



May 1, 2023

Jerry Lee Prevo, D. Div.
Interim President
Liberty University
1971 University Boulevard
Lynchburg, VA 24515

Via Electronic Mail

RE: Program Review Report
OPE ID: 02053000
PRCN: 202230330635

Dear President Prevo:

On February 18, 2022, the United States Department of Education (the Department) formally initiated an on-site program review to evaluate Liberty University's (Liberty; the University) compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) and the Drug-Free Schools and Communities Act (*DFSCA*). The findings of that review are presented in the enclosed report.

Findings of noncompliance are referenced to the applicable statutes and regulations and specify the actions required to comply with those statutes and regulations going forward. Please review the report carefully and prepare a substantive response. Liberty's response should include a narrative that begins with a clear statement of the University's position on each finding. The narrative should clearly indicate if the institution concurs with the findings, disagrees with the findings, or concurs in part and disagrees in part. The narrative response to each finding should also articulate a clear rationale for all positions taken by the institution.

The response also must describe any remedial action(s) that were taken to address the findings of violation and provide reasonable assurance that such exceptions will not recur. Copies of all documents and information referenced in the "Required Action" section of each finding must be submitted as part of the official response. The University must also provide copies of all documents and information that support its position and assertions on the findings and/or substantiate its remedial action claims. Wherever possible, the Department respectfully requests that responsive documents be submitted in an electronic format and that any spreadsheets, charts, or other similar records be submitted in a format that will permit Department officials to sort and search all data fields.

The University's response must be submitted to the attention of Mr. Anthony P. Simeone, the lead review official on this case, within 60 calendar days of receipt of this letter.

Please note that pursuant to HEA Section 498A(b), the Department is required to:

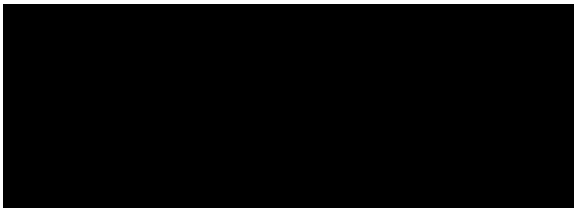
- Provide to the institution an adequate opportunity to review and respond to any Program Review Report and relevant materials related to the report before any Final Determination is issued; and,
- Review and take into consideration an institution's response in any Final Determination, and include in the Final Determination:
 - a. A written statement addressing the institution's response;
 - b. A written statement of the basis for such report or determination; and
 - c. A copy of the institution's response.

Please note that the Department considers the institution's response to be the written narrative (to include e-mail communication). Any supporting documentation submitted with the institution's written response will not be attached to the Final Program Review Determination (FPRD). However, it will be retained and available for inspection by Liberty upon request. Copies of the program review report, the institution's response, and any supporting documentation may be subject to release under the Freedom of Information Act after the FPRD is issued. Such documentation also may be provided to other government agencies and/or the institution's oversight bodies.

Please be sure that your response conforms to the Department's standards for the protection of Personally Identifiable Information (PII). PII is any information about an individual which can be used to distinguish or trace an individual's identity (some examples include name, social security number, date and place of birth). Please review the enclosure entitled "Protection of Personally Identifiable Information" for further guidance.

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 periods applicable to all Title IV records, including *Clery Act* and *DFSCA*-related documents, under *34 C.F.R. §668.24(e)* or other applicable laws.

We would like to express our appreciation for the courtesy extended during the review process thus far. The University's continued cooperation is anticipated, and the Department looks forward to receiving the University's response by the stated due date. Going forward, please include the Program Review Control Number (PRCN) noted above in all correspondence related to this case. If you have any questions concerning this report or the program review process, please contact Mr. Simeone on 202-377-4218 or at Anthony.Simeone@ed.gov.



James L. Moore, III
Senior Advisor
Clery Act Compliance/Campus Safety Operations

cc: Mr. Ronald T. Sloan, Vice President of Security and Public Safety, Liberty
Colonel Richard D. Hinkley, Chief of Police, Liberty
Mr. Matt Cooper, Vice President of Student Financial Services, Liberty

Enclosure:
Campus Crime Program Review Report
Instructions for Protection of Personally Identifiable Information

PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION

Personally Identifiable Information (PII) being submitted to the Department must be protected. PII is any information about an individual which can be used to distinguish or trace an individual's identity (some examples are name, social security number, date and place of birth).

PII being submitted electronically must be encrypted. The data must be submitted in a .zip file encrypted with Advanced Encryption Standard (AES) encryption (256-bit is preferred). The Department uses WinZip. However, files created with other encryption software are also acceptable, provided that they are compatible with WinZip and are encrypted with AES encryption.

The Department must receive an access password to view the encrypted information. The password must be e-mailed separately from the encrypted data. The password must be 12 characters in length and use three of the following: upper case letter, lower case letter, number, special character. A manifest must be included with the e-mail that lists the types of files being sent (a copy of the manifest must be retained by the sender).

Hard copy files and media containing PII must be:

- sent via a shipping method that can be tracked with signature required upon delivery
- double packaged in packaging that is approved by the shipping agent (FedEx, DHL, UPS, USPS)
- labeled with both the "To" and "From" addresses on both the inner and outer packages
- identified by a manifest included in the inner package that lists the types of files in the shipment (a copy of the manifest must be retained by the sender).

PII data cannot be sent via fax.

Prepared for:
Liberty University

OPE ID 02053000
PRCN: 202230330635

Prepared by:
U.S. Department of Education
Federal Student Aid
Clery Group

Program Review Report

May 1, 2023

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A. The Clery Act and the Drug-Free Schools and Communities Act

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*), § 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 at U.S. institutions of higher education. Each domestic institution that participates in the Federal student financial aid programs under Title IV of the HEA must comply with the *Clery Act* and its implementing regulations and must certify that it will so comply as part of its Program Participation Agreement (PPA) to participate in the Title IV, student financial assistance programs.

The *Clery Act* requires institutions to produce and distribute Annual Security Reports (ASRs) containing their 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 considered 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 with appropriate jurisdiction, or another campus security authority (CSA). There are four general categories of CSAs. These include: (i) campus police or security department, (ii) any institutional employee with safety-related job functions, such as a security desk receptionist in a residence hall or an attendant that controls access to a parking facility, (iii) anyone designated to receive reports of crime and/or student or employee disciplinary infractions, such as Human Resources, and (iv) any official that has significant responsibilities for student life or activities, such as residential life staff, student advocacy and programming offices as well as athletic department officials and coaches.

An ASR must include several statements of policy, procedures, and programmatic information regarding issues of student safety and crime prevention. The *Clery Act* also requires institutions with campus police or security departments to maintain daily crime logs that are available for public inspection. In addition, the institution must issue Timely Warnings and Emergency Notifications to provide up-to-date information about ongoing threats to the health and safety of the campus community. The *Clery Act* also requires institutions to develop emergency response and evacuation plans. Under § 485(i) and (j) of the HEA, 20 U.S.C. § 1092(i) and (j), institutions that maintain student residential facilities must develop missing student notification procedures and produce and distribute Annual Fire Safety Reports (AFSRs) 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, certain amendments to the *Clery Act* were included in Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) which 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. For ease of reference, we will refer to all of these campus safety requirements, including any implementing regulations, as "*Clery Act* requirements" or simply the "*Clery Act*" in this report.

Because the vast majority of violent crimes on campus 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 Federal Student Aid (FSA) in 2010. 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.

The *Clery Act* and other campus safety requirements are 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 choice, play active roles in their own personal safety and secure and protect their personal property. FSA uses a multi-faceted approach to ensure that institutions comply with the *Clery Act*, which includes providing technical assistance, training programs, and materials, as well as monitoring and enforcement through program reviews. Program reviews entail in-depth analyses of campus police and security records, as well as interviews of institutional officials, crime victims, and witnesses. During a program review, an institution's policies and procedures related to campus security matters are also examined to determine whether they are accurate and meet the needs of the campus community.

B. Institutional Information

Liberty University
1971 University Boulevard
Lynchburg, VA 24515

Control Type: Private, Non-Profit

Highest Level of Offering: Doctorate Degree

Accrediting Agency: Southern Association of Colleges and Schools - Commission on Colleges

Student Enrollment: 93,349 (approx.) Fall 2022 (NCES)

Percentage of Students Receiving Title IV: 60% (approx.) Fall 2022 (NCES)

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

2020-2021 Award Year

Federal Pell Grant	\$ 104,245,925
Federal Supplemental Educational Opportunity Grant (FSEOG)	\$ 7,724,783
Federal TEACH Grant	\$ 620,356
Federal Work Study (FWS)	\$ 3,096,677
Federal Perkins Loan Program (Perkins)	\$ 0
Direct Loan Program (DL)	\$ <u>758,888,848</u>
TOTAL	\$ <u>874,576,589</u>

DL Cohort Default Rate:

2019	2.0%
2018	6.3%
2017	8.5%

Liberty University

Founded in 1971 in Lynchburg, Virginia, Liberty University has grown from a small college of 154 students into a university more than 93,000 on-campus and on-line students, including a residential student body of over 15,000. Liberty University (“Liberty” or the “University”) is an accredited institution with 15 colleges and schools, including a law school, medical school, and school of divinity, and more than 700 programs of study from the certificate to the doctoral level. The University is accredited by the Southern Association of Colleges and Schools - Commission on Colleges.

The Liberty University Police Department (LUPD) is a full-service law enforcement agency which is a part of Liberty University’s Office of Security and Public Safety.

C. Background and Scope of Review:

On February 18, 2022, the Department of Education (Department) notified the University that the Clery Group would be conducting a program review of the institution. The focus of the review was to evaluate Liberty’s compliance with the *Clery Act* and its implementing regulations published at 34 C.F.R. § 668.41 and § 668.46. Liberty University was selected for this review as the result of the Department receiving complaints that alleged that the University engaged in a pattern of conduct that resulted in serious violations of the *Clery Act*. In addition, as part of the Clery Group’s oversight activities, it monitors media coverage of incidents of crime on campus. Taken together, the complaints and media accounts raised serious concerns about Liberty’s compliance and the effects that its noncompliance might have on victims of crime and the accuracy and completeness of the University’s crime statistics and other campus safety information.

The Department’s review began pursuant to the filing of a credible complaint in May 2021. This complaint alleged that Liberty had committed serious and systemic violations of the *Clery Act* and other campus safety and civil rights laws. Shortly thereafter, in July 2021, 12 “Jane Doe” plaintiffs, later joined by 10 others, filed a lawsuit that alleged ongoing safety concerns and revictimization by the University after reporting acts of sexual violence. Over time, other concerns were brought to the Department by current and former students and employees, other stakeholders, and through other information-gathering methods. The objective of this review was to further assess the nature and extent of any violations that may be identified and to ensure that effective remedial action is taken, as needed.

The review team selected both random and judgmental samples of LUPD’s incident and investigative reports, arrest records, daily crime logs, and other relevant materials from calendar years 2016 through 2022. The review team also selected samples of employee and student conduct records and other reports generated by other CSAs. The review period was selected to test the accuracy and completeness of statistical and informational disclosures that were included in the ASRs produced by the University in 2016 through 2022. Selected incident reports from the above referenced samples were cross-referenced to LUPD’s daily crime logs to ensure that crimes occurring within the patrol jurisdiction had been properly classified and recorded. This

program review report (PRR) includes several findings of violations that have been identified by the Department. Some of these issues have already been brought to the attention of University officials and their representatives in prior conversations. In light of the ongoing concerns about these failures and their negative impact on the campus community, the review team has provided detailed instructions on the remedial measures that must be taken by the institution. The Department continues to receive information regarding these and other areas of concern relevant to campus safety. The review team will follow up on these matters with the institution as necessary.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in this report concerning specific practices and procedures of the University must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve Liberty University of its obligation to comply with all of the statutory and regulatory provisions governing the Title IV, HEA programs, including the *Clery Act* and the *DFSCA*.

This report reflects the Department's initial findings. These findings are not final. The Department will issue its final findings in a subsequent Final Program Report Determination (FPRD).

D. Findings:

The Department identified multiple areas of serious noncompliance. Throughout the document, the review team cites the applicable statutes or regulations to which the areas of noncompliance relate. The report also specifies the actions Liberty must take to bring operations into compliance with the *Clery Act* and the Department's regulations.

Finding #1: Lack of Administrative Capability

Citation:

In order 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 a system of internal controls." *34 C.F.R. § 668.16(b)(2)*; *34 C.F.R. § 668.16(c)(1)*. An administratively capable institution also "has written procedures for or written information indicating the responsibilities of the various offices with respect to . . . the preparation and submission of reports to the Secretary." *34 C.F.R. § 668.16(b)(4)*. These

standards apply to all aspects of the Title IV operations, including *Clery Act* compliance. An institution that participates in any Title IV, HEA program is required to cooperate with the Secretary, in the conduct of program reviews and other reviews authorized by law, including by providing timely access to requested records and by providing reasonable access to personnel associated with the institution's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. 34 C.F.R. § 668.24(f)(1)-(2).

Additionally, Federal regulations at 34 C.F.R. § 668.82(a) and (b)(1) require participating institutions to act in the nature of a fiduciary in the administration of the Title IV, HEA programs. Participating institutions must, at all times, act with the competency and integrity required of a fiduciary and, in this capacity, are subject to the highest standards of care and diligence. The requirement to act as a fiduciary applies to all aspects of program administration, including compliance with the *Clery Act* and related laws.

Noncompliance:

Liberty substantially failed to develop and implement an adequate *Clery Act* compliance program during the years under review. The University did not meet its agreed-upon regulatory responsibilities in numerous and serious ways. Such failures call the willingness and the ability of the University to meet its obligations to its students, employees, the campus community, and the Department into serious question.

For these reasons, the Department finds that the University was unable to demonstrate the ability and/or willingness to properly administer the Title IV, HEA programs, which include the *Clery Act* and the Department's regulations during this period. This Finding is supported by the numerous and serious deficiencies identified in this report. It must be noted that many of these violations and their impacts contributed to, and in some cases caused, significant harm to members of the campus community. The provisions of the *Clery Act* establish standards for the creation of a system of campus safety, crime prevention, and consumer protection processes that requires the development and implementation of policies, procedures, programs, and systems that work in concert with each other to make campuses safer and stakeholders more informed. The law relies on enterprise-wide communications and the effective coordination of information and a strong system of internal controls. Strong internal controls ensure that accurate information is effectively and often quickly communicated to responsible officials and vulnerable populations. The Department finds that the University failed to carry out these responsibilities in numerous material respects.

Specifically, the evidence acquired and examined by the Department shows, among other things, that the University failed to: 1) implement an adequate system of internal controls to properly report, investigate, and adjudicate crime, including acts of sexual misconduct; 2) issue Timely Warnings to advise the campus community about criminal activity that may have posed a significant or ongoing threat; 3) issue Emergency Notifications to advise the campus community about emergencies or dangerous situations that may have posed a threat to health or safety; 4) compile and disclose accurate and complete crime statistics in its ASRs and in its reporting to the Department; 5) implement an adequate system to create, manage, retain and retrieve relevant

crime and conduct records in accordance with Federal requirements; 6) identify institutional officials who met the definition of a CSA and adequately notify them of their reporting obligations; 7) prevent retaliation against whistleblowers and other persons trying to ensure compliance with the *Clery Act*; 8) develop and implement required campus safety and crime prevention policies and procedures; and 9) properly identify its buildings and properties in order to categorize them in accordance with Clery Geography definitions.

