibid, p. 29

As noted throughout Baylor's response to the PRR, the institution acknowledges it did not perform in a satisfactory manner concerning *Clery Act* duties and responsibilities, specifically for CYs 2011 through mid-2015 in its CSA program. This is evident concerning the identification, notification and training of the institution's CSAs. Commencing in mid-2015, Baylor began properly identifying, notifying and training CSAs. Prior to this time, however, CSA's were primarily informed of their roles and responsibilities through an annual letter, sent by e-mail, requesting any crimes or other relevant information reported to them in the previous calendar year.

The active and timely information flow between Clery administrators and the institutional community is critical for those affected to be informed of all safety and security events and occurrences that impact the welfare of the campus community. Such fluent communication and timely information flow is also critical for CSAs to properly perform their duties. Effective communication by the Clery administrators with CSAs permits the reporting of crimes and incidents in a timely and efficient manner. Baylor should continue to make frequent communication a priority function, ensuring special events or activities are not neglected, i.e. summer band camps, sports programs, on-campus visiting mission events, etc. The lack of administrative capability in this area was especially evident through mid-2015. Thereafter, Baylor greatly improved in this endeavor.

In Finding #5 Baylor acknowledged the errant posting of crimes in the institution's daily crime log (DCL). In particular, sexual assaults, aggravated assaults, burglaries, and other incidents that occurred in its patrol jurisdiction, were not always published in the DCL. Baylor provided documentation of the improved processes, policies and procedures that the institution incorporated in its daily administration of performing *Clery Act* duties. These improved processes and procedures included the responsibility of maintaining an accurate and current DCL. The DCL provides a readily available record of all criminal incidents and alleged criminal incidents that are reported to Baylor's police and security personnel. Baylor responded that, administratively, the daily maintenance of their DCL is a priority for their institution.

Finally, the Department carefully examined all available information, including all data gathered on-site, Baylor's narrative response, and its supporting documentation. Based on that review and the University's admissions contained within its response to the PRR, each of the violations identified in the initial finding are sustained. The Department recognizes the resources expended and the focused work the institution conducted to improve its entire *Clery Act* program. Therefore, the Department determined that Baylor's remedial actions meet minimum requirements and for these reasons, has accepted Baylor's response and considers this finding satisfied for the purposes of this review. Nevertheless, Baylor is advised that it must take any additional actions that may be needed to address the deficiencies identified by the Department, as well as any other deficiencies or weaknesses that were detected during the preparation of the response and/or as may otherwise be needed to ensure that these violations do not recur.

Baylor 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. Baylor officials asserted that they had taken adequate remedial actions as required by Baylor's PPA. Notwithstanding these actions, Baylor officials must understand that the implementation of the Crime Awareness and Campus Security Act of 1990 is based on the accurate reporting to the Department and the campus community. Any failure to comply with these requirements deprives current and prospective students and employees of important campus crime information to which they are entitled. For these reasons, Baylor is advised that its corrective 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 Report Crime Statistics Accurately to the Office of Post-Secondary Education and in Annual Security Reports**

**Citation:**

*The Clery Act and Federal law require Title IV participants to accurately compile, publish, and distribute crime statistics for occurrences on campus for the following categories: (1) murder; (2) negligent or non-negligent manslaughter; (3) sex offenses (rape, fondling, incest, and statutory rape); (4) robbery; (5) aggravated assault; (6) burglary; (7) motor vehicle theft; and (8) arson. In addition, institutions are required to disclose arrests and disciplinary referrals involving violations of Federal, state, and/or local 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. The Clery Act also requires the separate disclosure of all Part I offenses and certain other offenses in which an individual or group is targeted for their actual or perceived membership in one or more of the following categories: race, gender, religion, sexual orientation, ethnicity or national origin, and disability. 34 C.F.R. §668.46(c)(3). Beginning with the 2015 ASR, institutions must also disclose the number of incidents of dating violence, domestic violence, sexual assault and stalking offenses that are reported as occurring on its Clery geography. 34 C.F.R. §668.46(c)(2).*

*Finally, a participating institution must submit its crime statistics to the Department for inclusion in the online campus crime statistics database,<sup>9</sup> maintained by Office of Postsecondary Education (OPE). 34 C.F.R. §668.41(e)(5).*

**Noncompliance:**

*Baylor failed to submit accurate and complete crime statistics to the OPE's online campus crime statistics database, and in its ASRs. Specifically, the crime statistics that Baylor submitted,*

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<sup>9</sup> Campus Safety and Security Data Analysis Cutting Tool (CSSDACT).

online, to OPE, for CYs 2011 through 2016, did not match statistical data that it published in its 2014 through 2017 ASRs for the same offense categories, geographic locations, and calendar years. An institution's crime statistics, as submitted online to the Department and as published in its ASRs, should match statistics that are disclosed for the same offense types, geographic locations, and calendar years.

Some of these discrepancies were uncovered during an internal assessment conducted by Baylor. After the review team examined the crime statistics reported in the University's ASRs and to OPE, several inconsistencies were noted. Those inconsistencies are presented below, divided into two distinct parts: Part A, which identifies the discrepancies found within all reported non-sexual crimes during the reporting period; and Part B, which identifies the discrepancies found within the sexual offenses that were reported during the same period.

#### **Part A.**

Selected groups of disparate crime statistics are presented in the following paragraphs and tables:

Table 1 indicates that, within the 2014 ASR, seven on-campus burglaries were reported in CY 2013, despite the fact that only four were reported to OPE during that same timeframe. Similarly, the 2014 ASR reflects three motor vehicle thefts on non-campus property, despite the fact that four such thefts were reported to OPE for that same timeframe.

2014 ASR, CY 2013 34 C.F.R. §668.46(c)(1)		
<i>Criminal Offenses</i>	<i>ASR</i>	<i>CSSDACT</i>
<i>Burglary</i>		
- On-campus	7	4
<i>Motor Vehicle Theft</i>		
- Non-campus	3	4

Table No. 1

Table 2 indicates that, within the 2014 ASR, two on-campus housing facility aggravated assaults were reported in CY 2013, despite the fact that only one was reported to OPE during that same timeframe. Similarly, the 2014 ASR reflects five on-campus housing facility burglaries, despite the fact that three such burglaries were reported to OPE for that same timeframe.

2014 ASR – CY 2013 On-campus Housing Facility 34 C.F.R. §668.46(c)(1)		
<i>Criminal Offenses</i>	<i>ASR</i>	<i>CSSDACT</i>
<i>Aggravated Assault</i>	2	1

Burglary	5	3
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Table No. 2

Table 3 indicates that, within the 2014 ASR, two on-campus burglaries were reported in CY 2013, despite the fact that three were reported to OPE during that same timeframe.

2014 ASR – CY 2013 On-campus 34 C.F.R. §668.46(c)(1)		
Criminal Offenses	ASR	CSSDACT
Burglary	2	3

Table No. 3

Table 4 indicates that, within the 2014 ASR, 60 on-campus liquor law violation arrests were reported in CY 2013, despite the fact that 69 arrests were reported to OPE during that same timeframe. Similarly, the 2014 ASR reflects 14 on-campus drug abuse violation arrests, despite the fact that only 11 were reported to OPE for that same timeframe.

2014 ASR – CY 2013 On Campus – Arrests 34 C.F.R. §668.46(c)(1)		
Other Offenses	ASR	CSSDACT
Liquor Law Violations	60	69
Drug Abuse Violations	14	11

Table No. 4

Table 5 indicates that, within the 2014 ASR, 44 on-campus student housing facility liquor law violation arrests were reported in CY 2013, despite the fact 54 arrests were reported to OPE during that same timeframe. Similarly, the 2014 ASR reflects 13 on-campus student housing facility drug abuse violation arrests, despite the fact that only nine arrests were reported to OPE for that same timeframe.

2014 ASR – CY 2013 On-Campus – Student Housing Facilities Arrests 34 C.F.R. §668.46(c)(1)		
Other Offenses	ASR	CSSDACT
Liquor Law Violations	44	54
Drug Abuse Violations	13	9

Table No. 5



Table 6 indicates that, within the 2014 ASR, four non-campus liquor law violation arrests were reported in CY 2013, despite the fact that six arrests were reported to OPE during that same timeframe.