The record shows that the University failed to exercise sufficient oversight, governance, and coordination over essential activities and workstreams and the actions of officials and departments that were responsible for safety-related functions across the enterprise. The result of these breakdowns was a general failure to properly advise crime victims of their rights and options, to help crime victims access accommodations, protective measures, and support services and to otherwise keep students, employees, other stakeholders, and the larger campus community fully informed of matters that affected their safety and security. These failures caused the University to violate the law and in so doing, compromised the safety and security interests of campus community members that would have accrued to their benefit if the University would have fully complied with all requirements of the *Clery Act*.

As noted throughout this report, the University substantially failed to implement an adequate *Clery Act* compliance program. During the review, it became clear that several of the University's offices did not have the necessary expertise or resources to intake complaints, produce clear incident reports, or manage data in a manner that would make it possible to compile and disclose accurate and complete crime statistics. For example, the Office of Equity and Compliance (OEC), which includes the Title IX Office, was riddled by flawed processes, personnel, and resource deficiencies, and policy conflicts that limited its ability to meet its mission. Similarly, during the review period, two Title IX Coordinators petitioned leadership to replace the system of record known as "Beacon" with a better records management system and to provide training for OEC staff. The Vice President of OEC and Executive Vice President of Inclusion, Diversity, and Equity (IDE) denied the requests. These choices contributed to the OEC's inability to conduct competent investigations and to ensure that the needs of victims/survivors were met in accordance with the requirements of the VAWA provisions of the *Clery Act*.

The University's Clery Compliance Officer is assigned to OEC. To be effective, a Clery Compliance Officer must be able to work across the enterprise, taking in and synthesizing information, reviewing, and refining publicly facing and internal policies and procedures, and providing technical advice on an ongoing basis. Based on interviews and review of documents, the Department has determined that prior to the initiation of the Department's program review, the Clery Compliance Officer was not given the requisite access or authority to perform these functions. Specifically, the review team was advised on multiple occasions during the review period, the Clery Compliance Officer raised concerns about specific and ongoing violations of the *Clery Act*, including, but not limited to, the general failure to issue Timely Warnings and to identify and notify CSAs. During this time, the Clery Compliance Officer also regularly presented recommendations for enhancements of policies, procedures, programs, and systems, most of which were rejected or ignored by senior management.

The administrative impairments that contributed to, and in some cases, caused the violations and weaknesses noted in this report were also evident in the LUPD. The LUPD's structure led to several failures in the issuance of Timely Warnings and Emergency Notifications to the campus community, most acutely during the tenure of the former Executive Vice President of Human Resources, in violation of the *Clery Act*. Until February of 2022, the month the program review was announced, the LUPD was, and had been for many years, controlled by the Human Resources Department (HR). Under University policy, the LUPD police chief is the sole authority to issue Timely Warnings and Emergency Notifications. As discussed in greater detail later in this PRR, HR leadership forbade the Chief and other command staff from issuing Timely Warnings and Emergency Notifications and police officials complied. During interviews with OEC staff, multiple employees stated that on multiple occasions over many years, their office recommended that Liberty issue Timely Warnings and Emergency Notifications in response to reports of Clery crimes and other emergencies and dangerous conditions, but their recommendations were disregarded.

The administrative capability and internal control failures also extended to the LUPD's investigative unit, which was staffed by a single officer for the majority of the review period with few process controls and minimal oversight. The review team identified numerous cases where the investigative processes resulted in the misclassification and underreporting of Clery offenses with a corresponding effect on the accuracy and completeness of the University's crime statistics. All incidents that were referred to "Investigations" were subject to reclassification without any communication or consultation with the officer(s) who originally responded to the incident and wrote the incident report. Additionally, several incidents that were referred to Investigations to be unfounded without any clear showing that the initial report was false or baseless, the regulatory requirement for taking such action. This was especially common with respect to sexually based offenses, including rape and fondling cases, many of which were originally classified using non-specific or less specific codes such as sexual assault.

As noted, for most of this review period, the LUPD investigative unit consisted of one detective to investigate crime.¹ That investigator was responsible for a number of unfounded reports noted in this PRR. It must be noted that Liberty did not indicate that any reported crimes were unfounded during the review period in its ASRs or in its responses to the Department's annual data collection.

The Department has determined that victims of sexual crime that occur on the University's Clery Geography are often fearful of reporting their incidents. For instance, the Department has found that numerous victims of sexual assault have been reluctant to speak up about their assaults because of fear of reprisal. In fact, over the course of this review period, several sexual assault victims were punished for violating the student code of conduct known as "The Liberty Way," while their assailants were left unpunished. Consequently, victims of sexual assault often felt dissuaded by Liberty administration's reputation for punishing sexual assault survivors rather than helping them. Such fears created a culture of silence where sexual assaults commonly went unreported. In addition, several whistleblower faculty members who have spoken up about the

¹ In the latter stages of the review period, the LUPD assigned a second officer to assist the primary investigator as part of his duties.

University's failure to fix the problem of fear of reprisal among sexual assault victims were intimidated or terminated in retaliation for speaking up. This has resulted in a systemic apprehension among Liberty's workforce about raising employee concerns about the University's treatment of sexual assault victims and other campus safety-related issues.

As noted throughout this report, Liberty CSAs were neither properly identified nor were they adequately advised of their crime reporting obligations. Two primary purposes of the CSA requirement are to provide a web of reporting options for victims and witnesses and to ensure the flow of accurate and complete information from mandatory reporters to the authority designated to receive reports and compile statistics. The effects of this failure not only affected the accuracy and completeness of the University crime statistics, it also negatively impacted crime victims and had detrimental cascading effects on enterprise-wide compliance. There are strong indications that this condition has reached many corners of the institution, including the Department of Intercollegiate Athletics. The Senior Associate Athletics Director was responsible for providing information about crimes and student conduct violations committed by athletes to the Office of Community Life (OCL). Based on the Department's review, it appears that not all of these cases were turned over to OCL but were instead handled within the athletic department without the knowledge or involvement of OCL. The nature and extent of violations related to this area of concern will become clearer once the comprehensive file review is completed and the results are submitted to the Department.

Liberty also failed to maintain records documenting crime and violations of its student and employee codes of conduct in accordance with Federal requirements. For example, the Department of Intercollegiate Athletics was unable to produce records that document its important role in the conduct process. To the extent that records are created, many of them are in the form of email. The reliance on email was so extensive that the email platform essentially became a system of record for certain departments. One of the problems with this approach is that, under the University's policies, email messages, and consequently student-athlete conduct data, are not stored in a manner that complies with Federal record retention requirements. This failure was evidenced by the University's inability to produce key email messages sought by the Jane Doe² plaintiffs during the discovery phase of their lawsuit.³ Liberty eventually conceded that many of the requested emails had been deleted even though less relevant messages continued to be readily available.

In point of fact, signs of Liberty's administrative impairments emerged before this program review ever began. As noted in the Background and Scope of Review section of this report, the Department started a limited-scope compliance assessment in May 2021 in response to various student complaints. From the outset of the assessment, the University was unable to produce data in accordance with stated due dates. Since that time, this pattern has continued as the

² Jane Doe plaintiffs refer to the 22 plaintiffs who sued Liberty for various failures to adequately protect them from sexual violence and/or failing to provide required services and assistance following such violence.

³ In an interview with the plaintiffs' attorney, the review team learned that numerous records requested during discovery had been destroyed or could not be located. Through its interview with other current former and current students and employees, the review team has learned of more recent cases where individuals were unable to access records for their cases.

institution has consistently failed to produce data requested by the Department on the established dates for production. Due dates for production are not advisory or mere aspirational targets. They are, in fact, deadlines. The Department understands that institutions will, at times, need an extension and some flexibility is generally granted. However, in this case, Liberty required additional time on nearly every occasion, including in order to fulfill even the most basic requests for documents and information that should have been readily available. Many of these delays seem to have been caused by administrative deficiencies, not the least of which were the systemic weaknesses in the way records were created and managed followed by multiple layers of internal review of records from past periods. For example, the University did not complete the production of materials specified in the Department's program review announcement letter until almost seven weeks after the due date.⁴ Another example was a November 9, 2022, data request that was not completely fulfilled until February 22, 2023, some 13 weeks after the due date.⁵ The ability to produce requested information timely to the Secretary is a key standard of administratively capability and administratively capable institutions are able to meet these obligations without any diminution in the ability to educate students or provide for the safety of the campus community. Liberty was unable to meet this standard at key points in the program review process.

Another clear indicator of Liberty's serious and persistent administrative impairment relates to the University's failure to initiate and sustain remedial action on the findings of the previous campus crime program review conducted by the Department. On March 23, 2010, the Department issued its FPRD to close a program review that was initiated as the result of the Department's assessment of a complaint filed by a survivor of sexual violence. The victim alleged that Liberty violated numerous provisions of the *Clery Act* as the law existed at that time.

In this context, it is important to note that the very limited number of incidents that were examined during this review occurred in 2005, long before the VAWA provisions became part of the *Clery Act*. At that time, the law largely treated crimes of sexual violence substantially the same as other offenses. Even under that legal standard and the limitations on the scope of the review, the Department identified serious violations related to the classification and counting of crimes, the compilation and disclosure of accurate and complete crime statistics, the issuance of timely warnings, the maintenance of a compliant crime log, the development and implementation of policies and procedures, and the production and distribution of the ASR. The actual harm caused by the violations documented in the Department's 2010 FPRD cannot be overstated. The victim attested that the crimes perpetrated against her and the indifference and revictimization that followed had a painful and profound effect on her life. Upon learning of this new investigation, this survivor reached out to the Department to implore the agency to take decisive action in the interest of the numerous other victims of sexual violence that she came to know during her time as a Liberty student, through her involvement in the Jane Doe litigation, and in her interactions with current and former Liberty students and employees since that time. As a result of the earlier program review, the University was specifically advised to address these deficiencies and the conditions and weaknesses that permitted them to occur. The most senior officials at Liberty asserted that comprehensive remedial action would be taken. While some

⁴ The due date was March 3, 2022.

⁵ The due date was November 23, 2022.

actions were taken, including replacing the Chief of Police, it is now clear that the efforts were not adequate or comprehensive. The Department also takes notice that the University has not yet followed through on the safety enhancements that it pledged would be made as part of its settlement with the Jane Doe plaintiffs such as installation of the blue phones.⁶

The Department has started to see indications of certain process improvements. The Department will continue to work with the institution throughout the review process and will continue to monitor its progress once the review is concluded. The need for such monitoring is evident based on the institution's inability and/or unwillingness to take effective remedial action as it claimed it would back in 2010. At that time, the University made some effort to establish a compliance program but simply failed to build it out in a manner that was sufficient to meet the needs of an already large, complex, and rapidly growing institution. FSA finds that the institution's structural issues contributed to the violations noted here and the underlying dynamics that made it easier for them to occur in the first place. The challenges created and compounded other problems and deficiencies in the University's campus safety and crime prevention programs. Now, years later, the full effects of these failures are still coming into full relief and many of the known effects will be presented in this PRR.

As a stand-alone matter, FSA finds that Liberty's failures to comply with the *Clery Act's* sexual assault prevention and response requirements provide more than a prima facie basis for this finding. The University's persistent failures in this regard have caused real harm to members of the campus community and are indicative of a lack of institutional control, especially in light of the credible information reported to institutional officials at several points over many years. Moreover, the University's failures, which touch on nearly every aspect of *Clery Act* compliance, clearly demonstrate the institution's most serious administrative impairments and its failure to establish a system of adequate internal controls.

Impaired administrative capability increases the likelihood that the statutes and regulations that govern the Title IV, HEA Programs will not be followed. With regard to the *Clery Act*, such impairment may result in an institution's systemic failure to provide students and employees with important campus crime information and services that are essential to their safety and security. Impaired administrative capability and weak internal controls are an indication that an institution lacks the ability or willingness to comply with Federal regulations.

Required Action:

As a result of this violation, Liberty is required to take all necessary remedial actions to cure the violations identified in this program review report and to adequately address the organizational weaknesses that contributed to the violations. The University is required to develop and implement a system of policies and procedures under each finding in this report to ensure that these and similar findings do not recur. Through this process, the University will have

⁶ While many of the enhancements that Liberty agreed to make are not specifically required by the *Clery Act*, the failure to take the agreed-upon actions in a timely manner is instructive as the Department evaluates the institution's commitment to making the campus safety, crime prevention, and consumer protection improvements that must be made to bring the institution into compliance with the *Clery Act*.

established a comprehensive remedial action plan that will be evaluated and approved by the Department.

Finding #2: Inaccurate and Incomplete Informational Disclosures

Citation:

The *Clery Act* and the Department's regulations require institutions to include several policy statements in their ASRs. These disclosures are intended to inform the campus community about the institution's security policies and procedures, and the availability of programs and resources as well as channels for victims of crime to seek recourse. In general, these policies include topics such as the law enforcement authority and practices of campus police and security forces, incident reporting procedures for students and employees, and policies that govern the preparation of the ASR itself. Institutions are also required to disclose their drug and alcohol education and prevention programs. Policies pertaining to sexual assault education, prevention, and adjudication and policies governing the issuance of Timely Warnings and Emergency Notifications and certain operational details about the institution's emergency evacuation and response procedures also must be disclosed in detail. The institution must include all required informational and statistical disclosures in a single comprehensive ASR. With the exception of certain drug and alcohol program information, cross-referencing to other publications is not sufficient to meet the publication requirements of the *Clery Act*.

20 U.S.C. § 1092(f); 34 C.F.R. § 668.46(b).

Federal regulations also require any institution that provides on-campus housing to develop and implement policies and procedures it will follow when a student who resides in those on-campus housing facilities is identified as missing and to publish these policies in their ASR. The policies must include statements that indicate the individual or organizations to which students, employees or other individuals should report that a student has been missing for 24 hours and require that any missing student report be referred to the institution's police or campus safety department or local law enforcement. Also, students who reside in on-campus housing must be informed of the option to identify a contact person who will be informed in the event that they are missing, that their contact information will be registered confidentially, and for students who are under 18 years of age, a statement that their custodial parent will be notified. The policy must indicate that in all instances law enforcement will be notified. Also, the procedure must include a statement that when a student is determined to be missing for 24 hours that their contact person will be notified, if they are under 18 that their custodial parent will be notified and that in all instances, that law enforcement will be notified, all within 24 hours of the determination that they are missing. *34 C.F.R. § 668.46(h).*

Federal regulations also require institutions that provide on-campus housing to publish an annual fire safety report that must include fire statistics for each on-campus student housing facility for the previous three years. The statistics must include the number of fires, the cause of each fire, the number of persons who received fire related injuries, the number of deaths caused by fires as well as the value of any property damage caused by fire. The report must additionally contain, at a minimum, a description of the fire safety system in each housing facility, the number of fire

drills held during the previous year and the institution's policies and procedures pertaining to fire safety. The policy statements must address any rules regarding electrical appliances, smoking and open flames in student housing and provide the procedures that students and employees should use in the case of a fire as well as procedures for evacuation during a fire. Statements must also include any policies regarding fire safety education and training programs provided to students and employees and any plans for future improvements in fire safety.

20 U.S.C. § 1092; 34 C.F.R. § 668.49.

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

Noncompliance:

Liberty failed to develop and implement required statements of campus safety and crime prevention policy, procedure, practice, and programs and to include accurate and complete informational disclosures in its ASRs. This condition was noted in each year of the review period and in the 2010 FPRD, which is almost 20 years of noncompliance. The review team identified several violations in the University's original and revised ASRs produced during the review period. These violations are further evidence of the significant administrative capability issues noted in Finding #1 and throughout this report.

The Department uses a three-pronged test to evaluate an institution's compliance with the policy and procedural development, implementation, and disclosure requirements. The first inquiry is simply to determine if the institution has included a required statement in the ASR or other required document. If that requirement is met, the Department will determine if the policy or procedure fit into the parameters established in the law for that requirement. If both of those requirements are met, the Department will review case documents and conduct interviews to determine if the compliant disclosures actually reflect institutional policy and whether they were followed generally or in a specific case. While the review team found instances where certain policies and procedures were missing completely or not developed accurately or fully,^{7 8} the more concerning and frequent problem was that the inclusion of statements of policy and procedure did not accurately describe actual institutional practices. In most of these cases, the

⁷ Examples of this condition include the omission of instructions on how to register a confidential emergency contact as part of the missing student notification procedure. Additionally, information about its emergency evacuation and response (EER) procedures, such as results about the annual testing of the procedures, is missing. The institution's EER disclosures were further compromised by the inaccurate information about the issuance of Emergency Notifications.

⁸ Institutions are not required to include information about their daily crime logs or Clery Geography in their ASRs, but if they choose to do so voluntarily, the information in these disclosures must be accurate and complete. Liberty chose to include information about its daily crime logs that was not accurate in light of the deficiencies outlined in Finding #8. The University also included maps in its 2016, 2017, and 2018 ASRs that did not accurately depict its Clery Geography as outlined in Finding #9.

published disclosures appeared to meet Federal requirements but simply did not align with operations at the enterprise or departmental level.

Based on interviews with current and former Liberty officials and on the review team's observations and independent analysis, the Department has found that many of the findings of noncompliance and other systemic weaknesses identified during the program review can be tracked to weaknesses in the policy development and implementation process, and lack of effective oversight of officials and offices to monitor adherence to such directives and standards, and of effective institution-wide communication and training efforts to create a clear and common understanding of the rules and institutional prerogatives that were intended to guide campus life at any given point.

This condition is most evident in the following areas:

1. **Failure to publish accurate and complete statements of policy, procedure, and programming intended to prevent acts of sexual violence.** This exception applies to multiple sections of the disclosures in Liberty's ASRs, the rights and options information for victims of sexual violence, and in the ongoing awareness and prevention programs required by the VAWA provisions and the Campus Sexual Assault Victim's Bill of Rights. Information related to these exceptions are described in detail in Findings #1, #3, and #5 and apply to each year in the review period.
2. **Failure to publish accurate statements of policy and procedures regarding Emergency Notifications.** This exception is described in detail in Finding #6 and applies to each year in the review period.
3. **Failure to publish accurate statements of policy and procedures regarding the issuance of Timely Warnings.** This exception is described in detail in Finding #7 and applies to each year in the review period.

This list of policy deficiencies, while not exhaustive, combined with the violations and contributing factors noted in this Finding, raise serious concerns for the Department. The review team acknowledges that some improvements have been noted in these areas, beginning a few months after the commencement of the Clery Group's compliance assessment in May 2021 and again more recently as a result of the remedial actions that were initiated by Liberty based in part on the concerns expressed by the review team. Liberty has conceded several significant deficiencies in these and other areas and has opened a dialog with the Department so that the parties can work collaboratively on improvements going forward. Nevertheless, it is evident that Liberty has consistently failed to develop, implement, and follow a set of accurate, complete, and effective policies and procedures as required by the *Clery Act*.

The *Clery Act* is first and foremost a consumer information initiative based on the premise that students and employees should have the information they need to take steps for their own safety and security. Accurate and complete disclosure of policies and a clear articulation of the institution's programs are essential to that goal and allow the campus community to be more

fully informed and actively provide for their own safety. Any failure in this area deprives the campus community of vital campus safety information and effectively negates the intent of the *Clery Act*.

Required Action:

As a result of these violations, Liberty must continue to develop its campus safety and *Clery Act* compliance programs, as needed, to reasonably ensure that these violations or similar deficiencies do not continue to recur. The University is strongly advised to carefully review all statements of campus safety and crime prevention policy and procedure and to take all necessary actions to ensure that all informational disclosures are compliant with Federal law and reflect current institutional policy. Copies of all new and revised informational disclosures must be part of the institution's response. Once the institution's new and revised policies and procedures are reviewed and approved by the Department, Liberty will be required to incorporate this material into its next ASR and to provide updates to the campus community about its efforts to improve and enhance its campus safety programs. Because of the timing of this directive and other factors, the Department will not require the University to make any changes to its 2022 ASR or any prior reports. Instead, institutional officials are directed to ensure that the contents of the 2023 ASR are, in fact, accurate, complete, and fully compliant with all Federal requirements.

In addition, the University must develop an action plan that will ensure that all new and revised statements of campus safety and crime prevention policy, procedure, and programs will be fully implemented and consistently communicated to the campus community.

As part of its response to this PRR, Liberty must ensure that its new and revised policies and procedures are fully implemented as published and that they align with The Liberty Way and all other directives of the institution.⁹ As part of this process, the University must also evaluate its current Amnesty policy and ensure that it aligns with all policy directives of the institution and that the details of the Amnesty policy are clearly and consistently communicated to the entire campus community.

Furthermore, Liberty must review and revise its missing student notification procedures. Liberty must review all of its incident reports that indicate one or more missing students from 2016 to Present. The University must also detail the actions taken in response to each report of a missing student. For any student who was missing for 24 hours or more, Liberty must detail in its response if the student registered an emergency contact and if so, whether that individual was appropriately contacted. Liberty must also provide credible evidence that students were provided the opportunity to register an emergency point of contact. Credible documentation must be provided in support of all claims regarding this component of the institution's response. The concerns about Liberty's missing student notification procedures are heightened due to the

⁹ The Department is not, in any way, calling into question the legitimacy of the University's doctrinal views or positions on controversial issues, *per se*. Rather, the Department's focus is on the effect that institutional policies have on compliance with Federal requirements.

fact that the Department became aware of approximately 40 reports¹⁰ of students who went missing for some period of time between 2016 to Present.

As noted above, copies of all new and revised informational disclosures must accompany the University's response to this program review report. Once reviewed and approved, these new and revised informational disclosures must be incorporated into the University's 2023 ASR.

Based on an evaluation of all available information including the University's response, the Department will determine if additional actions will be required and will advise the University accordingly in the FPRD.

Finding #3: Failure to Comply with Violence Against Women Act Requirements

Citation:

Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) amended the *Clery Act* to expand and enhance the sexual violence prevention and response requirements that apply to all institutions that participate in the Title IV, FSA programs. These requirements became effective on July 1, 2015, and therefore apply to the entire review period in this case. VAWA expanded the crime categories for which institutions must compile and disclose crime statistics. The existing categories of rape, fondling, incest, and statutory rape were supplemented by the offenses of dating violence, domestic violence, and stalking as defined in *Section 40002(a)(20)* of VAWA. *34 U.S.C. § 12291(a)*.

The VAWA requirements also expanded the policies, procedures, programs, and protocols required by the Campus Sexual Assault Victim's Bill of Rights. One of the most important components of this subsection requires institutions to develop and deliver ongoing sexual violence education and prevention programs and campaigns. *34 C.F.R. § 668.46(j)*. Students and employees must also be provided with detailed information about a range of vital topics, including the rights and options for reporting, the importance of preserving evidence, and the process for securing accommodations and protective measures. *34 C.F.R. § 668.46(b)(11)*.

Additionally, an institution's sexual violence prevention programs and publications must clearly communicate that all actions of sexual violence are prohibited. Through appropriate programming and publications, institutions provide the definitions of dating violence, domestic violence, sexual assault, stalking, and consent as those terms are used in the institution's policies and are defined in the applicable jurisdiction. Institutions must also provide detailed programming on primary prevention, risk reduction, and safe and positive options for students and employees to practice bystander intervention. *34 C.F.R. § 668.46(j)*.

Institutions are also required to provide detailed information about the policies and procedures that will be used in their investigative and adjudicative processes in a case of an alleged incident of sexual violence. This disclosure must address each type of disciplinary proceeding used by

¹⁰ Not all of these reported cases would have required a missing student notification.

the institution; the standard of evidence that will apply; the steps in the hearing process, anticipated timelines, and the decision-making process for each type of disciplinary proceeding; how to file a disciplinary complaint; and how the institution determines which type of proceeding to use based on the circumstances of the allegations. The disclosure must also describe the range of sanctions that may be imposed in cases where the accused is found responsible. 34 C.F.R. § 668.46(k)(1).

An institution's programming and publications must include a clear statement that in a case of an alleged incident of sexual violence, the institution will provide a prompt, fair and impartial process from initial investigation to final result. This disclosure must describe the annual training that will be provided to all individuals that will participate in investigations and/or proceedings. The disclosure also must advise that both the accuser and the accused will have the same opportunities to have others present during any disciplinary proceeding or meeting. The notice must clearly state that each party is entitled to be accompanied by an advisor of their choice and must spell out the restrictions that will apply to the advisor's participation and that these limitations will apply to all such advisors. An institution's processes must provide for the simultaneous, written notification of the parties regarding the result of the disciplinary proceeding, a rationale for the determination, information about any changes to the result, notification of when and how the results will become final, and any appeals procedures that may apply. 34 C.F.R. § 668.46(k)(2).

It is essential for institutions to understand that the VAWA rules work in concert with the requirements of Title IX of the Education Amendments to the HEA of 1972. Title IX protects student and employees from discrimination based on sex, which includes sexual harassment and sexual violence in education programs or activities. Title IX applies to institutions that receive Federal financial assistance directly from the Department of Education or through state and local educational agencies.

Noncompliance:

Liberty failed to comply with numerous sexual violence prevention and response requirements of the *Clery Act*, including those that were added by Section 304 of VAWA. These serious violations persisted throughout the review period. These provisions, the newest of which went into effect in July 2015, work with the original reporting requirements related to crime reporting, statistical compilation and disclosure, daily crime log maintenance, CSA identification and notification, and the issuance of warnings and notices, among other requirements. As noted throughout this report, the Department has identified serious and, in some cases, systemic failures in these areas.¹¹ The violations identified throughout this report are sufficient to ground this Finding without further elaboration. Most of an institution's obligations under the *Clery Act* are triggered by a report of a covered crime. From there, an institution's ability to provide a web of reporting options, take in reports accurately, document those reports accurately, and provide accommodations and protective measures or help victims access those reports from public authorities are part of a series of action steps that must be undertaken and managed in an

¹¹ See Findings #1, #2, #4, #5, #6, #7, and #8 for violations that can be directly linked to the VAWA/sexual violence deficiencies noted here.

effective, timely, and nonjudgmental manner. Simply stated, none of this consistently happened at Liberty during the review period.¹²

The following are examples of the University's VAWA deficiencies:

- Liberty failed to produce accurate and complete written resources that describe the rights and options of a student or employee who reports that they were the victim of an act of sexual violence regardless of whether the offense occurred on or off campus.
- Liberty failed to advise victims of sexual violence in writing that the institution is required to assist them in notifying law enforcement authorities about the incident.
- Liberty failed to produce a written notification to be provided to victims of sexual violence about available options for accommodations or flexibilities related to academic, living, transportation, and work situations and available protective measures. The *Clery Act* requires this notification to instruct individuals how to access these services and emphasize that such resources are available regardless of whether the victim chooses to report the crime to campus police or local law enforcement.
- Liberty failed to produce a written notification to be provided to victims of sexual violence concerning the availability of support services, including counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other victim services that are available on campus or in the near-campus community.
- Liberty failed to provide annual training to all officials involved in the investigation and adjudication of alleged cases of sexual violence and also failed to provide detailed information to the campus community about such training.

These and other violations caused actual harm to victims that was readily apparent to many of the institutional officials who were responsible for assisting victims of crime. The Department found through its review of records and through interviews that numerous employees with responsibilities for campus safety, sexual assault prevention and response, residential life, and other areas of campus life tried to call attention to the University's inability to respond to the needs of students and employees over many years. They also called attention to a lack of training, inadequate resources, and a paucity of clear, consistent, and effective policies, programs, and publications.¹³

In the face of these difficulties, several of these officials volunteered to create materials for the University, often on their own time, using their own resources. Their offers were rejected by

¹² Information developed during the Department's review indicates that many of these conditions predate the review period.

¹³ The Department acknowledges that some discernible progress was detected in these areas. These improvements roughly track to the initiation of the Department's compliance assessment in May 2021 that ultimately led to the opening of the program review in February 2022.

senior leadership in IDE. Multiple staff members reported in their interviews with the Department that this was true even after they advised leadership that the deficiencies in the operation were causing Liberty to violate the law and that these failures could result in enforcement action. Employees reported that upon hearing these concerns, the now former Executive Vice President of IDE dismissed their concerns as merely “the cost of doing business,” which was interpreted differently by those who heard the comment: 1) that the cost of taking effective action to comply would have been more expensive in the here and now than the possibility of future enforcement action that might never materialize or 2) that IDE leadership simply did not want to implement certain provisions of the sexual violence prevention and response requirements and decided that exposing the institution to the specter of future sanctions was preferable to implementing policies and programs with which they did not agree.

The review team repeatedly heard that many of the most serious challenges to creating an effective and supportive sexual violence prevention and response program resulted from longstanding conduct rules established by The Liberty Way¹⁴ and the institutional approach to victims that resulted from it. Under The Liberty Way, acts of sexual misconduct, consensual sex, and alcohol policy violations are all top-line offenses. As a result, the conduct monitoring and enforcement system established by The Liberty Way created an environment where people experiencing violence at the hands of an intimate partner or persons who were incapacitated by alcohol or drugs could be subject to disciplinary action if they reported the offense.

The Liberty Way has set out guiding principles for resident assistants (RAs) and the LU Shepherd¹⁵ and has had a profound impact on the enforcement of the University’s codes of conduct. For residential students, the code of conduct has endowed RAs and other officials across the University with broad authority to aggressively enforce the policy using a variety of tactics and methods, including the surveillance of other students and employees. The training provided to RAs and the authority vested in them has served to confirm and reinforce the common understanding of the role they were to play in the enforcement of campus roles. RAs have also been granted discretion to initiate complaints against campus community members that could carry significant penalties including large fines, revocation of privileges, and academic consequences. The Department has also learned that individuals who reported incidents of sexual violence or other offenses were frequently questioned about their own conduct that may have allegedly contributed to or, in some way, facilitated the crime, such as consumption of alcohol. Student complainants and witnesses were also questioned about issues such as their sexual history, sexual orientation, and their manner of dress, all of which are irrelevant to an analysis of *Clery Act* compliance.¹⁶ Many survivors of sexual violence told the review team that the University’s policies, whether intentionally or not, created serious hardship for victims and

¹⁴ The Department does not, in any regard, dictate or question the doctrinal views, missions, visions, or values of any institution. However, the Department must call attention to any factor that may have demonstrably contributed to violations. The University will have to reconcile its approach to such issues with the law, which has been accomplished by many institutions with different approaches to these complicated issues.

¹⁵ The LU Shepherd trains the “Resident Shepherds” and “Community Group Leaders,” who are focused on peer mentorship, life skills, and counseling.

¹⁶ Issues such as manner of dress or prior sexual history are irrelevant to the proper administration of the *Clery Act* and Title IX by institutions and to the Department’s assessment of an institution’s compliance, notwithstanding how these matters might be treated under an institution’s policies and procedures and its codes of conduct.

caused many to refrain from coming forward with reports of crime or violations of the University's codes of conduct.