2014 ASR – CY 2013 Non-Campus - Arrests 34 C.F.R. §668.46(c)(1)		
Other Offenses	ASR	CSSDACT
Liquor Law Violations	4	6

Table No. 6

Table 7 indicates that, within the 2014 ASR, nine on-campus disciplinary liquor law violations were reported in CY 2013, despite the fact 17 arrests were reported to OPE during that same timeframe. Similarly, the 2014 ASR reflects six on-campus disciplinary drug abuse violations, despite the fact that 11 violations were reported to OPE during that same timeframe.

2014 ASR – CY 2013 Disciplinary Actions On-Campus 34 C.F.R. §668.46(c)(1)		
Other Offenses	ASR	CSSDACT
Liquor Law Violations	9	17
Drug Abuse Violations	6	11

Table No. 7

Table 8 indicates that, within the 2014 ASR, eight on-campus student housing facility disciplinary liquor law violations were reported in CY 2013, despite the fact that 16 violations were reported to OPE during that same timeframe. Similarly, the 2014 ASR reflect six on-campus student housing facility disciplinary drug abuse violations, despite the fact that only two were reported to OPE during that same timeframe.

2014 ASR – CY 2013 Disciplinary Actions – On Campus Student Housing Facilities 34 C.F.R. §668.46(c)(1)		
Other Offenses	ASR	CSSDACT
Liquor Law Violations	8	16
Drug Abuse Violations	6	2

Table No. 8

Finally, Table 9 indicates that, within the 2014 ASR, two non-campus disciplinary liquor law violations were reported in CY 2013, despite the fact that there were zero violations reported to OPE during that same timeframe.

2014 ASR – CY 2013 Disciplinary Actions – Non-Campus 34 C.F.R. §668.46(c)(1)		
Other Offenses	ASR	CSSDACT
Liquor Law Violations	2	0

Table No. 9

### Part B.

Part B identifies the statistical discrepancies involving sexual offenses during the same reporting period.

More specifically, documentation provided by the University revealed that Baylor failed to provide accurate crime statistics for sexual offenses that occurred on Clery geography in its 2014, 2015, and 2016 ASRs, or to the Department via its submission to OPE. Moreover, the University provided to the Department's review team an Excel spreadsheet<sup>10</sup> verifying most of these inaccurate crime statistics, and indicating that it had inaccurately reported sexual assaults during the time period in question, as outlined below:

- Table 10 shows that BU's 2014 ASR, and the data that it submitted to OPE, revealed zero sexual offenses for CY 2011. However, according to BUPD Incident Report #Y-0480, a sexual offense occurred inside a student residential facility acquired by BU in 2011. Even though the incident report was titled, "ET: Assist Other Agency," the body of the report contained information indicating that a sexual assault had occurred at the recently acquired University Parks student housing facility.

2014 ASR – CY 2011 Sexual Offense 34 C.F.R. §668.46(c)(1)			
	ASR	CSSDACT	Clery Review
On-Campus	0	0	1
Student Residential Facility	0	0	1

Table No. 10

- Table 11 shows that Baylor's 2014 and 2015 ASRs, and the data that it submitted to OPE, revealed two on-campus sexual offenses for CY 2012. However, the University's

<sup>10</sup> This Excel spreadsheet provided by Baylor is entitled, "Baylor Spreadsheet Clery Data Audit 2011-2015 (5.9.2017).xls."

own assessment indicated that at least five on-campus sexual assaults were reported in student residential facilities during that same timeframe. Furthermore, the review team could find no caveats or explanations provided in the CSSDACT or other public document to explain those numeric differences.

2014 & 2015 ASR – CY 2012 Sexual Offense 34 C.F.R. §668.46(c)(1)			
	ASR	CSSDACT	Audit Review
On-Campus	2	2	5
Student Residential Facility	2	2	5

Table No. 11

- Table 12 shows Baylor's 2015 and 2016 ASRs, as well as its updated 2016 ASR,<sup>11</sup> contained conflicting information regarding forcible sex offenses during CY 2013, but no caveat was provided in any of those ASRs to explain those numeric differences.

On-Campus – CY 2013 34 C.F.R. §668.46(c)(1)			
ASR	2015	2016	2016 Updated
Forcible Sex Offenses	6	7	7

Table No. 12

**Directive from PRR:** As a result of these violations, Baylor was to review and improve its policies, procedures, internal controls, audit trails, and training programs ensuring that statistical data is accurate and consistent for all offense categories in the same geographic locations and calendar years before its online submittal to OPE and/or publication in an ASR.

A copy of these revised policies and procedures, including a comprehensive audit trail of all the updated crime statistics, arrests statistics, and referral for disciplinary actions, was to accompany the University's response to this program review report. This audit trail was to cover the review period and include the following information:

- Location of the incident on Clery geography
- Date of the incident
- Crime/Incident
- Original crime statistic
- Updated crime statistic
- Brief explanation of the change

<sup>11</sup> "eNews: Campus Safety Update" sent via e-mail on April 19, 2017 with BUPD and DPS information changes and an updated 2016 ASR containing a new point of contact for Title IX.

*Using the audit trail and the revised policies and procedures as a guide, Baylor was to identify and reconcile discrepancies in its crime statistics as best as possible for all Clery offenses that were reported for CYs 2011 to 2016. The University was required to ensure that the revised statistics accurately reflected and matched those statistics published in the corresponding ASRs and reported online to OPE for the applicable reporting years.*

*BU was to report these revised crime statistics in its 2019 ASR, and provide a copy of those statistics with the University's response to the program review report. Furthermore, Baylor was required to provide a special section in its 2019 ASR in which it provided the most accurate accounting of all of its reportable crimes back to and including CY 2011.*

*Federal regulations require that an institution publish, by the October 1st deadline date each year, an ASR for the current year, with statistical disclosures for all required Clery offenses for the three most recent calendar years. For the purposes of this program review, Baylor was required to provide the updated crime statistics reported back to CY2011 in the 2019 ASR. Any statistical changes reflected in the 2019 ASR for CYs 2015 to 2017 were to be identified and explained in the "caveat" section of the CSSDACT and the University's ASR.*

*Based on an evaluation of all available information, including Baylor's response, the Department was to determine appropriate additional actions, and advise the University accordingly in its FPRD.*

**Institutional Response:** In its official response on September 16, 2019, Baylor concurred with this finding by noting:

We concur with the Department's finding that there were discrepancies and inconsistencies in this data. Following a comprehensive data audit and review...the University is unable to reconcile these discrepancies, in part because the University officials who were responsible for submitting Clery crime data to the Department did not maintain accurate and complete records sufficient to provide an "audit trail."<sup>12</sup>

Baylor's response claimed that it completed and reconciled the audit trail, to the best of its ability, to support its reported statistics for the period of CY 2011 to the present. The University also stated that while Baylor had not accurately reported sex crime statistics, its reconciled data has shown that there were few other variances between what was reported and what the audit revealed concerning other crimes required to be reported. Finally, the University claimed that it developed processes to:

- Use its audit trail to resolve all crime statistical discrepancies in its 2019 ASR;
- Ensure that its ASR's *Clery Act* crime statistics match the statistics reported online to OPE; and,

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<sup>12</sup> Baylor University Response, p. 34

- Ensure that the 2019 ASR includes the revised crime statistics.

**Final Determination:** Baylor failed to provide accurate and complete crime statistics in its 2014, 2015, and 2016 ASRs, and the statistical data it submitted to the Department for the same calendar years. The tables below represent the numerous discrepancies the Department's reviewers identified in the 2014, 2015 and 2016 ASRs compared with the statistical data the institution submitted to the Department for the same calendar years. The discrepant crime statistics demonstrated that either the ASRs or the data submitted to the Department were erroneous. In fact, it is highly likely that both the ASRs and the data submitted to the Department were inaccurate. This conclusion is supported by the institution's response to the PRR which stated: *"We concur with the Department's finding that there were discrepancies and inconsistencies in this data. Following a comprehensive data audit and review...the University is unable to reconcile these discrepancies, in part because the University officials who were responsible for submitting Clery crime data to the Department did not maintain accurate and complete records sufficient to provide an "audit trail."* Thus, not only did the institution concede that its three ASRs (2014, 2015 and 2016) and the data submitted to the Department (for the same years) were inaccurate; the institution stated that it could not verify the veracity of the reports.