Numerous interviewees asserted that the challenges created by The Liberty Way were further complicated by the University's amorphous Amnesty policy. Many institutions have an amnesty policy that is intended to allow victims and witnesses to come forward to report crimes and access accommodations, protective measures, and other harm reduction and support services. Some Liberty officials claim that the institution had such a policy but concede that it was poorly defined and barely communicated to campus community members, including RAs who were primarily responsible for enforcing The Liberty Way. The Department has also learned that the formation of the Amnesty policy was complicated by internal conflicts about whether it should exist at all and whether the Amnesty policy was consistent with the institution's mission, vision, and values. These conditions combined to ensure that the University did not communicate a clear message about the policy and how, if at all, it aligned with The Liberty Way.¹⁷

The consequences of the University's failures to develop and implement an adequate sexual violence prevention and response program had devastating impacts for victims. Under the *Clery Act* and Title IX, the process of addressing sexual violence starts with a report by a victim or witness. As noted throughout this report, Liberty lacked the internal controls necessary to manage an effective, accessible reporting process, free of recrimination, and revictimization. These conditions caused some victims of crime to not report incidents to the University in the first place and contributed to myriad problems down the line, ranging from the creation and management of useful incident reports to the compilation and disclosure of accurate, complete, and fully reconciled crime statistics, and the timely provision of accommodations, protective measures, and support services to survivors as required by the law and the institution's own policies. As noted in Finding #5, the effect of these conditions on the accuracy and completeness cannot be overstated. One of the most important and disturbing outcomes is that there is no way to know how many victims simply refused to report or who "dropped out" of the institution's reporting processes without getting the help they needed.

The Department is aware of multiple cases that demonstrate the negative effects that these policy, procedural, and programmatic deficiencies had on the University's approach to incidents of sexual violence and the victims who reported them. As one example, the review team calls attention to LUPD Incident #19-02750.¹⁸ In this case, a victim reported that she was raped. The victim stated that in furtherance of the attack, the perpetrator slapped her, pulled her hair, and threatened her by reminding her that he carried a knife. The perpetrator also engaged in coercive, intimidating, and manipulative behaviors. Despite these reported facts, the investigator unfounded this case based on a claim that the "victim indicates that she consented to the sexual act." In point of fact, the victim's own statement merely indicated that she "gave in" in an

¹⁷ The Department notes that the most recent iteration of The Liberty Way, issued on September 14, 2022, evidences some development of the Amnesty policy, and provides more clarity about its provisions.

¹⁸ The Department notes with some irony that this incident, which was improperly unfounded by LUPD Investigations, was included in the University's campus crime statistics because the Clery Compliance Officer, a former police officer himself, realized that the incident had been mishandled at several points in the process and unilaterally determined that the incident had to be counted and disclosed as a Clery-reportable crime.

attempt to get away from the perpetrator. To state the obvious, “consent” acquired by threat or force is no consent at all. To make matters worse, it is now clear that the initial report was mishandled by an LUPD officer, and in that process, the investigator, and the LUPD at large, failed to gather more information about two other incidents of sexual assault reported by the victim.

As shown by this one example, the violations noted above and their impacts on the lives of students and employees caused excessive and ongoing harm. Multiple victims reported to the review team that they felt that the reporting process at Liberty further complicated an already difficult time in their lives and that they would have been better off if they had not reported these crimes in the first place. The facts of this case and others like it are not credibly in dispute and neither is the fact that Liberty’s policies and procedures and approach to crimes of sexual violence made it impossible for the University to comply with the VAWA provisions of the *Clery Act* and Title IX during the majority of the review period.

Based on interviews with students and employees, the Department finds that The Liberty Way effectively acts as a deterrent to optimal levels of crime reporting. The VAWA provisions of the *Clery Act* set a heightened standard for sexual violence prevention and response efforts on America’s college campuses. The policies, procedures, and programs created by VAWA work in concert with Title IX and other campus safety, crime prevention, and civil rights initiatives to make sexual violence less likely and to ensure that survivors receive the accommodations, protective measures, and support services they need and that they are provided with options to seek redress through campus conduct processes or the criminal justice system. Accurate, complete, and clear information about the law and an institution’s policies and programs are essential to the consumer education and protection goals of the law. Any failure to comply deprives the campus community, especially survivors of sexual violence, of vital information and support that they need and effectively negates the intent of the *Clery Act*.

Required Action:

As a result of these violations, the University is required to take all necessary remedial actions to address this violation and all others identified in this program review report. In addition, the University must develop and implement a system to develop improvements in its policies and procedures to ensure that this finding does not recur. Specifically, Liberty is advised to carefully review all statements of policy and procedure and revise them as needed to ensure that all informational disclosures are compliant with Federal law and accurately reflect current institutional policy.

As part of the response, Liberty must develop and implement an effective strategy to reconcile its sexual violence prevention and response policies, procedures, and programs with The Liberty Way and Federal law. As part of this process, the University also must revise any conflicting policies, procedures, and programs, including, but not limited to its Amnesty policy and The Liberty Way. Once all new and revised policies are reviewed and approved, the institution will be required to incorporate this material into its 2023 ASR. The University will also be required

to include information about its Amnesty policy in other publications and to incorporate it into its ongoing awareness and prevention programming.

The institution must submit a copy of each version of The Liberty Way and the Amnesty policy that was published during the review period (2016 to Present). Copies of these publications and of all new and revised policies, procedures, and programmatic materials must accompany the University's response to this PRR.

Based on an evaluation of all available information including the University's response, the Department will determine if additional actions will be required and will advise the University accordingly in the FPRD.

Finding #4: Failure to Identify and Notify Campus Security Authorities and to Establish an Adequate System for Collecting Crime Statistics from All Required Sources

Citation:

The *Clery Act* and the Department's regulations require institutions to compile and publish accurate and complete statistics concerning the reported occurrence of the following crimes on campus: homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assaults, burglary, motor vehicle theft, and arson. Institutions must also publish statistics providing the numbers of arrests and disciplinary actions related to violations of Federal, State, or local drug, liquor, and weapons laws. *34 C.F.R. § 668.46(c)(1)(B)*. To comply with these requirements, institutions must develop a system that allows for the collection of incidents of crime reported to any CSA. *34 C.F.R. § 668.46(c)(2)*. 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)*. Among other things, CSAs serve as key conduits for the reporting of crimes covered by VAWA, including incidents of dating violence, domestic violence, sexual assault, and stalking. *34 C.F.R. § 668.46(c)(1)(iv)*.

Noncompliance:

Liberty failed to effectively collect statistics for incidents of crime reported to CSAs and to include them in its campus crime statistics. As noted throughout this report, the University did not have structures and processes¹⁹ in place to identify and notify institutional officials who are or were CSAs.²⁰ CSAs perform a vital service and create the web of reporting options that are

¹⁹ Institutions have flexibility to develop and implement procedures and processes to identify CSAs and to notify them about their crime reporting obligations, so long as those practices ensure that the institution achieves the intended purpose of the regulation, which is to identify incidences of Clery-reportable crimes.

²⁰ The Department has discussed the importance of providing training for CSAs on an ongoing basis. While there is not a specific requirement in the law obligating institutions to provide training to CSAs, it is practically impossible to comply with the law without such training. In a letter dated January 28, 2023, from the Vice President of Equity Compliance, Liberty advised the review team that it has recently undertaken its first effort to identify, notify, and train CSAs.

an essential part of facilitating the intake of information regarding incidents of crimes that are reported to them. From there, this information must be used for a variety of purposes, including, but not limited to, the compilation and disclosure of accurate and complete crime statistics. This information must also be evaluated to determine if a Timely Warning or Emergency Notification must be issued. Furthermore, of special importance to victims of sexual violence, this information may be used in support of investigative and adjudicative processes and the timely delivery of accommodations, protective measures, and support services. Given the size and complexity of the institution, Liberty's rudimentary processes for identifying and notifying CSAs, which were adopted in 2017 and remained in place until the commencement of the Department's compliance assessment in May 2021, were insufficient to meet the need as supported by the multiple failures documented in this report.

In addition to the collection of accurate crime statistics, the reporting of crimes from the individual reporting to the CSA and then to the LUPD, permits, when necessary, the issuance of Timely Warnings and Emergency Notifications. Fast action in such cases increases the situational awareness of the entire campus community and empowers individuals to play an active and informed role in their own safety. In order for this to occur, the *Clery Act* requires the institution's ASR to include a "list of the titles of each person or organization to whom students and employees should report the criminal offenses..." for purposes of issuing Timely Warnings and of compiling the annual crime statistics. 34 C.F.R. § 668.46(b)(2)(iii).

From the inception of the *Clery Act* to 2017, the Chief of the LUPD has been charged by the University with compiling crime statistics used to prepare the ASR. In fact, until 2017, the day-to-day *Clery Act* compliance functions were assigned solely to the LUPD. The Department was not provided any evidence that the LUPD received any training on the *Clery Act* or were trained or experienced in setting up a compliance program. As time went on, Liberty did adopt a process where the University's General Counsel would send out an email to certain University personnel to attempt to gather information about Clery crimes that were reported to individuals who met the definition of CSAs. The first email was sent out on January 24, 2018. The email was titled, "Request for Assistance and Cooperation in Completion of Liberty University's *Annual Clery Campus Security and Fire Safety Reports*," informing officials to notify anyone in their offices that met the definition of a CSA and had incident reports, to forward the information to the LUPD and the Clery Compliance Officer.

During interviews conducted by the review team, LUPD officials and the Clery Compliance Officer confirmed that none of the employees charged with implementing the *Clery Act* were aware of the requirement to include incidents of crime reported to CSAs in the ASR until at least 2018. It was at that time that LUPD officials and the Clery Compliance Officer realized that the *Clery Act* required the inclusion of statistics for incidents of crime reported to CSAs.

The Department also determined that the LUPD and the Clery Compliance Officer never had sufficient authority to require CSAs to attend training or to participate in a CSA crime-reporting system, even after they became aware of the CSA requirements. Further, the LUPD and the Clery Compliance Officer also did not have the authority to take direct action to request crime statistics from CSAs even after some staff had attended training and were put on notice regarding

the requirement to do so. This condition contributed to the underreporting of crimes throughout the review period. In fact, multiple employees who met the criteria of a CSA informed the Department that they did not know they were CSAs or were only recently informed of their status. Furthermore, the Department has found that numerous CSAs did not know how to properly perform their duties as required by the *Clery Act*.

Although the effect of Liberty's systemic failure to collect crime reports from CSAs cannot be reliably quantified, it is abundantly clear that it caused Liberty's crime statistics to be substantially and systemically underreported. This failure resulted in an ongoing material misrepresentation of the occurrence of Clery-reportable crimes on all of Liberty campuses during the entirety of the review period. The Department's current review and the prior limited-scope compliance assessment that closed in 2010 suggest that this condition has persisted for many years and may in fact track back to 1992, the first year that institutions were required to comply with the *Clery Act*.

The following information provides a timeline of the University's approach to identifying CSAs, and serve to highlight the inadequacy of the process:

2016

Interviews with the LUPD and the Clery Compliance Officer confirmed that Liberty did not have a system in place to identify CSAs in 2016.

2017

In 2017, the Clery Compliance Officer developed a process to identify and notify CSAs. The Clery Compliance Officer attested that an email was sent out to all of the Vice Presidents asking them to identify the CSAs in their areas, and to send the names of individuals who were identified as CSAs. The Clery Compliance Officer created a spreadsheet to compile the information that he was expecting from all of the Vice Presidents. Per the Clery Compliance Officer, not one Vice President responded to the email.

On March 13, 2017, the Athletic Director did ask his executive assistant to forward an email with the subject line "Clery Act Compliance and Subsequent Responsibilities," to all coaches, head coaches, assistant coaches, graduate assistants, volunteer coaches, administrators, and staff within the Athletic Department. No evidence was provided that this email was ever sent. Instead, the institution provided to the Department a list of 165 Athletics Department names that Liberty had identified as being CSAs. The Department requested evidence of distribution of the email as requested by the Athletic Director on March 13, 2017, and again none was provided. The only other Department that provided names and a total number of CSAs was Residence Life, which identified 296 CSAs for Spring of 2017 and 331 CSAs from Fall of 2017 to Spring of 2018.²¹ There was no documentation provided that these individuals were aware of their status or responsibilities or that they reported any incidences of crime.

²¹ Liberty provided the Department with a total count of CSAs, but the University did not break down the count by individual semester.

2018

In 2018, the Office of Legal Affairs took over the process from the Clery Compliance Officer and used the 2017 method of sending out an email to certain institutional personnel. Specifically, on January 24, 2018, the General Counsel sent Department Heads and Vice Presidents an email entitled, “Request for Assistance and Cooperation in Completion of Liberty University's *Annual Clery Campus Security and Fire Safety Reports*,” informing officials to notify anyone in their specific offices that met the definition of a CSA and had incident reports, to forward the information to the LUPD and the Clery Compliance Officer. A copy of this email was provided to the Department.

On March 7, 2018, the executive assistant for the Athletic Director sent out an email to 186 Athletic Department employees. The subject of the email was, “Clery Act Compliance and Subsequent Responsibilities.” The information provided to the Department identified 185 Athletics Department CSAs.

Residence Life identified 332 CSAs for Fall of 2018 to Spring of 2019.²² There was no confirmation that these individuals were aware of their status or responsibilities.

2019

On March 19, 2019, the executive assistant for the Athletic Director sent an email entitled “Clery Act Compliance and Subsequent Responsibilities” to 24 employees. The information provided to the Department identified 203 Athletics Department CSAs. It is unclear why only 24 employees were sent an email.

Residence Life identified 313 CSAs for Fall of 2019 to Spring of 2020.²³ There was no confirmation that these individuals were aware of their status or responsibilities.

2020

In 2020, Residence Life identified 336 CSAs for Fall of 2020 to Spring of 2021.²⁴ There was no confirmation that these individuals were aware of their status or responsibilities. No other information regarding CSAs was provided to the Department for 2020.

2021

In 2021, Residence Life identified 335 CSAs for Fall of 2021 to Spring of 2022.²⁵ There was no confirmation that these individuals were aware of their status or responsibilities.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

2022

In 2022, a list of 91 Department Heads and Vice Presidents were identified as CSAs to the Department as part of Liberty’s response to the program review announcement letter. No additional information or confirmation was provided.

The following table illustrates the number of purported CSAs identified by Liberty during each calendar year of the review period. The table is broken down by the three categories of Athletic Department, University Department Heads/VPs, and Residence Life.

SELF-REPORTED CSA COUNTS PER UNIVERSITY DEPARTMENT AND YEAR

Year	Athletic Department	Department Heads/VPs	Residence Life	Total
2016	0	0	0	0
2017	165	0	296	461
2018	185	0	331	516
2019	203	0	332	535
2020	0	0	313	313
2021	0	0	336	336
2022	223	91	335	649

The information presented above highlights only one aspect of the problem. In 2016, Liberty did not have any reliable process in place to identify its CSAs. The process that was in place from 2017 to 2021 resulted in the identification of a significant and relatively consistent number of CSAs in Residence Life, most of whom were RAs.²⁶ The number of CSAs identified by the Department of Intercollegiate Athletics, however, fluctuated considerably during this time. The second column of the chart illustrates the weaknesses in the process used to identify CSAs in the other departments and workgroups across the enterprise. This process continued to fail to effectively identify CSAs until 2022 when the University engaged outside counsel and consultants with expertise in *Clery Act* administration. Building on this outside help and input from Liberty’s Clery Compliance Officer, 91 CSAs were finally identified beyond Athletics and Residence Life.