## Part A

### Discrepancies in 2015 ASR

Calendar Year	Offense	Geography	ASR	CSSDACT	Difference
2013	Liquor Law Violations – Disciplinary Actions	On-Campus	9	11	2

### Discrepancies in 2016 ASR

Calendar Year	Offense	Geography	ASR	CSSDACT	Difference
2013	Aggravated Assault	On-Campus – Student Housing	2	1	1
2013	Burglary	On-Campus	7	4	3
2013	Burglary	On-Campus – Student Housing	5	3	2
2013	Liquor Law Violations – Arrests	On-Campus	60	69	9
2013	Liquor Law Violations – Arrests	On-Campus – Student Housing	44	54	10



2013	Liquor Law Violations – Arrests	Non-Campus	4	6	2
2013	Drug Abuse Violations – Arrests	On-Campus	14	11	3
2013	Drug Abuse Violations – Arrests	On-Campus – Student Housing	13	9	4
2013	Liquor Law Violations – Disciplinary Actions	On-Campus – Student Housing	16	9	7
2013	Liquor Law Violations – Disciplinary Actions	Non-Campus	2	0	2
2013	Drug Abuse Violations – Disciplinary Actions	On-Campus	6	11	5
2013	Drug Abuse Violations – Disciplinary Actions	On-Campus – Student Housing	6	2	4

## Part B

### Discrepancies in 2014 ASR

Calendar Year	Offense	Geography	ASR	CSSDACT	Clery Team Review	Difference
2011	Forcible Sexual Offense	On-Campus	0	0	1	1
2011	Forcible Sexual Offense	On-Campus – Student Housing	0	0	1	1

### Discrepancies in 2014 and 2015 ASR

Calendar Year	Offense	Geography	ASR	CSSDACT	Clery Team Review	Difference
2012	Forcible Sexual Offense	On-Campus	2	2	5	3

2012	Forcible Sexual Offense	On-Campus – Student Housing	2	2	5	3
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#### Discrepancies in 2015 and 2016 ASR

Calendar Year	Offense	Location	2015 ASR	2016 ASR	2016 ASR Updated	Difference
2013	Forcible Sexual Offense	On-Campus	6	7	7	1

The Department carefully examined all available information, including all data gathered on-site, Baylor's narrative response, and its supporting documentation. Based on that review and the University's admissions in its response to the PRR, each of the violations identified in the initial finding is sustained. The Department has determined that Baylor's remedial actions meet minimum requirements and for these reasons, has accepted Baylor's response and considers this finding satisfied for the purposes of this review. Nevertheless, Baylor is advised that it must take any additional actions that may be needed to address the deficiencies identified by the Department, as well as any other deficiencies or weaknesses that were detected during the preparation of the response and/or as may otherwise be needed to ensure that these violations do not recur.

Baylor 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. Baylor officials asserted that they had taken adequate remedial actions as required by Baylor's PPA. Notwithstanding these actions, Baylor officials must understand that the implementation of the Crime Awareness and Campus Security Act of 1990 is based on the accurate reporting to the campus community and the Department. Any failure to comply with these requirements deprives current and prospective students and employees of important campus crime information to which they are entitled. For these reasons, Baylor is advised that its corrective 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 #3: Failure to Issue Timely Warnings**

##### **Citation:**

*The Clery Act and the Department's regulations require institutions to issue timely warnings to the entire 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:**

*Baylor failed to directly comply with timely warning provisions of the Clery Act and adhere to its own policies and procedures for the issuance of timely warnings. Specifically, Baylor did not issue timely warnings for reports of Clery crimes that presented serious or continuing threats to students and employees in its campus community; it did not disclose accurate data in timely warning notices; and it did not properly execute timely warning policies and procedures that were published in the University's ASRs.*

*Following the on-site program review, Baylor provided the Department with copies of its "Baylor Alerts" that were issued as timely warnings for incidents of crimes, as well as the corresponding crime incident reports, DCLs, activity logs, policies and procedures that were in effect in the 2014, 2015, 2016, and updated 2016 ASRs. The Department's careful review of these documents found that Baylor failed to issue timely warnings upon receipt of reports and confirmation of incidents of crimes that represented serious and/or continuing threats to members of its campus community. This lack of notification persisted even after repeated incidents involving similar methodologies and similar suspect descriptions were reported. The examples below, which are not exhaustive, evidence Baylor's failure to issue timely warnings following incidents that warranted community notification:*

### **CY 2013**

- **Incident #A-0398 (Sexual Assault)** – On October 20, 2013, at approximately 10:30pm, a student reported to BUPD that she had been sexually assaulted, in her on-campus residence hall, by another student whom she had met a week prior. After attending an off-campus party, less than ½ mile from campus, the victim returned to her residence hall room in a state of intoxication and was sexually assaulted by the suspect.

*Approximately one and one-half days after the initial report, the victim reported to the BUPD that she may have been the victim of a drugging, as she had consumed an unknown alcoholic substance at the aforementioned party. The victim further stated that she had heard of others at the party who had complained of experiencing symptoms similar to her own, in that they "did not remember everything and/or felt like they did not have use of their body, feeling limp."*

- **Incident #A-0520 (Forcible Sexual Assault)** – On Sunday, November 24, 2013, at approximately 10:00am, BUPD was dispatched to a local hospital in reference to an alleged sexual assault that had possibly occurred at an on-campus dining facility. The victim, although an adult female, was reported to have a diminished mental capacity. Nevertheless, the victim was able to provide a suspect description and advise law enforcement that the suspect was employed by the same company, contracted by BU, as was the victim. Two days after that report, a suspect was identified by name, a photo of

*the suspect was obtained, and, upon investigation, it was determined that he'd had a previous arrest for an Assault on a Child Under 16. Yet BUPD issued no warning to the campus community. The suspect was not arrested until nearly two months after the original report.*

#### **CY 2014**

- **Incident #B-0517, B-0518 (Burglary/Attempted Burglary)** – On November 10, 2014, BUPD was notified of several offices and classrooms on which attempts at forcible entry had been made, and one of which was successfully completed, leading to the loss of University property. In all of these instances, spanning several rooms and two separate buildings, visible pry marks were left on the doors. The following day, BUPD was able to review video of the area, and obtain a suspect description. According to the investigation, witnesses stated a person fitting that description had been seen several days prior, possibly attempting to enter offices in an on-campus building. No subsequent arrests were made.

#### **CY 2015**

- **Incident #15-1083 (Assault – As classified by BUPD)** – On November 9, 2015, BUPD was notified that a female student had been walking on campus when she was slapped on the buttocks by an unknown Hispanic male, riding a bicycle. BUPD was further notified of another similar incident, also occurring on campus, approximately 50 minutes after the first reported incident. Despite the fact that these two forcible fondling incidents had occurred within an hour of each other, on campus property, no notification was sent to the community.
- **Incident #15-1186 (Assault - As classified by BUPD)** – Approximately one month after the above-referenced incidents, on December 2, 2015, BUPD was notified by a female student that, earlier that day, she had been walking on campus, along “bear trail,” when an unknown male subject approached her and asked to speak with her. Upon stopping to speak with him, the male subject walked over to the victim and began to hug and kiss her on the cheek, stating repeatedly that he needed kisses, hugs, and money. The victim was able to push away from the suspect, and, as she fled the area, the suspect slapped her on the buttocks.
- **Incident #15-1105 (Assault Threat or Offense Touch - As classified by BUPD)**  
On December 2, 2015, approximately three weeks after previous and similar incidents were reported to BUPD, a third victim was fondled, on campus, by a suspect matching a similar description and method of operation as the suspect from the two incident reports above. The suspect was apprehended a short time later.

*Failure to issue timely warnings of serious and on-going threats deprives students and employees of vital, time-sensitive information, and effectively denies members of the campus community the opportunity to take adequate steps to provide for their own safety and increased situational awareness.*

**Directive from PRR:** *As a result of these violations, Baylor was required to review and update its processes, policies, and procedures for timely warnings and emergency notifications. In accordance with 34 C.F.R. §668.46(e), the University was to develop and implement policies and procedures to facilitate the timely issuance of warnings for all Clery-reportable crimes that may pose a serious or an ongoing threat to the campus community. Baylor's timely warning policy, as a minimum, need to apply to all required Clery-geography prescribed by the Clery Act, including incidents that occur within the patrol jurisdiction and those reported by CSAs other than police or security officers.*

*Baylor was to ensure the accuracy of recorded dates, approximate times, geographic locations, and occurrences in its DCLs, campus crime incident reports, and that timely warning notices provided accurate and complete information. Baylor also needed to ensure that the University's timely warning deliberations included evaluations of any other similar crimes committed in the area of the campus, non-campus, and public property immediately adjacent to their campuses.*

*Based on an evaluation of all available information, including Baylor's response, the Department would determine appropriate additional actions, and advise the University accordingly in its FPRD.*

**Institutional Response:** In its official response on September 16, 2019, Baylor concurred with this finding and stated that the institution should have issued a timely warning for each incident described in the PRR. Baylor explained that starting in April 2016, the University began using Timely Warning Notice Determination Forms to assess whether timely warnings should be issued for reportable Clery crimes. Furthermore, the institution has developed protocols to ensure both timely warnings and emergency notifications can be issued quickly and efficiently for required incidents and events. Baylor also provided the Department with its new timely warning and emergency notification policies and procedures.

**Final Determination:** Baylor failed to provide timely warnings for at least six criminal incidents that occurred in CYs 2013, 2014, and 2015. The CY 2013 incidents involved two sexual offenses. The CY 2014 incident involved a burglary/attempted burglary. The CY 2015 incidents involved three sexual assaults.

Timely warning Not Issued		
Incident	Date	Location
A-0398 – Sexual Assault	October 20, 2013	On-campus Residence Hall
A-0520 – Forcible Sexual Assault	November 24, 2013	On-campus
B-0517 – Burglary / Attempted Burglary	November 10, 2014	On-campus
15-1083 – Assault	November 9, 2015	On-campus
15-1186 – Assault	December 2, 2015	On-campus



15-1105 – Assault Threat of Offense Touch	December 2, 2015	On-campus
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The Department carefully examined all available information including Baylor's narrative response and supporting documentation. Based on that review and the institution's admissions in its response to the program review report, each of the violations identified in this finding are sustained. This analysis also indicated that the University improved its timely warning issuance by addressing its notification command protocol and other policy and procedure initiatives.

The Department has determined that the institution's remedial action plan meets minimum requirements and for these reasons, has accepted the response and considers this finding to be satisfied for purposes of this program review. Nevertheless, Baylor is put on notice that it must take any additional actions that may be needed to address the deficiencies identified by the Department, as well as any other deficiencies or weaknesses that were detected by the institution during the preparation of its response, and/or as may otherwise be needed to ensure that these violations do not recur.

Although this finding is now satisfied for program review purposes, Baylor is reminded that the exceptions identified above constitute serious and persistent violations of the *Clery Act* and that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. Baylor asserted that it has taken adequate remedial actions and is now in compliance with the *Clery Act* as required by its PPA. Baylor's enhanced policies and procedures conveys the necessity of providing accurate and timely notification during, and after significant events and threats to the campus community. Nevertheless, Baylor officials must understand that the Department deems compliance with the *Clery Act* is essential to maintaining a safe and situationally aware environment. This is true for all institutions regardless of their size, location, or organizational structure. Baylor is advised that its corrective 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 further corrective action as a result.

**Finding #4: Failure to Identify and Notify Campus Security Authorities to Ensure Accurate Crime Reporting and Timely Warnings**

**Citation:**

*The Clery Act and the Department's regulations require institutions to identify individuals or organizations, known as Campus Security Authorities (CSAs), to provide an expanded process of reporting crimes for the purpose of crime statistics and the issuance of timely warnings. These crimes can include: homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assaults, burglary, motor vehicle theft, and arson. 34 C.F.R. §668.46(c)(1)(i). 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)(ii). Along with the above crimes and incidents, institutions must provide an open*

*and non-retributive process for reporting of hate crimes, which include larceny-theft, simple assault, intimidation, and the destruction/damage/vandalism of property. 34 C.F.R. §668.46(c)(1)(iii). Finally, CSAs provide an additional conduit for the reporting of Violence Against Women Act (VAWA) violations that include the specific incidents of dating violence, domestic violence, sexual assault, and stalking. 34 C.F.R. §668.46(c)(1)(iv). To comply with these requirements, institutions must develop a system that allows for the collection of incidents of crimes reported to any CSA. 34 C.F.R. §668.46(c)(2). Federal regulations define a CSA as a campus police department or campus security department of an institution, as well as any individuals who have significant responsibility for student and campus activities, including, but not limited to: athletics, student housing, student conduct, and programming offices. 34 C.F.R. §668.46(a).*

### **Noncompliance:**

*Baylor failed to provide adequate policies and procedures for CSAs to gather and submit information reported to them pertaining to incidents of crime. This very serious and persistent deficiency that contributed significantly to Baylor's ongoing failure to collect and disclose accurate and/or complete campus crime statistics in its ASRs and impeded its ability to effectively evaluate the need for, and to issue, timely warnings throughout the review period.*

*In order for Baylor to accurately compile and report the institution's crime statistics, it must have processes, policies, and procedures in place that govern the receipt of reports of criminal incidents from all CSAs. Those CSAs must be properly identified and equipped to fulfill Baylor's own requirements for submitting accurate and timely information for use in the compilation of crime statistics and for timely warning consideration. More specifically, Baylor's processes, policies, and procedures that Baylor provides to its CSAs should allow those CSAs to:*

- *Elicit relevant details from any individual or group reporter of crime;*
- *Accurately notate information;*
- *Properly classify the incident;*
- *Provide information regarding additional resources to the student or employee who is reporting particular, impactful crimes;*
- *Encourage reporting to the institution's law enforcement agency or its local counterpart when applicable;*
- *Determine if the incident requires additional analysis from law enforcement or higher institutional officials (whichever is applicable) for issuance of timely warnings;*
- *Forward the information (if non-emergency), in a reasonable, timely fashion, for collation of annual crime statistics and possible inclusion in the daily crime log.*

*The Department requested to review the University's policies and procedures pertaining to its CSAs, and any evidence that the University had that notified those CSAs of their duties and responsibilities as CSAs, for CYs 2011-2016, to include any written instructions and training materials. Per this request, Baylor provided documentation pertaining to its CSA program.*

*More specifically, the Department reviewed a list of titles provided by the University depicting the CSAs whom the Institution had reportedly identified and properly prepared, through formal training and/or other published procedures, to carry out their assigned responsibilities, broken down by the following calendar years:*

- **CY 2011**
  - *The institution posted on its website a list of eight titles, the holders of which had been deemed CSAs, along with their telephone numbers and locations, but failed to provide proof that these individuals/organizations were ever formally assigned CSA duties and/or provided any type of training, training materials, or policies and procedures to equip them to perform those CSA duties.*
- **CY 2012**
  - *The institution provided an e-mail, dated July 15, 2013, from BUPD's Chief of Police to the Director of Baylor Communication in New York, requesting the report of any crimes for CY 2012, but failed to provide proof that the individual/organization was ever formally assigned CSA duties and/or provided training, training materials, or policies and procedures to equip them to perform those CSA duties.*
- **CY 2013<sup>13</sup>**
  - *The institution provided an excerpt from its 2013 ASR and a list of eight titles, the holders of which had been deemed CSAs, along with their telephone numbers and locations, but failed to provide proof that these individuals/organizations were ever formally assigned CSA duties and/or provided any type of training, training materials, or policies and procedures to equip them to perform those CSA duties.;*
- **CY 2014**
  - *The institution provided an excerpt from its 2014 ASR (see Footnote #9) and a list of nine titles, the holders of which had been deemed CSAs, along with their telephone numbers and locations, but failed to provide proof that these individuals/organizations were ever formally assigned CSA duties and/or provided any type of training, training materials, or policies and procedures to equip them to perform those CSA duties.*
  - *The institution also provided an e-mail, dated August 14, 2014, from the Chief of Police to eight individuals requesting crime statistics for CY 2013. There was a special note in said e-mail that stated, "The Baylor Police Department is working on a process to identify and train all CSAs..." However, the Institution failed to*

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<sup>13</sup> Baylor's 2013 (page 9), 2014 (page 8), 2015 (page 17), 2016 (pages 42-43) ASRs, along with its updated 2016 ASR (pages 42-43) all state, "While the University has identified several hundred campus security authorities, we officially designate the following offices as places where campus community member should report crimes..."