The problem is that while the process for identifying CSAs improved slightly over time, improvements in the process for notifying CSAs of their reporting obligations did not follow. In fact, the Department has not found any evidence that the that CSAs outside of Athletics and Residence Life were properly notified of their crime reporting obligations during the majority of the review period. While institutions are not required to provide CSA training, most institutions find that training is the best way to educate CSAs about their important role. The best evidence of the weaknesses in the institution’s CSA identification, notification, and reporting processes is that, with the exception of the RAs, it did not generate any actual

²⁶ These RAs were the principal institutional officials charged with enforcing The Liberty Way in student residential facilities.

reports. These conditions necessarily had a significantly detrimental impact, although not an entirely quantifiable one, on the institution's reporting processes and the resulting crime statistics. Given the paucity and unreliability of credible records, the full extent of this violation can never be entirely known or quantified. Consequently, the accuracy of the statistical disclosures in the University's ASRs and in its reporting to the Department will continue to be in doubt, as will the usefulness of this data as a source of meaningful consumer information.²⁷

Any failure by an institution to identify its CSAs, notify them of their essential reporting obligations, provide them with a mechanism to transmit crime reports to a designated official or office, and ensure their compliance with reporting requirements, compromises the effectiveness of its crime reporting processes and the integrity and validity of its campus crime statistics. CSAs are an essential part of a competent *Clery Act* compliance program and play a key role in ensuring that the campus community has access to important campus safety information. When accurate and timely information is coupled with effective policies, procedures, programs, and systems, victims of crime and their advocates are better able to understand their options and vindicate their rights.

Required Action:

As a result of these violations, Liberty must establish policies and procedures for identifying all CSAs and for requesting and compiling statistics of all Clery-reportable incidents of crime that are reported to any CSA or other official or office that may receive such reports. These policies and procedures must address access, communication, and coordination of campus crime statistics and information by and among institutional officials. In addition, the University must develop a formal system for requesting, receiving, and compiling crime reports from CSAs so that an accurate number of reported crimes can be included in its official campus security statistics. Finally, Liberty must develop a process to notify all CSAs about the *Clery Act* and inform them of their reporting obligations conferred upon them by the law.

When the Department became involved with the institution in 2021, the University implemented some improvements. However, at this time, Liberty must take all necessary action to identify all CSAs and other designated reporting entities by job title and provide a list of the actual number of such positions identified so far. This information will be used to estimate the effect of this violation. As such, remedial actions in this area will focus primarily on measures that will allow the University to comply going forward. A copy of the new and revised policies and procedures and the CSA list must be submitted with the University's official response to this PRR.

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

²⁷ While additional information will be developed through the required comprehensive file review, this process cannot reverse the effects of the CSA deficiencies noted above.

Finding #5: Failure to Properly Classify and Disclose Crime Statistics

Citation:

The *Clery Act* and the Department's regulations require that institutions participating in the Title IV, HEA programs compile and disclose crime statistics in the ASR and in its reporting to the Department for the three most recent calendar years concerning occurrences on campus, in or on non-campus buildings or property, and on public property for the following crimes that are reported to police agencies or to a campus security authority: criminal homicide, manslaughter, rape, fondling, statutory rape, incest, robbery, aggravated assault, burglary, motor vehicle theft, and arson. 34 C.F.R. § 668.46(c)(1). In addition, institutions must disclose arrests for liquor law violations, drug law violations, and illegal weapons possession. 34 C.F.R. § 668.46(c)(1)(viii).

An institution must also compile and disclose statistics for Part I offenses and certain Part II offenses (simple assault, larceny-theft, vandalism/destruction of property) that manifest evidence that 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)(1) and (4); 34 C.F.R. § 668.46(c)(1)(iii).

Additionally, the Department's regulations require that, for *Clery Act* reporting purposes, participating institutions compile crime statistics using the definitions of crimes provided in Appendix A to Subpart D of the Department's General Provisions Regulations. 34 C.F.R. § 668.46(c)(7). Beginning with the 2015 ASR, institutions were required to disclose statistics for incidents of dating violence, domestic violence, and stalking offenses as defined in Section 40002(a)(20) of VAWA.

Furthermore, institutions must provide a geographic breakdown of the reported crime statistics according to the following categories: (i) on campus; (ii) of the crimes reported on campus, the number of crimes that took place in dormitories or other residential facilities for students on campus; (iii) in or on a non-campus building or property; and (iv) accessible and adjacent public property. 34 C.F.R. § 668.46(c)(4).

Finally, each institution must also submit its crime statistics to the Department for inclusion in the Department's Campus Safety and Security Data Analysis Cutting Tool²⁸ and the College Navigator.²⁹ 34 C.F.R. § 668.41(e)(5).

Noncompliance:

Liberty failed to compile and publish accurate and complete crime statistics throughout the review period. The Department has reviewed a sample of the University's incident reports from the calendar years in this period (2016-2020) however, the exceptions noted in this Finding were

²⁸ Campus Safety and Security Data Analysis Cutting Tool, Office of Postsecondary Education: <http://ope.ed.gov/campussafety/>.

²⁹ College Navigator, National Center for Education Statistics: <https://nces.ed.gov/collegenavigator/>.

identified from records produced with respect to calendar years 2016-2020.³⁰ Numerous reporting errors were identified as a result of that analysis. The most frequent types of violations included:

- (1) errors in entering all reported crimes, including VAWA offenses, associated with a single operation of crime;
- (2) identification and disclosure errors commonly referred to as “underreports”;
- (3) classification errors including the improper use of non-criminal classification such as “All Other Offenses”; and,
- (4) persistent recordkeeping weaknesses³¹ and other deficiencies.

As noted throughout this report, Liberty failed to implement a minimally adequate *Clery Act* compliance program. None of the responsible officials were given the necessary authority or oversight responsibility to ensure that criminal incidents were properly identified, classified, and reflected in the campus crime statistics. As described in Finding #4, personnel interviewed by the Department during the site visit were unaware of the reporting obligations associated with their status as CSAs. The failure to notify employees that they were CSAs and the lack of training for CSAs contributed to the cited disclosure violations as well as other violations found during the program review.³²

In addition, the responsible University personnel did not understand all of the University’s real estate holdings and boundaries, nor has it assessed its property holdings for appropriate inclusion in its *Clery Geography*. As detailed in Findings #9 and #10, Liberty did not clearly define its non-campus properties and separate campuses for *Clery Act* reporting purposes, and the records management systems used by various affected offices were disorganized and insufficient. Consequently, some incidents of crime that were reported to CSAs were never communicated to the LUPD or the *Clery Compliance Officer*, the primary authorities responsible for compiling and disclosing crimes statistics. As a result of these failures, the annual crime statistics disclosed to the University’s students and employees and provided to the Department during the review period were incomplete and inaccurate.

As part of this review, the Department requested documentation to test the accuracy and completeness of the University’s crime statistics. Shortly after the review was announced,

³⁰ At the time that the review was announced in February 2022, Liberty had not yet published its 2022 ASR, which included crime statistics for calendar years 2021, 2020, and 2019. The institution was not required to distribute this report until October 1, 2022. As such, the detailed analysis of crime statistics could only be conducted through the end of 2020. The University’s comprehensive file review will include an analysis of the 2021 statistics that were included in the 2022 ASR and the 2022 statistics that will be included in the University’s 2023 ASR. This information will be reviewed and validated by the Department and presented in the FPRD.

³¹ Recordkeeping violations are discussed in greater detail in Finding #10.

³² Once again, the Department acknowledges that no institution is required to provide CSA training; however, it is generally understood that a lack of training for CSAs makes it more difficult for institutions to establish a competent crime reporting structure.

Liberty's consultant reported to the Department that the institution did not have documentation that supported the statistical data included in its ASRs. As such, Liberty began the process of reconstructing back-up documents, commonly known as audit trails, with the assistance of a consultant with expertise in the field. As noted in Finding #10, this was a daunting task. Because of the weakness in the University's record management system and other constraints, the consultant advised that it was not able to examine anything close to the universe of relevant documents. Instead, the consultant described the audit trail reconstruction process, which was merely a limited search of reports to identify incidents that roughly matched the number of crimes disclosed its ASRs. This scattershot approach provided virtually no credible substantiation for the University's crime data and was of little use for compliance monitoring and enforcement purposes.

Liberty, in essence, "backed into" the audit trails submitted to the Department. This approach, which neither Liberty or the consultant tried to hide, was riddled with problems, not least among them being that the exercise could not detect classification or count errors.³³ For example, Liberty would search the term "rape" in a given calendar year and would simply look for the first 5 incidents that matched the statistical disclosure reported in its ASR. While this methodology cannot result in the production of a reliable and valid audit trail, Liberty did manage to identify a number of incidents that appear to have been reported and documented appropriately with CSAs, but were not previously included in the statistical compilations, a condition referred to as "underreports." The Department acknowledges that although the process used to create the "audit trails" was deeply flawed, some additional underreports were identified. The majority of these incidents which have never been disclosed were found primarily in the records of OEC and would have never been discovered if the Department had not conducted this review. This revelation points to the fact that the University had failed to include these incidents and statistical disclosures for multiple years and raises a concern that there may be many other incidents that were not identified and identified and disclosed in the year they were first reported to Liberty officials.

Liberty's recordkeeping deficiencies also created challenges for Liberty when it attempted to create the "audit trails" that were produced to comply with the Department's document request. In some cases, the University was unable to locate LUPD incident reports or other records that officials believed were the source documents that substantiated the statistical disclosures in its ASRs. In such cases, the University asserted that incidents for which documentation could not be located should be eliminated from the statistical tallies for that category of crime. In fact, the University's "audit trail" information identified at least 44 incidents³⁴ for which no documentation could be found, and the institution apparently believes that those incidents should be removed from the statistical compilations as a result. Liberty is reminded that institutions are obliged to create and keep credible records to substantiate the accuracy and completeness of their own crime statistics. No safe harbor is created by an inability to find and retrieve records that are required to be maintained in an institution's own data sets.

³³ Liberty's consultants described the audit trail reconstruction process to the review team during video calls on May 16, 2022, and December 8, 2022.

³⁴ These incidents will be considered statistical reporting errors by the Department now and in the FPRD unless the University can provide source documents that indicate they should be excluded.

The following chart details 74 disclosure violations due to underreporting of criminal offenses during calendar years 2016-2020. These deficiencies were identified in a sample of the University’s incident reports that was focused on the detection of underreports. The Department expects that a significant number of other statistical deficiencies including, classification, counting, compilation, and disclosure errors, will be identified in the comprehensive file review and that such errors did cause the University’s crime statistics to be significantly underreported. This Finding is based primarily on records provided by Liberty officials and illustrates some of the violations that resulted in substantial misrepresentations of the crime statistics in the institution’s ASRs and its reporting to the Department over time.

Examples of these violations include the following:

Underreported Offenses³⁵			
Calendar Year	Incident Report #	Crime Classification	Date of Initial Report
2020	836599	Domestic Violence	12/14/2020
	834107	Sexual Violence	12/3/2020
	20-02840	Stalking	11/25/2020
	20-02770	Stalking	11/18/2020
	828417	Domestic Violence	11/10/2020
	837985	Sexual Assault	10/30/2020
	824637	Stalking	10/24/2020
	801324	Rape	9/1/2020
	740067	Stalking	2/13/2020
2019	19-02750	Rape	12/2/2019
	709443	Rape	10/24/2019
	19-02530	Stalking	10/24/2019
	706509	Fondling	10/15/2019
	706513	Fondling	10/15/2019
	714005	Fondling	10/15/2019

³⁵ The type of exceptions noted in this chart affect the accuracy and completeness of the institution’s statistical disclosures included in multiple ASRs. The carryover effects of these continuing reporting violations will be presented in the FPRD.

	19-02172	Fondling	10/11/2019
	700265	Dating Violence	9/21/2019
	697447	Stalking and Dating Violence	9/13/2019
	663181	Fondling	4/4/2019
	657462	Stalking	3/27/2019
	642261	Stalking	2/26/2019
	641971	Stalking	2/20/2019
	638734	Sexual Assault	2/4/2019
	636891	Stalking	1/20/2019
	637459	Stalking	1/19/2019
	636421	Sexual Assault	1/17/2019
2018	629893	Fondling	11/14/2018
	629894	Fondling	11/14/2018
	628592	Stalking	11/5/2018
	628154	Stalking	10/31/2018
	627103	Stalking	10/24/2018
	625872	Stalking	10/16/2018
	625380	Sexual Assault	10/11/2018
	625208	Stalking	10/10/2018
	624590	Stalking ³⁶	10/2/2018
	624433	Stalking	9/29/2018
	18-01981	Stalking	9/29/2018
	18-01832	Motor Vehicle Theft	9/14/2018
	620396	Stalking	9/6/2018

³⁶ For OEC Incident Report #624590, the crime of fondling was included in the statistical disclosures, but the crime of stalking was omitted.

	619227	Stalking	8/30/2018
	619278	Stalking	8/30/2018
	619280	Stalking	8/30/2018
	618912	Stalking	8/26/2018
	618109	Stalking	8/24/2018
	620428	Stalking	8/22/2018
	589787	Fondling	5/3/2018
	568666	Stalking	3/15/2018
	568005	Stalking	3/14/2018
	562084	Stalking	3/9/2018
	561564	Sexual Assault	3/1/2018
	557088	Stalking	2/23/2018
	535883	Stalking	2/14/2018
	547824 ³⁷	Domestic Violence	2/13/2018
	547824	Domestic Violence	2/13/2018
	547824	Domestic Violence	2/13/2018
	547824	Domestic Violence	2/13/2018
	547564	Dating Violence	2/8/2018
	18-00179	Fondling	1/29/2018
	540063	Fondling	1/25/2018
	539264	Dating Violence	1/23/2018
	538843	Dating Violence	1/22/2018
	538843	Stalking	1/22/2018
2017	532996	Dating Violence	12/14/2017
	17-0500	Stalking	2/22/2017

³⁷ This incident report indicates that four domestic violence crimes were underreported.

2016	16-3078	Dating Violence/Fondling	12/10/2016
	16-2806	Alcohol Referral	11/11/2016
	16-2399	Drug Law Violation	10/1/2016
	16-1666	Drug Law Violation	7/4/2016
	16-1382	Motor Vehicle Theft	5/8/2016
	16-1371	Drug Law Violation	5/7/2016
	16-1301	Rape	5/2/2016
	2016-011413 ³⁸	Drug Law Violation	3/8/2016
	16-0174	Dating Violence (underreported) ³⁹	1/24/2016
	653003	Sexual Assaults and Dating Violence	7/7/1905 ⁴⁰

Taken together the number of underreported incidents and cases for which the institution cannot produce documentation, currently represents 118 known statistical omissions. This number may increase if further discrepancies are identified.

As noted above and throughout this report, the accuracy and completeness of Liberty’s crime statistics was negatively impacted by a number of other factors. The Department has found that the LUPD improperly “unfounded” multiple incidents that did not meet the criteria for that action. The review team has identified three⁴¹ LUPD reports that document incidents of sexual violence that were improperly unfounded by LUPD investigations. Liberty failed to disclose any

³⁸ This LPD incident report documents a Clery reportable crime that occurred at Liberty’s s 1900 12th Street storage facility. The LPD provided this report to the Department. This crime was not included in the statistical disclosures in any of the institution’s ASRs.