*provide proof that these eight individuals had been formally assigned CSA duties and/or provided any type of training, training materials, or policies and procedures to equip them to perform those CSA duties.*

- **CY 2015**

- *The institution provided an excerpt from its 2015 ASR (see Footnote #9) and a list of 16 CSA titles, the holders of which had been deemed CSAs, along with their telephone numbers and locations, but failed to provide proof that the individuals/organizations were ever formally assigned CSA duties and/or provided any type of training, training materials, or policies and procedures to equip them to perform those CSA duties;*
- *The institution provided an internal document identifying 15 individuals/positions titled "Identified Campus Security Authorities 2015, (For 2014 Statistical Information)," which stated, "Unknown if trained/notified of CSA role, prior to the e-mail requesting statistics June 2015".<sup>14</sup> This document provides proof that the Institution was unable to verify its notification and training of its own CSAs as of that time period.*
- *Baylor produced several additional documents indicating that, between July 27, 2015 and the Fall 2015, it had identified and trained approximately 309 CSAs. These individuals were primarily Resident Hall Directors, Resident Hall Assistant Directors, and Campus Living & Learning Community Leaders.*

- **CY 2016**

- *The institution provided an excerpt from its updated 2016 ASR (see Footnote #9) and a list of 16 CSA titles, the holders of which it had deemed CSAs, along with their telephone numbers and locations, and proof, as of October 2016, that it had identified and trained over 600 personnel as CSAs.*
- *Baylor DPS provided documentation that it had instituted a CSA identification and training process, that ultimately trained over 600 personnel, from May 17, 2016 through October 28, 2016. However, even though Baylor provided multiple training sessions for these individuals, its training records indicate that over 50 personnel, identified as CSAs, had not attended a training session as of May 2017, despite having been identified as CSAs in 2016.*

*Prior to July 27, 2015, Baylor could not produce any proof of the notification it had provided to its CSAs, or of the training, training materials, and CSA-related policies, procedures, and/or processes that it had provided them. This lack of protocol was further noted in the September 2014 Baylor University, Title IX Program Review & Clery Act Compliance Assessment, provided to the University by its consultant, which recommended that additional attention be paid to the processes for identifying and training CSAs.<sup>15</sup> Yet, it was not until May of 2015 that Baylor began to formally identify and notify its CSAs, and to provide them with training and instruction*

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<sup>14</sup> See Exhibit A attached.

<sup>15</sup> Title IX Program Review & Clery Act Compliance Assessment, September 2014, page 49.

*as to how they were to report crimes and provide information to the proper authorities responsible for the issuance of timely warnings.*

*CSAs are to be identified, and then provided processes, policies and procedures that delineate their duties and responsibilities. Through interviews with multiple CSAs, the review team learned that the University's formal CSA training program did not commence until the summer of 2015, with additional training continuing into CY 2016. Even though the regulation does not specifically require training of an IHE's CSAs, the institution must be able to provide proof of the processes that it uses to identify and provide instruction to its CSAs in order to ensure that they are able to perform their duties and carry out their responsibilities according to the institution's own processes, policies, and procedures. Furthermore, the need for such instruction or training was outlined within the Title IX Program Review & Clery Act Compliance Assessment that Baylor, itself, commissioned. That report detailed the need for the identification and notification of CSAs, along with their training on the relevant policies and procedures. As noted above, all identified CSAs should be prepared to perform their identified functions; otherwise, the compilation and reporting of accurate crime statistics, and the ability to make decisions regarding the issuance timely warnings, may be significantly affected.*

*Second, as part of the program preview review process, Baylor provided the Department with a copy of the form titled, "Clery Campus Security Authority Crime Report Form"<sup>16</sup> which is to be used by CSAs to report and forward to the Clery Coordinator crimes and incidents that are reported to them. Close examination of this form indicates that it is used primarily for statistical reporting, while providing anonymity to complainants. In fact, the instructions within this form specifically advise the CSAs to refrain from listing "any personal identifying information" relating to those complainants. Therefore, this form is to be strictly used for the anonymous reporting of crimes or incidents. This, despite the fact that the training that Baylor provides to its CSAs indicates that they are to do the following when incidents or crimes are reported to them:*

- *Document **when** the crime or incident occurred*
- *Document **when** it was reported to you*
- *Document **where** it occurred*
- *Document **what** occurred*
- *Document **who** was involved*

*Furthermore, the instructions on the above-referenced CSA reporting form state:*

*The information collected is not intended to be used to identify the victim, but rather to meet Clery Act requirements and to be used to increase public safety. Please do not list any personal identifying information. Any cooperating victims who do not wish to remain anonymous should be directed to the Baylor University Police Department.*

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<sup>16</sup> See Exhibit B attached.



*Moreover, the above-referenced form does not provide a space for the CSA to record the complainant's name; rather, it provided only a box to be used to characterize the reporting party as a "Victim, Witness, Suspect, or Other."<sup>17</sup>*

*According to the Clery Act, individuals reporting crimes or incidents to CSAs are not required to report anonymously but must be given the opportunity to report anonymously if they so desire. 34 C.F.R. §668.46(b)(2)(iii). Whether the reporting party chooses to report anonymously or not, s/he is still not required to report the crime or incident to campus or local police. Therefore, the Department agrees with the statement below, taken from the above-referenced CSA reporting form:*

*Nonetheless, a person reporting a crime to a CSA should also be encouraged to report the crime to the Baylor Police Department.*

*Baylor's CSA reporting form appears to only permit anonymous intaking of reports of crime by CSAs, thereby greatly limiting the ability of those CSAs to gather all pertinent information from reporting parties who may be willing, or who may wish, to be identified. Moreover, the limited information captured on the CSA reporting form could hinder the University's ability to issue accurate and detailed timely warnings, and could cause the double counting of incidents by making them difficult to differentiate from one another. Therefore, it is incumbent upon CSAs to obtain as much information as possible when it is made available to them as that report could be Baylor's one and only opportunity to obtain all the information concerning a crime or incident if the complainant refuses to report it to BUPD.*

*Finally, during the site visit, the Department conducted interviews with Baylor's summer camp personnel, when the review team learned that Baylor provides a series of summer camps for high school students. Therefore, the review team requested a list of these summer camps, and received an extensive spreadsheet of Summer High School Camps from Baylor's director responsible for overseeing the summer camp operation. More specifically, as of 2016, Baylor housed 52 summer camps, comprised of hundreds of high-school aged students who lived in Baylor's residential student housing during the pendency of their programs. The institution was quick to note, during the interview with Manager for Protection of Minors, that all of the camp employees were required to complete a mandatory on-line course, entitled, "Keeping Our Minors Safe." This course was specifically designed to teach camp employees how to report and initially manage any incidents involving the students. The Department's review team reviewed this course, and noted that it does provide relevant information for protecting students while on campus. However, it fails to meet fundamental CSA requirements for the reporting of crime statistics and the issuance of timely warnings. Furthermore, despite the above-referenced interviews and the documentation provided to the Department, including training materials and attendance rosters, Baylor was unable to provide proof that its camp directors or camp employees had been formally identified as CSAs or trained to perform CSA duties prior to*

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<sup>17</sup> The category of "Other" does provide a space for the CSA to add additional information.

*October 2016. Thus, Baylor failed to ensure that its camp directors and staff, to whom responsibility for the safety of young campers had been entrusted, were aware of the relevant CSA policies, procedures, and processes, or prepared to handle the duties and responsibilities of a CSA.*

**Directive from PRR:** *In CY 2015, Baylor implemented a CSA identification and policy and procedure education program. The University was required to continue to maintain processes, policies, and procedures ensuring that all CSAs were capable, empowered, and aware of their responsibilities in performing their Clery-related duties according to the institution's own Clery Act requirements. To that end, Baylor was to ensure that all CSAs were capable of identifying reportable crimes and reporting those crimes to the appropriate party(ies) in the appropriate fashion so that the institution could properly assess those reports of crime for timely warning purposes.*

*Corrective actions were to focus primarily on the measures that the University had taken and continued in order to improve its identification of CSAs and ensure that those CSAs could perform their responsibilities according to established CSA policies and procedures. Baylor was to review its policies and procedures concerning the use of the CSA "Clery Campus Security Authority Crime Report Form," which, as noted above, limited the recording of information regarding crimes and incidents reported by parties willing to have their identifying information included. A copy of all relevant, new, and revised policies and procedures was to accompany the University's official response to this PRR.*

*Based on an evaluation of all available information, including Baylor's response, the Department would determine appropriate additional actions, and advise the University accordingly in its FPRD.*

**Institutional Response:** In its official response on September 16, 2019, Baylor concurred with the finding at large, but it disagreed with specific elements of the finding, as outlined below in the Final Determination section. The University acknowledged that from the period of 2011 through mid-2015, it had no formalized processes or procedures in place for identifying, notifying, and training its CSAs.

**Final Determination:** In its official response on April 17, 2019, BU concurred in part and disagreed in part with this finding. The University acknowledged that from the period of 2011 and 2014, it had no formalized processes or procedures in place for identifying, notifying, and training its CSAs. However, the Institution disagreed with several of the finding's assertions. Specifically, BU claimed that:

- While 50 employees identified as CSAs in May 2016 had still not been trained, 828 CSAs did receive training;
- The University's practice of notifying and training CSAs prior to July 27, 2015 involved annual outreach via email to individuals who oversaw large numbers of CSAs. Additionally, BU referenced the 2011 issue of the "Handbook for Campus Safety and

Security Reporting,” stating that the Handbook did not provide clear direction regarding the identification and notification of CSAs;

- Its CSA reporting form has, since August 17, 2016, allowed a CSA to identify the reporter of the crime in question by name and telephone number; and,
- Prior to 2016, many camp directors or camp employees had otherwise been formally identified as CSAs and trained to perform CSA duties through their primary role at the University.

The Department carefully examined all available information including BU’s narrative response and supporting documentation. Based on that review and the institution’s admissions, each of the violations identified in the finding are sustained, other than the updated CSA reporting form. The Department’s analysis acknowledges that the University improved its CSA policies and procedures for reporting crimes and timely warnings through the new training process. However, when an institution identifies and notifies personnel that part of their official capacity is to perform CSA functions, and provides several training or education opportunities, and the personnel still do not attend those trainings, then those negligent personnel may keep the institution from being fully complaint, potentially affecting the safety and security of the campus community. Also, Baylor failed to ensure, during the entire program review period, that personnel designated as CSA were capable of performing all necessary duties assigned to that role. It was evident that Baylor made significant strides in improving its CSA program; however, up until mid-2015, the institution was not compliant with the *Clery Act*. Finally, even though Baylor provided a training program (in accordance Texas state requirements) to manage and supervise juveniles during summer camps, etc. the program did not fully train these CSAs in all requirements of the *Clery Act*. Because these individuals were serving in the role of a CSA, all camp RA equivalents, counselors, etc. needed to be able to perform all duties and responsibilities required of a CSA under the *Clery Act*.

Even so, the Department has determined that the institution’s remedial action plan meets minimum requirements and, for these reasons, has accepted the response. As a result, this finding is considered satisfied for purposes of this program review. Nevertheless, the directors and officials of BU are put on notice that they must take any additional actions that may be needed to address the deficiencies identified by the Department, as well as any other deficiencies or weaknesses that were detected by the institution during the preparation of its response, and/or as may otherwise be needed to ensure that these violations do not recur.

Although the finding is now satisfied for program review purposes, BU is reminded that the exceptions identified above constitute serious and persistent violations of the *Clery Act* and that by their nature cannot be cured. There is no way to truly “correct” violations of this type once they occur. BU asserted that it has taken adequate remedial actions and is now in compliance with the *Clery Act* as required by its PPA. Nevertheless, BU officials must understand that the Department deems compliance with the *Clery Act* is essential to maintaining a safe and aware environment. This is true for all institutions regardless of their size, location, or organizational structure.

## **Finding #5: Failure to Maintain an Accurate and Complete Daily Crime Log**

### **Citation:**

*The Clery Act and the Department's regulations require institutions with a police or campus security departments to maintain written, easily understood DCLs, listing all crimes that occurred in the following areas and that are reported to the campus police or security department: 1) on campus, including in residence halls; 2) in non-campus buildings or on non-campus property; 3) on public property within the campus or immediately adjacent to and accessible from the campus; or 4) within the campus police or security department's patrol jurisdiction area. 34 C.F.R. § 668.46(f). This reporting requirement applies to all crimes reported to the campus police or security department, not just the crimes listed in 34 C.F.R. §668.46(c)(1) and (3).*

*The crime log must record crimes by the date on which they were reported to the campus police or security department. It must include the nature, date, time, general location, and disposition of each reported offense. An entry, an addition to an entry, or a change in the disposition of an incident must be recorded within two business days of the report of that information to the campus police or the campus security department. The DCL must be kept up to date and be accessible to any requestor during normal business hours. 34 C.F.R. §668.46(f).*

### **Noncompliance:**

*Baylor failed to properly maintain an accurate and complete DCL. During the course of its examination, the Department reviewed DCLs spanning January 1, 2011 to December 31, 2016 to determine the accuracy of the information posted therein. Those incidents were then cross-referenced to Baylor's incident reports, and all activity-call log<sup>18</sup>. This examination revealed that Baylor's DCLs failed to properly, transparently report crimes that had occurred within its patrol jurisdiction. Rather, these crimes were often masked under such headings as "Information" or "Assist Other Agency." As an example, Baylor failed to include the following incidents that occurred within its patrol jurisdiction in its DCLs:*

#### **CY 2011**

- **Incident #Y-0480 ("Assist Other Agency")** – A review of the information indicated that this incident was actually a sexual assault, which occurred at 2200 Block South University Parks Drive, and was reported on November 6, 2011.

#### **CY 2012**

- **Incident #Y-0852 ("Information")** – A review of the information indicated that this incident was actually a sexual assault, which occurred at [REDACTED] Speight Avenue, and was reported on February 19, 2012;

<sup>18</sup> The activity-call log is developed through an automated system that tracks all dispatch calls to BUPD officers.

- **Incident #Y-0982 (“Information”)** – A review of the information indicated that this incident was actually a sexual assault, which occurred at 1300 Block Park Avenue, and was reported on March 1, 2012;
- **Incident #Y-1043 (“Burglary of a Habitation/Home Invasion”)** – A review of the information indicated that this incident was actually an armed robbery and an aggravated assault, occurring at 500 Block Daugherty Avenue, and were reported on April 19, 2012;
- **Incident #Z-0428 (“Assist Other Agency”)** – A review of the information indicated that this incident was actually a robbery, which occurred at 1700 Block South 8<sup>th</sup> Street, and was reported on October 29, 2012.

#### **CY 2013**

- **Incident #A-0292 (“Assault – Family Violence”)** – A review of the information indicated that these were actually two incidents, occurring at 1500 Block South 9<sup>th</sup> Street, and were reported on September 25, 2013 and December 18, 2013.