³⁹ For incident #16-0174 the crime of fondling was reported for statistical disclosure. However, the offense of dating violence was not reported. The daily crime log indicates crimes of sexual assault and suspicious circumstances.

⁴⁰ The report date of this incident is clearly an error. Liberty University was not in existence in 1905.

⁴¹ The Department notes that case #21-008831, occurred in calendar year 2021 and therefore the Department did not include this incident in its testing of the institution’s crime statics. It is referenced here solely because it is a disturbing example of the institution’s improper use of the unfounded designation. In this case, the victim reported three separate sex crimes, one of which appears to have been properly unfounded based on communications the victim had with a third party.

unfounded incidents in its statistics included in its ASRs and its reporting to the Department during the review period. Misuse of the option to unfound a reported incident is especially concerning to the Department for several reasons. Firstly, the available information on these cases does not establish that the report was false or baseless. Additionally, it appears that the decision to unfound each of these incidents was made solely by LUPD Investigations without supervisory review and without any input from the officers who responded to the initial complaint. Thirdly, the manner in which each of these cases was unfounded made it nearly impossible for complainants to secure the accommodations, protective measures, and support services guaranteed by the *Clery Act* and Title IX and to pursue redress through the campus disciplinary processes or the criminal justice system.

Moreover, by improperly unounding these cases, the LUPD investigator further complicated the Clery Compliance Officer's efforts to properly compile and disclose the University's annual crime statistics. Solely by chance, the Clery Compliance Officer was able to identify a small number of cases that were improperly unfounded and took unilateral action to include those incidents in the statistical compilations. Given the process used to identify these three reports, the Department would expect additional cases of this type to be identified in the comprehensive file review to be conducted in response to this finding and other findings in this PRR. Please see Finding #3 for more information regarding the underreporting of sex offenses and the detrimental impact of improper unounding on Liberty's compliance with the *Clery Act* requirements.

As noted throughout this report, the University failed to implement an adequate *Clery Act* compliance program. The University's data collection practices made an already bad situation even worse as evidenced by the University's widespread failure to adequately account for Clery-reportable crimes documented by the LUPD or other CSAs. Failures of this sort trigger a special regulatory concern for the Department and indicate a general failure to properly implement the *Clery Act* and call into question the University's ability and willingness to properly administer the Title IV, Federal Student Aid programs.

The Department continues to be concerned that there may be additional records of incidents and/or other formal or informal systems of record that may contain information about Clery-reportable crimes that were required to be disclosed. This includes but is not limited to information that was submitted to the Gentry Locke web portal.

Institutions are required to compile and disclose accurate and complete crimes statistics and to include this data in their ASR and in its responses to the Department through the annual data collection and survey. Any failure to carry out these responsibilities in the required manner deprives campus community members, other stakeholders, and the general public of important campus safety information to which they are entitled.

Required Action:

As result of these violations, Liberty is required to take all necessary remedial actions to rectify this violation and all others identified in this PRR. The University must address each of the

underreports noted in this finding. In addition, as discussed below, the University must conduct a full file review of records relating to crime statistics for calendar years 2016 to 2022, the parameters of which are discussed in this program review report and in conversation with the institution on March 3, 2023.

To address the deficiencies identified in this finding, Liberty must conduct a full-file review to identify and correct all errors in its crime statistics. Within ten (10) days of receipt of this report, the University must provide a copy of the statement of work and agreed-upon procedures between Liberty and its consultant that set out the terms for the conduct of the comprehensive file review/data audit and the comprehensive real estate review, including any modification to the original terms that were necessary to comply with the requirements outlined in this PRR.

The specific requirements of the file review are as follows:

- Examine all institutional records⁴² regarding incidents of crime reported to officials in offices that meet any part of the CSA definition, including any institutional officials to whom students and employees are directed to report incidents of crime or violations of the institution's codes of conduct, including but not limited to the LUPD, OEC, OCL, HR, and the Department of Intercollegiate Athletics. To the extent that it has already not done so, Liberty must contact all local enforcement agencies to request the records needed to identify incidents of Clery-reportable crimes that were required to be included in the University's crime statistics.⁴³ The University must search and review all CSA reporting systems, University websites, online portals used for collecting reports of crime or conduct and disciplinary matters, online report collection portals (including Gentry Locke) or incident report collection mechanisms utilized by the University or any third-party contractor, and any real estate or business incident management system. The Department of Intercollegiate Athletics' compliance reporting systems, Speak Up reporting system, Dean of Students reporting systems (emails, portals, and forms) and incident reporting email accounts. If systems, networks, or emails are unretrievable or were destroyed, then the University must indicate the system, office and individual impacted and the date ranges of the destroyed emails.
- Construct a clear audit trail to substantiate the accuracy and completeness of its revised crime statistics for calendar years 2016 to 2022. The audit trails must support the corrected crime statistics for all Clery-reportable crime classifications including Part I Offenses, hate crimes, drug law violations, liquor law violations, and illegal weapons possession arrests, VAWA offenses, unfounded crimes, and disciplinary referrals. The audit trails are required to ensure that revised statistics are supported with source

⁴² The Department respectfully requests that copies of any information regarding incidents of crime, Title IX violations, and/or or relevant student or employee conduct violations that was reported though the portal established and administered by Gentry Locke as part of the internal investigation be provided to the review team for examination under appropriate agreed-upon terms. The Department will work with Gentry Locke to ensure that such inspection can take place without the direct involvement of the University and that the confidentiality concerns expressed previously by the firm can be effectively addressed.

⁴³ The University is required to amend the requests for crime data filed with local law enforcement agencies if the institution's comprehensive real estate review results in changes to any Clery Geography boundary lines.

materials. Each audit trail must provide incident report numbers associated with each crime classification, and crime statistics must separate incidents by category of Clery Geography for each calendar year. The University must prepare a short narrative that explains the findings of the file review and a summary report in spreadsheet format that includes the following fields: incident report number, date of the report, original classification, corrected classification, and the number of incidents associated with each classification.

In accordance with the requirements of Finding #6, the summary report must indicate: if an Emergency Notification was issued (Y/N), pursuant to each report of an incident of crime, emergency, or other dangerous conditions that was brought to the attention of the institution and the institution's current position on whether an Emergency Notification was required based on the findings of the file review. If the institution determines that an Emergency Notification was not required to be issued in response to such an event, an explanation must be provided for the institution's rationale.

In accordance with the requirements of Finding #7, the summary report must indicate: if a Timely Warning was issued (Y/N), in response to a Clery-reportable crime and the institution's current position on whether a Timely Warning was required based on findings of the file review. If the institution determines that a Timely Warning was not required to be issued in response to a Clery-reportable offense involving a crime of violence against a person or one or more property crimes that may have posed a significant or ongoing threat, an explanation must be provided for the institution's rationale.

In accordance with the requirements of Finding #8, the summary report must indicate the type and number of reporting errors and omission associated with the daily crime log entries for each incident reported to the LUPD.

- Conduct a search of the Department of Intercollegiate Athletics email system for information regarding reports of Clery-reportable crimes and disciplinary matters. If emails are unretrievable or were destroyed, the University must identify the CSA whose emails are not retrievable and the date ranges of the deleted emails. The University must provide copies of the emails, a list of the incidents, to whom the report was sent, and the referring CSA. The list must identify the reports that went to LUPD and to OCL.
- Submit a list of all incidents of crime and conduct violations involving student athletes that were referred by Intercollegiate Athletics to OCL by calendar year (2016 to 2022).
- Indicate if any notifications were issued in response to each report of a missing student that was brought to the attention of the institution during the review period. The University must then determine if one or more notifications were required to be issued in accordance with the *Clery Act* and the institution's published procedures. If Liberty determines that a notification was not required, an explanation must be provided for the

University's rationale. This information should be presented in the narrative section of the institution's response to this Finding.

- In accordance with the requirements of Finding #9, Liberty must conduct a comprehensive real estate review⁴⁴ to identify and properly classify all buildings and properties owned or controlled for educational purposes that constitute the University's Clery Geography. The assessment must include an analysis of all properties, real estate holdings, real estate agreements, financial interest investments and any other relationships related to real estate. Liberty must also account for its immediately adjacent and accessible public property, including all walkways. Because of the University's admitted issues identifying all of Liberty's real estate that was purchased by the former Liberty President, and the intended use of those properties, the Department will require that the University certify that it has identified all the properties that should have been included within its Clery Geography during the review period. As part of the real estate analysis, the University must provide copies of any real estate arrangements or insurance contracts which provide reports of crimes, or conduct, and request and review those records to ensure that all incidents of Clery-reportable crimes were identified and correctly classified.
- As part of the comprehensive file review, Liberty must review all incident reports and/or other records and information related to the incidents of sexual violence that were alleged by the Jane Doe Plaintiffs, these records must be used to determine if these reported incidents were reflected in the institution's crime statistics in the year that that the incident occurred or at any point prior to the filing of their lawsuit. The University has asserted that several of the Jane Doe victims did not report the offenses committed against them at any point prior to the filing of the litigation. If that is in fact true, then the University was required to treat the information in the lawsuit and any other information developed thereafter as a report of sexual violence. If any of these incidents met the criteria of one or more Clery crimes, then those incidents were required to be reflected in the University's campus crime statistics in the year the lawsuit was filed. Detailed information about any such cases must be presented in the narrative response and in the summary report.
- As part of the comprehensive file review, Liberty must review all incidents of crime that were unfounded by the LUPD to determine if this action was done in accordance with the regulatory requirements. Liberty must provide a list of all incidents that were referred to LUPD Investigations⁴⁵ for follow up as well as a list of all incidents that were unfounded by the LUPD. Copies of all initial reports and investigative supplements for each incident that was unfounded, regardless of whether the offense was a Clery crime, must accompany the institution's response.

⁴⁴ On March 3, 2023, Liberty advised the Department that the institution had already commenced a new evaluation of its real estate holdings.

⁴⁵ On August 15, 2022, Liberty provided the Department with 2016 to 2021 LUPD incident reports that went to Investigations.

- As part of the comprehensive file review, Liberty must consider all reports and other information sources regarding violations of the student and employee codes of conduct. For the record, the Department acknowledges that Liberty submitted lists of student and employee conduct cases; however, due to the University's delayed production of these records, the Department determined that it was impractical to select samples, request source documents from the institution, and conduct independent testing given the agency's timeframe for issuing this report. Therefore, this testing is included as a required element of the comprehensive file review.⁴⁶ This component of the file review must account for any conduct cases involving employees of third-party contractors.
- Additionally, Liberty must submit copies of the incidents reports and/or other records that substantiate the revised statistical tallies resulting from the comprehensive file review for calendar years 2016 to 2022. In addition, the University must review and improve its policies, procedures, internal controls, and training programs to ensure that all incidents of crime reported to CSAs and local law enforcement agencies are properly classified in accordance with the definitions in Appendix A to Subpart D of 34 C.F.R. Part 668 and are included in its ASR statistical disclosures and in the statistics provided to the Department.

Finally, Liberty must submit a certification statement attesting to the accuracy and completeness of the comprehensive reviews required under Finding #5 and #9. The certification statement must include the following statements and assurances:

1. The file review was conducted by competent reviewing officials with the requisite knowledge and experience to complete the work;
2. Liberty conducted a diligent search to identify all relevant records management systems, email systems, record depositories, and other information sources that include reports of crime and/or conduct violations;
3. The University has not knowingly or purposely withheld any of the records that are or should have been included in the data sets referenced in #2 above;
4. The institution has not knowingly or purposely altered, destroyed, or removed any reports or other information that are or should have been included in the systems of record referenced in #2 above;
5. Liberty provided the reviewing officials with full access to the institution's systems of record referenced in #2 above;

⁴⁶ The Department requested these documents in November 2022, the documentation was not submitted to the Department until January 2023. Given the institution's timelines for production of requested records the Department determined that it would be more efficient to include a review of the cases on these lists as part of the required comprehensive file review.

6. The University has ensured that the reviews were planned and conducted in accordance with the process steps set out in the statement of work/agreed-upon procedures between the institution and its consultants; and,
7. The institution certifies that its narrative response, summary report, and supporting documentation fairly and accurately presents the findings of both reviews and, in all material respects, represents the institution's best efforts to compile accurate and complete crime statistics and an accurate and complete presentation of its real estate holdings.

Liberty's President must sign the certification statement and submit it as part of the institution's response. Once the University response is received and reviewed, the Department will assess and validate the University's revised crimes statistics analysis, the results of the comprehensive Clery Geography and real estate review, and all new and revised policies and procedures. Upon completion of this review Liberty will be required to incorporate this material into its 2023 ASR.⁴⁷ Once compiled, errors in past crime statistics disclosures must be corrected. Any corrections to the Department's online campus security database or to subsequent ASRs must contain a caveat explaining those corrections.

The summary report must also clearly identify all Clery-reportable hate crimes. For this purpose, hate crimes are defined as offenses that manifested evidence that a victim was intentionally selected because of their actual or perceived membership in one or more of the designated categories and/or was motivated by the biases of the perpetrator.

A copy of all new and revised internal guidance regarding the classification and counting of incidents and the compilations and disclosure and crime statistics must accompany the University's response to this PRR.

Based on an evaluation of all available information including the University's response, the Department will determine if additional actions will be required and will advise the University accordingly in the FPRD.

Finding #6: Failure to Issue Emergency Notifications in Accordance with Federal Regulations

Citation:

The *Clery Act* and the Department's regulations require that an institution must immediately notify the campus community upon the confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students or employees occurring on the campus. 34 C.F.R. § 668.46(g)(1).

⁴⁷ The University will be required to include the accurate and complete crime statistics for the most recent five calendar years in its 2023 ASR.

Noncompliance:

Liberty knowingly and repeatedly failed to issue Emergency Notifications to advise the campus community about emergencies and other dangerous conditions that may have posed a threat to their health or safety. Violations persisted throughout the entirety of the review period, primarily as a result of the change in policy imposed on the LUPD and emergency managers following the reorganization explained below and in Finding #7.⁴⁸ This Finding is grounded in the information developed by the review team and the scope of the violations will be developed further through the comprehensive file review that is already underway.

Throughout the review period, although Emergency Notifications were necessary in numerous circumstances, Liberty issued few non-weather-related notices even in cases where emergencies or other dangerous conditions may have posed a threat to the health and safety of the campus community or a segment of it.⁴⁹ Until February of 2022, the LUPD was controlled by HR. The now former Executive Vice President of Human Resources intentionally suppressed the ability of the LUPD to issue such notices according to accounts provided by Liberty employees in interviews with the Department.⁵⁰ The University *did* issue an Emergency Notification on March 30, 2016, in response to a credible on-campus bomb threat. At that time, the most senior officials were concerned about the attention that the notice generated and took steps to ensure that the issuance of Emergency Notifications did not become a common occurrence. At least one LUPD officer was subjected to disciplinary action for issuing the notice even though it was issued in conformity with Federal law and the institution's published policy at the time.⁵¹ Following the disciplinary action, the University stopped issuing Emergency Notifications in response to crime-related threats.

The Timely Warning and Emergency Notification provisions of the law are intended to provide actionable information to affected individuals so they can make informed decisions about their own safety and security. Many current and former campus community members reported that they were aware of Liberty's stated policy and initially trusted the institution to issue warnings and notices when the need arose. This condition points to the importance of developing and implementing required policies and procedures, communicating them to the campus community, and, most importantly, following through when it counts. Liberty did not adhere to the policy statements in its ASR regarding the issuance of Emergency Notifications. An excerpt of the

⁴⁸ See Finding #2 for information on the policy and procedural deficiencies associated with these violations.