#### **CY 2014**

- **Incident #B-0605 (“Assist Other Agency”)** – A review of the information indicated that this incident was actually a sexual assault, which occurred at 2300 Block South 3<sup>rd</sup> Street, and was reported on December 2, 2014;
- **Incident #B-0163 (“Information”)** – A review of the information indicated that this incident was actually a sexual assault, which occurred at 2200 Block South University Parks Drive, and was reported on August 27, 2014.

#### **CY 2015**

- **Incident #15-0036 (“Information”)** – A review of the information indicated that this incident, which was a sexual assault, that occurred at an unknown location, was reported to BUPD on January 19, 2015;
- **Incident #15-0231 (“Sexual Assault”)** – A review of the information indicated that this was a sexual assault, which occurred at 2200 Block South University Parks Drive, and was reported on March 20, 2015;
- **Incident #15-0458 (“Aggravated Assault With Motor Vehicle”)** – A review of the information indicated that this was an aggravated assault with a motor vehicle, which occurred at 1900 Block South University Parks Drive, and was reported on May 15, 2015.

**Directive from PRR:** Baylor was required to review and revise its policies, procedures, and internal controls to ensure that all incidents of crime, reported as having occurred within its patrol jurisdiction, were accurately entered into its DCLs. These revisions were to provide for the designation of a capable official(s) to ensure that the crime logs were also accurately and completely updated in a timely manner, and readily available to members of the campus community and public for review upon request. A copy of these revisions was to be submitted to the Department along with Baylor’s response to this program review report.



*Additionally, Baylor was to provide the Department a DCL reflecting all the crimes that BUPD responded to, within its patrol jurisdiction, from January 1, 2011 through July 31, 2016.<sup>19</sup> Furthermore, a copy of this DCL was to be made available to the campus community, via its website, for a period no less than one year after publication.*

*Based on an evaluation of all available information, including the University's response, the Department would determine appropriate additional actions and advise Baylor accordingly in its FPRD.*

**Institutional Response:** In its official response on September 16, 2019, Baylor concurred with this finding. The University acknowledged that it failed to include the incidents cited in the PRR in its DCL. In addition, Baylor claimed that those omissions were unintentional.

**Final Determination:** Baylor failed to include eleven incidents of crime in its daily crime log for CYs 2011 through 2015. These eleven incidents involved crimes such as sexual assault, assault, aggravated assault, robbery, and burglary. The Department notes that the omission of a crime incident from the DCL often results in the oversight of that crime statistic from numerous ASRs and statistical data submitted to the Department. For example, Baylor omitted from its DCL **CY 2012, Incident #Y-0852** – A sexual assault that occurred at 700 Block Speight Avenue, reported on February 19, 2012. The omission of this sexual assault incident from the 2012 crime log also resulted in the omission of this sexual assault statistic from the 2013, 2014 and 2015 ASRs; and the statistical data submitted to the Department for the same years.

Incidents Missing From the Daily Crime Log		
Incident as Reported by BU	Case Number	Reported Date
Assist Other Agency	Y-0480	November 6, 2011
Information	Y-0852	February 12, 2012
Information	Y-0982	March 1, 2012
Burglary of a Habitation / Home Invasion	Y-1043	April 19, 2012
Assist Other Agency	Z-0428	October 29, 2012
Assault – Family Violence	A-0929	September 25, 2013 December 18, 2013
Assist Other Agency	B-0605	December 2, 2014
Information	B-0163	August 27, 2014
Information	15-0036	January 19, 2015
Sexual Assault	15-0231	March 10, 2015
Aggravated Assault with Motor Vehicle	15-0458	May 15, 2015

<sup>19</sup> The Department noted that, on August 1, 2016, Baylor started to include its patrol jurisdiction in its DCLs.

The Department acknowledges that Baylor implemented several processes to improve the accuracy of reporting of crimes and alleged crimes in the institution's DCL that not only includes on-campus, but also patrol jurisdictions around the campus, where a majority of the eleven incidents occurred.

The Department carefully examined all available information including Baylor's narrative response and supporting documentation. Based on that review and the institution's admissions in its response to the PRR, each of the violations identified in the finding are sustained. The Department acknowledges Baylor's claim that its omissions were unintentional. However, the purpose of the DCL is to provide clear and accurate identification of incidents that are on-campus or within the institution's patrol jurisdiction. Thus, any omissions equate to compliance deficiency.

The Department has determined that the institution's remedial action plan meets minimum requirements and for these reasons, has accepted the response and considers this finding to be satisfied for purposes of this program review. Nevertheless, the directors and officials of Baylor are put on notice that they must take any additional actions that may be needed to address the deficiencies identified by the Department, as well as any other deficiencies or weaknesses that were detected by the institution during the preparation of its response, and/or as may otherwise be needed to ensure that these violations do not recur.

Although the findings are now satisfied for program review purposes, Baylor is reminded that the exceptions identified above constitute serious and persistent violations of the *Clery Act* and that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. Baylor asserted that it has taken adequate remedial actions and is now in compliance with the *Clery Act* as required by its PPA. Nevertheless, Baylor officials must understand that the Department deems compliance with the *Clery Act* is essential to maintaining a safe and aware environment. This is true for all institutions regardless of their size, location, or organizational structure.

**Exhibit A**

**Identified Campus Security Authorities 2015**

**(For 2014 Statistical Information)**

**\*Unknown if trained/notified of CSA role, prior to the e-mail requesting statistics June 2015\***

**Main Campus:**

- Athletic Director – [REDACTED]
- Assistant Athletic Director of Compliance – [REDACTED]
- Director of Campus Recreation – [REDACTED]
- Associate Dean for Student Conduct Administration – [REDACTED]
- Associate Director for Judicial Affairs – [REDACTED]
- Director of Campus Living & Learning – [REDACTED]
- Director of Student Activities – [REDACTED]
- Associate Vice President for Student Life – [REDACTED]
- Coordinator for Greek Life – [REDACTED]
- Executive Director of Counseling Services – [REDACTED]
- Medical Director – [REDACTED]
- Vice President & Chief Human Resources Officer – [REDACTED]

**Dallas EMBA Program:**

- Director Baylor EMBA Program (Dallas) – [REDACTED]

**Austin EMBA Program:**

- Administrator for the Austin EMBA Program – [REDACTED]

**Baylor in New York:**

- Director of Baylor in New York Program – [REDACTED]

**Exhibit B**

<b>CLERY CAMPUS SECURITY AUTHORITY</b> <b>CRIME REPORT FORM</b> <b>NON-POLICE CAMPUS SECURITY AUTHORITIES</b> <b>BAYLOR UNIVERSITY</b>																		
<p>The purpose of THE CLERY ACT is to encourage the reporting and the collecting of accurate data of campus crime statistics. The goal of the Clery Act is to provide information to the campus community to promote crime awareness and to enhance campus safety through providing reliable statistical records. This report form was developed to provide a uniform method to document reportable crimes and/or non-criminal hate motivated incidents that have occurred within one of the four reporting locations and which have been reported to a Campus Security Authorities (CSA) other than the Baylor Police Department. The definitions of the crimes that are required to be reported and a description of the mandatory reporting locations are available for review on the Clery Definition Page.</p> <p>The information collected is not intended to be used to identify the victim, but rather to meet Clery Act requirements and to be used to increase public safety. Please do not list any personal identifying information. Any cooperating victims who do not wish to remain anonymous should be directed to the Baylor University Police Department.</p> <p>It is the policy of the Baylor University Police Department to encourage victims and/or witnesses to crime(s) to report such crimes to the police and/or to a designated Campus Security Authority - someone who has significant responsibility for student and campus activities. For the purposes of Clery, CSAs are required to document certain reportable crimes and non-criminal hate motivated incidents which have been reported to them.</p> <p>For Clery purposes, the student status (yes/no) of the offender or the victim is not a relevant fact as to whether or not this report form is to be completed. If a violation of one of the 15 listed offenses occurs, documentation is required.</p> <p>Clery documentation is not satisfied by simply directing/transferring the reporting party to the police department. In order for the University to satisfy the statistical reporting requirements of the Clery Act, all CSAs are required to complete this form when certain any of the specified offenses listed below are reported to them. Nonetheless, a person reporting a crime to a CSA should also be encouraged to report the crime to the Baylor Police Department.</p>																		
<table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> Homicide</td> <td><input type="checkbox"/> Burglary</td> <td><input type="checkbox"/> Drug/Narcotic violations</td> <td><input type="checkbox"/> Stalking</td> </tr> <tr> <td><input type="checkbox"/> Manslaughter</td> <td><input type="checkbox"/> Motor Vehicle Theft</td> <td><input type="checkbox"/> Liquor Law violations</td> <td><input type="checkbox"/> Sex Offense (Forcible)</td> </tr> <tr> <td><input type="checkbox"/> Robbery</td> <td><input type="checkbox"/> Arson</td> <td><input type="checkbox"/> Domestic Violence</td> <td><input type="checkbox"/> Sex Offense (Non-forcible)</td> </tr> <tr> <td><input type="checkbox"/> Aggravated Assault</td> <td><input type="checkbox"/> Weapons violations</td> <td><input type="checkbox"/> Dating Violence</td> <td></td> </tr> </table>			<input type="checkbox"/> Homicide	<input type="checkbox"/> Burglary	<input type="checkbox"/> Drug/Narcotic violations	<input type="checkbox"/> Stalking	<input type="checkbox"/> Manslaughter	<input type="checkbox"/> Motor Vehicle Theft	<input type="checkbox"/> Liquor Law violations	<input type="checkbox"/> Sex Offense (Forcible)	<input type="checkbox"/> Robbery	<input type="checkbox"/> Arson	<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Sex Offense (Non-forcible)	<input type="checkbox"/> Aggravated Assault	<input type="checkbox"/> Weapons violations	<input type="checkbox"/> Dating Violence	
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<input type="checkbox"/> Robbery	<input type="checkbox"/> Arson	<input type="checkbox"/> Domestic Violence	<input type="checkbox"/> Sex Offense (Non-forcible)															
<input type="checkbox"/> Aggravated Assault	<input type="checkbox"/> Weapons violations	<input type="checkbox"/> Dating Violence																
<input type="checkbox"/> Hate Crime (Please Select Sub-Type) <input type="checkbox"/> Bodily Injury <input type="checkbox"/> Vandalism <input type="checkbox"/> Email <input type="checkbox"/> Telephone <input type="checkbox"/> Message <input type="checkbox"/> Other <input type="checkbox"/> Hate Incident (any non-criminal incident)	<b>Category of Prejudice</b> <input type="checkbox"/> Ethnicity <input type="checkbox"/> Gender <input type="checkbox"/> Sexual Orientation <input type="checkbox"/> Race <input type="checkbox"/> Disability <input type="checkbox"/> Religion <input type="checkbox"/> National Origin																	
<input type="checkbox"/> On-campus (excluding residential life) <input type="checkbox"/> Public property <input type="checkbox"/> On-campus (residential life: bridge) <input type="checkbox"/> Unknown <input type="checkbox"/> Non-campus property	Date of Incident: _____ Time of Incident: _____ Name of CSA receiving report: _____																	
	CSA's Department	Dept. Address or Mail Code																
Reporting Party: <input type="checkbox"/> Victim <input type="checkbox"/> Witness <input type="checkbox"/> Suspect <input type="checkbox"/> Other: _____	Was a Police Report Filed? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown Specify Department: _____																	
Date of Police Report: _____	Case Number: _____	Officer Name: _____																

8CAPR 000076

**Sex Offenses:** Sex offenses are of special concern to the campus community because they have been historically under reported. The victim of a sex offense typically desires confidentiality and anonymity; as a result he/she will often seek a reporting source other than law enforcement such as a designated Campus Security Authority. Because the sex offender may continue to pose a threat in the community, the threat potential needs to be evaluated and the campus community alerted/warned as necessary. In this regard, the following additional information is requested.

<input type="checkbox"/> Known offender (friend, classmate, acquaintance, date, etc.)	<input type="checkbox"/> Alcohol involved: <input type="checkbox"/> Offender <input type="checkbox"/> Victim
<input type="checkbox"/> University affiliated ( <input type="checkbox"/> Student <input type="checkbox"/> Staff <input type="checkbox"/> Faculty)	<input type="checkbox"/> Drugs involved: <input type="checkbox"/> Offender <input type="checkbox"/> Victim
<input type="checkbox"/> Unknown offender (stranger)	<input type="checkbox"/> Narcotics involved: <input type="checkbox"/> Offender <input type="checkbox"/> Victim
<input type="checkbox"/> Victim was not injured (excluding emotional/psychological trauma)	<input type="checkbox"/> Weapon involved: <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Victim was injured - Describe injuries:	Describe weapon:

**Brief Description of Crime or Incident:**

**If not submitted via the Website please return the completed form to:**  
**Chief of Police, Baylor University Police Department**  
**One Bear Place #97090, Waco, Texas 76798**

SCAPR 000077



### Clery Act Definitions

#### Definitions for geographic areas for which crimes must be reported:

1. **On-campus property:** Any building or property owned or controlled by the University within the same reasonably contiguous geographic area and used by the University in direct support of, or in a manner related to, the University's educational purpose, including buildings or property the location described herein that is owned by the University but controlled by another person and which is frequently used by students.
2. **On-campus residential life buildings**
3. **Non-campus property:** Non-campus property or building owned or controlled by the University that is frequently used by students and is not within the same reasonably contiguous geographic area of the institution, or any building/property that is owned or controlled by a student organization that is officially recognized by the institution.
4. **Public property:** Public property located immediately adjacent to and accessible from campus, including: thoroughfares, sidewalks, streets, lanes, parks and beaches.

#### Definitions of crimes which must be reported:

**Murder/Non-Negligent Manslaughter:** the willful (non-negligent) killing of one human being by another. NOTE: Deaths caused by negligence, assaults to kill, suicides, accidental deaths, and justifiable homicides are excluded.

**Negligent Manslaughter:** the killing of another person through gross negligence.

**Robbery:** the taking or attempting to take anything from value of the care, custody or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

**Aggravated Assault:** an unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. It is not necessary that injury result from an aggravated assault when a gun, knife or other weapon is used which could or probably would result in a serious potential injury if the crime were successfully completed.

**Burglary:** The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or a felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.

**Motor Vehicle Theft:** The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access, even though the vehicles are later abandoned - including joy riding).

**Arson:** The willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, or personal property of another kind.

**Weapon Law Violations:** The violation of laws or ordinances dealing with weapon offenses, regulatory in nature, such as: manufacture, sale, or possession of deadly weapons; carrying deadly weapons - concealed or openly; furnishing deadly weapons to minors; aliens possessing deadly weapons; all attempts to commit any of the aforementioned.

**Drug Abuse Violations:** Violations of state and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include: opium or cocaine and their derivatives (morphine, heroin, codeine); marijuana; synthetic narcotics (Demerol, methadone); and dangerous non narcotic drugs (barbiturates, Benzadrine).

**Liquor Law Violations:** The violation of laws or ordinances prohibiting: the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public conveyance; all attempts to commit any of the aforementioned. (Drunkenness and driving under the influence are not included in this definition.)

**Domestic Violence:** A felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with or had cohabitated with the victim as a spouse or intimate partner; or any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**Dating Violence:** Violence committed by a person who is or has been in a social relationship or a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

1. The length of the relationship.
2. The type of relationship; and
3. The frequency of interaction between the persons involved in the relationship.

**Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

**Sex Offenses-Forcible:** Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent. Includes forcible fondling of the private parts of another person for the purpose of sexual gratification.

**Sex Offenses-Non-Forcible:** Unlawful, non-consensual sexual intercourse, e.g., incest and statutory rape.

**Sex Offenses Definitions from the National Incident-Based Reporting System Edition of the Uniform Crime Reporting Program**

8CAFR 000070