⁴⁹ Over the course of the review period, Liberty issued some alerts that it now represents as Emergency Notifications. Nearly all of those alerts appear to relate to dangerous weather conditions. While the law of Emergency Notifications clearly applies to severe weather, there were many other incidents and circumstances that are covered by the law and required the issuance of a notice during the review period. Only a few of those are listed here for illustrative purposes. The University will be required to reevaluate the need for such notices as part of the comprehensive file review required under Finding #5 and report its findings to the Department. The Department will test the validity of the file review and use the information that the review yields in the preparation of the FPRD.

⁵⁰ Based on interviews with multiple current and former Liberty officials, the Department found that the LUPD was unable to issue Emergency Notifications and Timely Warnings as a result of the change in policy imposed by the then EVP of HR.

⁵¹ This disciplinary action is evidenced by HR conduct records.

relevant portion of University's policy that were published in its 2019 ASR is presented in the paragraph below.

“In accordance with the Higher Education Act of 1965 and Section 23.1-803 of the Virginia Code, Liberty University has implemented a comprehensive communications system identified as the ‘LU Campus Alert System.’ This system provides prompt warning notifications and alerts of immediate threats to health and safety of the University community.” *Annual Campus Security and Fire Safety Report 2019*, at page 8.

Liberty's policy states that an Emergency Notification will be promptly issued in the event of a reported incident that constitutes an immediate threat to the health and safety of the University community.

As noted throughout this report, Liberty regularly touted itself as the “Safest College in Virginia” and one of the safest in America. Issuing Emergency Notifications would have conflicted with that narrative and called attention to the safety issues that existed on the Liberty campus.

The Department further found that Liberty did not issue Emergency Notifications even after officials were notified and the nature of the condition had been reasonably confirmed. This lack of notifications occurred for on-campus incidents of credible bomb threats and gas leaks. Moreover, the University failed to issue Emergency Notifications that should have been considered for certain conditions involving dangerous individuals who were credibly accused of serious and repeated acts of sexual violence, notably a former Liberty football player and the current Executive Director of Student Health and Wellness. The continued, unchecked presence of a sexual predator on a campus creates a dangerous condition for many members of the campus community. Under the *Clery Act*, these community members have a right to information about such risks in their environment. In this context, the presence of a serial sexual offender on campus is no different than the risks created by other environmental contagions such as asbestos, lead paint, or toxic mold.

Despite serious concerns expressed by members of the campus community, especially victims of such offenses, Emergency Notifications were never issued for even the most serious acts where the perpetrator's⁵² continued access to the campus⁵³ created a dangerous condition for the general public or some smaller segment of the campus community. One individual whose campus presence posed such a danger to the Liberty campus involved a former football player who attended the University from 2018 to 2022. That football player had been accused of multiple sex crimes dating back to at least 2020.

⁵² See the Department's Finding and Final Determination in the Pennsylvania State University case for an example where a person created a dangerous condition that required a notice or other immediate remediation. A copy of the FPRD can be found at <https://studentaid.gov/data-center/school/clery-act-reports/clery-by-school>.

⁵³ If Liberty wanted to avoid the need to issue an Emergency Notification in this case, it could have initiated remedial measures to eliminate the dangerous condition created by the football player's presence on campus.

Timeline of the Football Player's Criminal Conduct

- **Rape (2020):** In 2020, the football player was accused of raping a woman on Clery Geography, an incident that was not included in the University's 2020 crime statistics. The Department notes that this reported offense should have resulted in the issuance of a Timely Warning but did not.⁵⁴
- **Stalking (2021):** In early 2021, the football player started to engage in a pattern of stalking behaviors directed at Victim A, who was both a Liberty student and an employee. This behavior continued for several months.
- **No Contact Directive (2022):** OEC issued a No Contact Directive (NCD) on August 17, 2022, against the football player on Victim A's behalf. Following the NCD's issuance, the football player continued to stalk Victim A.
- **Arrested for Stalking (2022):** On September 11, 2022, the football player was arrested for stalking. The football player was permitted to continue playing and practicing with the football team.
- **Convicted for Stalking (2022):** On October 13, 2022, the football player was found guilty of stalking in Virginia court.⁵⁵ The football player was permitted to continue playing and practicing with the football team.

Despite the football player's history of sexual violence, there is no evidence that University officials ever considered alerting the campus about the threat to the Liberty campus community. Furthermore, there is no evidence that the University made significant effort to limit his access to campus facilities. Rather, from 2020 to the end of the 2022 football season, the football player was allowed to come onto campus and access all football facilities.

Additional examples of Liberty's failure to issue Emergency Notifications are summarized below.

- **LUPD Incident #18-01439 (Assault)** – On July 10, 2018, at approximately 10:22 p.m., a 14-year-old girl reported that she was grabbed by a white male in a black hoodie. She told police that the attack occurred while she was walking on the lawn area behind the Vines Center, near the Falwell Library. The victim also reported that she screamed and then struggled with the assailant. She stated that during the struggle,

⁵⁴ Please refer to Finding #5 for the underreported rape and Finding #7 for the failure to issue a Timely Warning. The requirement to issue a Timely Warning is driven by the report of an incident that may have posed a serious or ongoing threat. The requirement to issue an Emergency Notification resulted from the choice to allow the perpetrator to remain even after a pattern of dangerous conduct was established.

⁵⁵ The stalking conviction was later overturned by Lynchburg Circuit Court on January 27, 2023. The court ruled that there was insufficient proof that the football player's actions constituted stalking under Virginia law. However, his actions did undoubtedly fall under the *Clery Act* definition of "stalking," the standard that applies in this case.

she was able to strike the perpetrator in the groin at which time, he fled the scene. The perpetrator was never located.

The failure to issue an Emergency Notification in response to this report is concerning for several reasons. First, this was an attack on a child who was enrolled in a summer youth camp sponsored by the University, meaning many other young children were on campus, participating in the very same program and were at risk. Although no warnings were issued to the campus community, the LUPD was concerned enough about this continuing dangerous condition to issue a BOLO (Be On the Lookout) memo to “All LUPD Officers” advising them that a young girl was “grabbed” but “was able to fight off the suspect and flee to a safe location.” The BOLO, which characterized this attack as “an attempted abduction,” described the offender as a white male, between 20-30 years of age, standing 6’1” and weighing approximately 180 pounds. An incident of this type clearly posed an immediate threat to the health and safety of persons found on the campus, or at least some distinguishable segment of this group, including children.

- **LUPD Incident #19-01424 (Bomb Threat)** – On July 31, 2019, at approximately 5:03 p.m., the LUPD received a report that someone was allegedly attempting to blow up Thomas Road Baptist Church (TRBC). A suspect was eventually identified but could not be located. An Emergency Notification should have been issued based on information in the University’s incident report which noted that the person(s) responsible had not been apprehended and their current location was unknown. In this context, it is notable that TRBC is co-located with Liberty Christian Academy (LCA), a K-12 school located on the University campus. The parents of the school-age children and employees of LCA were entitled to detailed and timely information about this threat.

Bomb threats pose serious threats to educational institutions. Not only do bomb threats cause major disruption to the educational process, they cause mass confusion and fear to proliferate quickly and can exacerbate other risks to public safety that emerge in such cases. The nature of such threats combined with the fact that school children and churchgoers were within the foreseeable zone of danger resulted in a situation that required prompt action.

- **LUPD Incident #19-01185 (Bomb Threat)** – On June 11, 2019, at approximately 11:25 a.m., the LUPD arrived at the Graves Mill location of Liberty University Online⁵⁶ in response to a report of a bomb planted on the facility’s grounds. No suspect was immediately determined, the building was not evacuated, and the case was not closed until the following day at 9:53 a.m. Until that time, the risks posed by this credible threat were ongoing.

The review team is also aware of numerous on-campus gas leaks and other occurrences that occurred during the review period and may have created a dangerous condition. Several of these

⁵⁶ As noted in Finding #9, Liberty has never properly categorized the Liberty University Online facility for Clery Geography purposes. This is true of many buildings, properties, and other parcels that are or were owned or controlled by the University and/or its affiliates. The University has already begun work on the comprehensive real estate review required under Findings #5 and #9.

events were recorded in LUPD incident reports, but most did not include enough information to indicate whether an apparent dangerous condition actually existed. Also, most of these reports did not indicate whether Liberty officials evaluated the need for an Emergency Notification or took any action to effectively remediate the dangerous condition. It is clear that some of those incidents should have at least been evaluated to determine if a notification was necessary; however, in light of the unofficial policy prohibiting nearly all such notices, it appears that no such analysis was conducted. As noted throughout this report, Liberty lacked the internal controls necessary to keep the campus community fully informed of emergency situations.

Another example of a serious threat to the wellbeing of at least some campus community members resulted from the continued unchecked presence on campus of a long-serving senior administrator who engaged in a pattern of disturbing behaviors. Information gathered by the Department indicates that senior institutional officials at Liberty were familiar with credible reports that the current Executive Director of Student Health and Wellness, referred to hereafter as Employee A, had committed sex offenses involving subordinates when he served as the Dean of Students. The information developed and examined by the Department, thus far, indicates that a reasonable person would have concluded that Employee A's continued presence on campus created a dangerous condition that could have posed an immediate threat to some campus community members. These individuals were entitled to be advised of this threat so they could make informed decisions about their own safety and wellbeing. Despite Employee A's history of inappropriate sexual behavior, there is no evidence that University officials ever considered alerting the campus about the threat that he posed to Liberty students and employees.

Timeline of Employee A's Sexual Misconduct

- **Sexual Harassment (2012):** In 2012, one former female employee reported to both the Executive Vice President of Student Affairs and the Pastor of Thomas Road Baptist Church⁵⁷ that for at least three years, she continuously felt uncomfortable and afraid of Employee A due to his disturbing behavior and sexually charged comments.
- **Sexual Harassment (2013):** Another sexual harassment complaint against Employee A was made by a female employee on April 16, 2013.
- **Domestic Violence and Possible Sexual Assault (2013):** On October 13, 2013, Employee A showed up at one of his employee's houses and gave the woman what he referred to as "medicine," which caused her to fall asleep. When the woman woke up, Employee A was kissing her.
- **Inappropriate Behavior and Mistreatment of Employees (2014):** On April 23, 2014, another formal complaint against Employee A was sent to HR.

⁵⁷ The Pastor of Thomas Road Baptist Church, who has close connection to the University, notified the then-President of Liberty of the report.

- **HR Investigation of October 13, 2013, Complaint (2014):** On April 29, 2014, HR wrote that Employee A’s “final disposition will most likely have to be made on the fact that Employee A was at an employee’s house and admitted to rubbing lotion on her back.”
- **Threat Assessment (2014):** On May 7, 2014, HR conducted a threat assessment on Employee A and concluded that Employee A should be punished for his actions. Employee A was subsequently demoted to the newly created position of Director of Student Health Records. However, later that year, Employee A was once again promoted.

At no point did these events cause senior Liberty officials to take any action to warn the campus community about the potential risk posed by Employee A’s continued presence on campus. Furthermore, there is no evidence that the University made any significant effort to limit his access to campus facilities. In fact, in 2014, Employee A became the first Executive Director of the Office of Student Health and Wellness.⁵⁸

Based on interviews conducted by the review team, it is clear that many members of the campus community have been extremely concerned about Employee A’s continued presence on campus. Several of the Jane Doe plaintiffs reported they were directly victimized by Employee A. Further, both current, and former students and employees – especially individuals who knew Employee A personally or worked with him – have been disquieted by Liberty’s disregard for the danger brought about by allowing Employee A to remain on campus. When Department officials asked the current Academic Provost why Employee A was still employed, he simply responded by saying “I do not know.”

Failure to issue Emergency Notifications to the campus community about emergencies or other dangerous conditions that may pose a threat to their health or safety deprives students, employees, and others found on the campus of vital information, and effectively denies them the opportunity to actively participate in their own safety, minimize trauma, practice self-care, and pursue their academic and professional goals in supportive environment. Active suppression of the immediate issuance of such notices to the community through management practices, including through adverse disciplinary actions taken against employees for lawful conduct, is a significant breach of the institution’s obligation to administer the Title IV, HEA programs with the highest standard of care and diligence required of a fiduciary.

Required Action:

As a result of these violations and as part of the comprehensive file review described in Finding #5, the University must evaluate each incident report or other relevant record to determine if the event documented therein created or resulted in an emergency or dangerous condition that required the issuance of an Emergency Notification. This requirement applies to the entirety of the review period (calendar years 2016 to Present). The file review summary

⁵⁸ The Department notes that this individual has access to highly sensitive student information.

report must include fields that indicate if a notice was required and whether or not an Emergency Notification was in fact issued. If a notification was issued, the timing of the Emergency Notification and the mode of communication must also be identified.

If a notification was not issued, Liberty must indicate whether or not the University now believes that a notification was required. If Liberty determines that a notification was not required, it must briefly explain its reasoning and provide documentation in support of its determination.⁵⁹ In this context, the University is reminded that the mere fact that a subsequent dangerous occurrence of the same or similar type did not actually occur is not a justification for failing to issue an Emergency Notification in response to an initial dangerous situation that posed such a threat. Liberty must prepare a summary report containing this information and submit it with its official response to this program review report. Copies of any Emergency Notifications that have not already been provided to the Department must accompany the University's summary report.

Procedures must be put in place to ensure and facilitate the issuance of Emergency Notifications for emergencies or dangerous situations that pose a threat to the campus community in accordance with *34 C.F.R. § 668.46(g)(1)*. The policy must provide for campus-wide dissemination of all such warnings. A copy of all revised policy statements must be submitted with Liberty's response.

Based on an evaluation of all available information, including Liberty's response, the Department will determine appropriate additional actions and advise the University accordingly in our FPRD.

Finding #7: Failure to Issue Timely Warnings in Accordance with Federal Regulations

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. *§ 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:

Liberty failed to issue Timely Warnings in response to Clery-reportable crimes that may have posed a significant or ongoing threat to the campus community. A review of the University's documentation and admissions made by Liberty officials establish that there was a general

⁵⁹ Explanations can be displayed using a dropdown menu of codes so long as a detailed legend of codes is provided.

failure to warn campus community members about these serious crimes. This condition persisted through the entirety of the review period and likely existed long before 2016.⁶⁰

As noted in Finding #6, the most senior leaders at Liberty reorganized the LUPD to manage and monitor its operations. The primary feature and intent of the reorganization was to move all law enforcement and emergency operations under the authority and control of the EVP of HR.⁶¹

During this time, the LUPD command staff, line officers, and other officials⁶² with related responsibilities were directed to not issue Timely Warnings and Emergency Notifications. These officials were advised that violations of this directive would result in disciplinary action.

This edict, which stood in stark contradiction to the University's publicly facing policy, applied to even the most serious crimes against persons and property including rapes and other sexually based offenses, robberies, physical assaults, and motor vehicle thefts. Records examined by the review team indicate that employees complied with the order, notwithstanding their serious concerns about the negative impact on campus safety and the resultant violations of federal law. Compliance with the internal policy was so complete that the Department has only identified two warnings⁶³ that were issued during the review period, one of which was not issued until 24 days after the incident was first reported.⁶⁴ Several officials from offices across the institution, including the Title IX office, reported to the review team that they raised concerns about cases on their dockets that they believed could have posed serious or ongoing safety risks and recommended that warnings be issued. Based on the policy statements in the ASRs, the LUPD Chief had the sole authority to issue such warnings; however, the Chief did not have the actual authority to issue the Timely Warnings under the directive issued by the EVP of HR.

Active suppression of the timely issuance of such warnings to the community through management practices is a significant breach of the institution's obligation to administer the Title IV, HEA programs with the highest standard of care and diligence required of a fiduciary.

Failure to Issue Timely Warnings

The Department has determined that Liberty did not issue Timely Warnings in response to incidents of crime reported that may have posed a serious or continuing threat to members of its

⁶⁰ See Finding #2 for information on the policy and procedural deficiencies associated with these violations.

⁶¹ The long-time former EVP of HR is a member of the Falwell family and was regarded by many to be the second most powerful official at the institution at the time.

⁶² Multiple current and former Liberty officials explained the change in policy of issuance of Emergency Notifications and Timely Warnings during interviews with the review team.

⁶³ The deficiencies associated with the second warning notification are described in Example #5.

⁶⁴ Liberty identified a notice about a "nationwide TikTok challenge" encouraging campus violence that was sent to the campus community on December 16, 2021, as a Timely Warning. This alert was actually an Emergency Notification as defined by the *Clergy Act*.

campus community. These notification failures often occurred even after repeated incidents were reported involving similar methodology and suspect descriptions.

During calendar years 2016 to 2021, Liberty disclosed 284 Clery-reportable crimes (not including drug and alcohol disciplinary referrals and arrests).⁶⁵ During this time, the University only issued one Timely Warning, which was deficient as noted above.

A few examples of incidents where a Timely Warning was required and not issued are presented below:

- 1. LUPD Incident #16-2538 (Robbery and Assault and Battery)** – On October 15, 2016, at approximately 9:45 p.m., the LUPD began investigating an alleged robbery and assault and battery of a student that occurred on-campus at Liberty’s annual Scaremare, an event that consisted of many people moving around within a confined area. The victim, who had several bruises on his face, claimed that he was forcibly robbed of money and was physically attacked by two robbers. The LUPD could not immediately find the two suspects involved in the alleged offenses, meaning these individuals were at large and that other persons were in the foreseeable zone of danger at this large-scale social event.

In this example, Liberty violated timely warning provisions of the *Clery Act* when it did not issue a timely warning for a robbery and assault and battery that took place on its campus. It constituted both a serious and an ongoing threat to students due to the nature of the incident and the unknown whereabouts of the suspects.

- 2. LUPD Incident #18-02162 (Robbery and Assault and Battery)** – On October 20, 2018, at approximately 3:40 p.m., a student reported that two men came into his dorm room and attacked him and stole his shoes. The victim suffered physical injuries from the attack. The suspects were not immediately found and were on the loose until October 25, 2018, at 4:00 p.m., which was five days later.

Despite the danger posed by two alleged violent robbers, Liberty did not issue a Timely Warning to the community to alert people of this threat.

- 3. Beacon Incident #837985, #838027** – In December of 2020 in an Orlando, Florida hotel being used by the Liberty football team,⁶⁶ the complainant was allegedly intoxicated from alcohol consumption when a football player forced her into performing oral sex on him.⁶⁷ The University’s own Title IX file, while thin and not well organized, documented that an alleged rape of a vulnerable victim was committed by an offender

⁶⁵ As detailed in Finding #5 and throughout this report, the crime statistics published in the University’s ASRs and submitted to the Department were seriously flawed so as to be unreliable for consumer protection and compliance monitoring purposes. This data is presented here for contextual purposes only and in full knowledge that many incidents were improperly classified, counted, and disclosed.

⁶⁶ The hotel constituted Clery Geography because it was being used to house Liberty athletes before their college football bowl game.

⁶⁷ Nonconsensual oral sex that occurs on Clery Geography constitutes a rape.

who could have continued to commit similar crimes. The football player should have been considered a dangerous threat to the Liberty community.

The Title IX interview transcript associated with this case shows that the perpetrator forced the victim to perform oral sex on campus and based on his pattern of conduct, continued to pose a significant and ongoing threat, and could have victimized others.

- 4. LUPD Incident #19-02750 (Rape)** – On September 13, 2019, at approximately 12:00 a.m., a Liberty employee was allegedly raped. She also allegedly had her hair pulled and was slapped by her perpetrator. The victim claimed that she “gave in”⁶⁸ to sex because she was afraid of her attacker.

The offender in this incident was eventually terminated from his job at the University and was administratively banned from campus. However, termination of such a perpetrator, which takes time, is not a sufficient means of eliminating the serious and continuing threat posed by a sex offender, especially one who served in a position of trust at the University. Liberty’s own incident report indicated that there was credible evidence that the perpetrator committed acts of rape and dating violence and posed an ongoing threat to the campus community. The University should have issued a Timely Warning.

- 5. LUPD Incident #19-02172 (Sexual Battery)** – On October 11, 2019, at approximately 11:00 p.m., a Liberty student was allegedly touched by someone in his crotch region in the Scaremare building. He heard the perpetrator’s voice, but he did not see the perpetrator’s face. No suspect was identified. This incident meets the *Clery Act* definition of fondling.

This incident was one of five reported incidents of fondling that occurred during the two days of October 11 and October 12, 2019. No Timely Warning was issued to the campus community even though the information compiled in the LUPD’s own incident report noted that the perpetrator remained at large and could continue to offend. In this example, Liberty failed to issue a Timely Warning for an on-campus fondling incident,⁶⁹ which was classified as a sexual battery.

Warnings Not Issued in a Timely Manner

The Department also found that in the rare instances where Liberty issued warnings, the warnings were not issued in a timely manner. The most recent noncompliant notification was issued in response to a series of motorized scooter thefts⁷⁰ that occurred on-campus:

⁶⁸ Although the victim used the phrase “gave in,” the violence of the situation prevented her from giving voluntary and genuine actual consent.

⁶⁹ As detailed in Finding #5, this incident of fondling was not included in the University’s crime statistics.

⁷⁰ Under the National Incident-Based Crime Reporting System (NIBRS), motorized scooters constitute motor vehicle thefts, which are crimes if they occur on Clery Geography.

1. **LUPD Incidents #22-014156, #22-017730, #22-017918, #22-017983, #22-018202, #2223-000818, 23-001089, #23-001341, #23-001346** – From October 10, 2022, to January 26, 2023, nine incidences of on-campus motorized scooter thefts occurred, several of them occurring within a short expanse of time. Two thefts occurred on back-to-back days, two occurred within three days of each other, and three occurred within five days of each other.

Liberty issued a warning notification on January 27, 2023, at 3:30 p.m., which was approximately one day after the theft of the ninth motorized scooter in approximately three and a half months. Had the University issued a Timely Warning weeks earlier upon realization that there was an ongoing and serious threat of having one's scooter stolen on-campus, then it potentially could have prevented the victimization of several members of the campus community. The warning was not issued timely with respect to this series of threats.

2. **LUPD Incident #21-008358 (Sexual Battery)** – On November 19, 2021, at approximately 5:35 p.m., a woman reported that she was allegedly fondled, choked, and prevented from leaving a vehicle that was on-campus by a University professor. Liberty issued a warning notification on December 13, 2021, which was approximately three weeks after the incident occurred. The professor who committed the alleged crimes was arrested but bonded out, and therefore, could return to campus. As such, this offender continued to pose an ongoing and serious threat to the community. Had the University issued a Timely Warning weeks earlier upon realization that there was an ongoing and serious threat of a potential assailant who could have sexually assaulted additional victims, then it potentially could have prevented the victimization of several members of the campus community.

It must be noted that these and other Timely Warning violations were not simply the result of operational errors, but also of inadequate and contradictory policy and procedures. Liberty did not adhere to the policy disclosures in its ASRs.

An excerpt of the University's Timely Warning procedure that was included in its 2016 ASR stated the following:

“A Timely Warning Notice shall be issued when a reported crime, either on or off campus, is deemed to constitute an ongoing serious threat to the Liberty University community, The Liberty University Chief of Police, or the Chief's official designee, shall be tasked with judging the necessity of a Timely Warning Notice. A Timely Warning Notice shall be issued when a reported crime, either on or off campus, is deemed to constitute an ongoing serious threat to the Liberty University community, The Liberty University Chief of Police, or the Chief's official designee, shall be tasked with judging the necessity of a Timely Warning Notice...

Timely Warning Notices are typically distributed for the following Uniformed Crime Reporting (UCR) and National Incident Based

Reporting System (NIBRS) classifications. These include, but are not limited to: Arson, criminal homicide, and robbery. Cases of aggravated assault and sex offenses are considered on a case-by-case basis. The distinguishing factor in these cases is the presence of an ongoing threat to the community of Liberty University.” *Annual Campus Security and Fire Safety Report 2016*, at page 8.

Liberty’s policy states that a Timely Warning will be issued in response to reports of certain serious crimes that may constitute an ongoing threat to the University community. These crimes include homicide, robbery, and arson. The policy goes on to state that warnings maybe issued in response to other serious offenses including sex crimes. However, in nearly every case, Liberty failed to issue Timely Warnings to the community⁷¹ as required by its own policies and procedures. Additionally, the Department must call attention to the fact Liberty’s own policy goes above and beyond the requirements of the *Clery Act* by stating that warnings will be issued in response to crimes that occur at off-campus locations. By voluntarily committing to a higher standard of disclosure and communicating that position to the campus community through its ASRs, this is the compliance threshold to which the Department will hold the institution.

Failure to issue Timely Warnings to notify the community of serious or ongoing threats deprives students and employees of vital, time-sensitive information, and effectively denies the campus community the opportunity to take adequate steps to provide for their own safety and to increase their situational awareness and to participate in reducing the likelihood of similar crimes occurring on or near the campus.

Required Action:

As a result of these violations and as part of the comprehensive file review required under Finding #5, Liberty is required to identify all Clery-reportable crimes⁷² that required the issuance of a Timely Warning during calendar years 2016-2022. The file review summary report must indicate if a Timely Warning was issued. If a warning was issued, the timing of the warning and the mode of communication must also be ascertained and identified in the summary report.⁷³

⁷¹ In this context, it must be noted that the LUPD would sporadically issue “Be On the Lookout” (BOLO) and “LUPD Intel Bulletins” internally to advise officials with an apparent need to know about matters that may have posed some sort of threat to campus property and/or campus community members, or that required additional investigation or other follow-up.

⁷² The Department notes that Liberty’s policy states that Timely Warnings will be issued for crimes that occur on or off campus. To simplify the file review process, Liberty is not required to evaluate whether Timely Warnings should have been issued in response to certain crimes that did not occur on Clery Geography. However, the policy violations stemming from the representation that Timely Warnings would be issued in response to certain off campus crimes will be sustained in the FPRD unless the institution can show that the policy statements were in fact accurate.

⁷³ Based on available documents and information, the Department does not anticipate that any incidents will fall into this category other than the two cases already noted.

If a Timely Warning was not issued, Liberty must indicate whether or not the University now believes that a warning was required. If Liberty determines that a warning was not required, it must explain its reasoning and provide documentation in support of its determination. In this context, the University is reminded that the mere fact that a subsequent crime of the same or similar type did not actually occur is not a justification for failing to issue a warning in response to an initial Clery-reportable offense that reasonably posed such a threat. The University must prepare a summary report containing this information and submit it with its official response to this program review report. Copies of any Timely Warnings that have not already been provided to the Department must accompany Liberty's summary report. Additionally, Liberty must review and revise its Timely Warning policies and procedures⁷⁴ as part of the comprehensive file review required under Findings #2 and #5. Procedures must be put in place to ensure and facilitate the timely issuance of warnings for *all* Clery-reportable crimes that pose an ongoing threat to the campus community in accordance with 34 C.F.R. § 668.46(e).

The policy must also provide for campus-wide dissemination of all such warnings. A copy of all revised policy statements also must be submitted with the University's response.

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

Finding #8: Failure to Maintain an Accurate and Complete Daily Crime Log

Citation:

Institutions with a police or campus security department must maintain "a written, easily understood daily crime log" listing all crimes that occurred 1) on campus including 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 boundaries of the campus police or security department's patrol zone. This reporting requirement applies to all crimes, not merely those crimes identified as Clery crimes and listed in 34 C.F.R. § 668.46(c)(1) and (3) of the *Clery Act*.

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

⁷⁴ The Department is in receipt of the Vice President of Equity Compliance's letters dated January 25, 2023, and March 21, 2023, that discuss Liberty's enhancements to its *Clery Act* compliance program.

Noncompliance:

Liberty failed to maintain accurate and complete daily crime logs throughout the review period.

1. **Failure to Enter Incidents Reported to the LUPD** – Over the course of this review period, the Department has found that certain reported crimes that occurred in the LUPD’s patrol zone were completely undocumented in the daily crime log. The following two incidents are examples of this deficiency.

LUPD Incident #16-1301 (Rape)⁷⁵ – The crime associated with this report constituted a rape that occurred in the LUPD’s patrol zone and was omitted from the daily crime log.

LUPD Incident #17-0500 (Stalking)⁷⁶ – The crime associated with this report constituted an incident of stalking that occurred in the LUPD’s patrol zone and was omitted from the daily crime log.

2. **Failure to Enter *All* Offenses Associated with a Reported Incident** – Over the course of the review period, Liberty routinely failed to enter *all* offenses that were associated with a single report of crime. For example, the LUPD typically did not include entries for lesser included offenses such as simple assault, weapons offenses, and alcohol and drug infractions that were identified in the documentation for a reported primary offense. Additionally, the Department has found that, among other crimes, the University was especially neglectful in documenting the VAWA offenses of stalking, domestic violence and dating violence when at least one of these incidents occurred as a part of the same transaction or occurrence as a primary criminal offense. The following two incidents are examples of this deficiency.

LUPD Incident #16-0174 (Fondling, Dating Violence)⁷⁷ – The crimes associated with this report constituted a fondling incident as well as dating violence. Liberty should have entered the two distinct crimes of fondling and dating violence. While the reference to sexual battery is acceptable, in that this description can include the act of fondling as defined under Federal law, Liberty failed to include an entry for dating violence.

LUPD Incident #16-1288 (Fondling, Dating Violence) – The crimes associated with this report constituted a fondling incident as well as dating violence. Liberty should have entered the two distinct crimes of fondling and dating violence. While the reference to sexual battery is acceptable, in that this description can include the act of fondling as defined under Federal law, Liberty failed to include an entry for dating violence.

⁷⁵ As detailed in Finding #5, this incident also constituted an underreported rape.

⁷⁶ As detailed in Finding #5, this incident also constituted an underreported incident of stalking.

⁷⁷ As detailed in Finding #5, this incident also constituted an underreported crime of dating violence.

LUPD Incident #19-02750 (Rape) – The incident associated with this report constituted a rape that occurred in the LUPD’s patrol zone. The incident also involved the crime of dating violence. Liberty should have documented the two distinct crimes of rape and dating violence in the daily crime log, and it failed to document dating violence.

- 3. Improper Use of the “Informational” Classification** – The Department has found that the LUPD failed to include crimes that were filed as “Informational.” On numerous occasions, “Informational” LUPD reports contained documentation of crimes that should have been entered into the daily crime log. Liberty’s daily crime log is solely generated by the LUPD report’s classification, so if a report is not filed as an actual crime and is referenced as “Informational,” then the crimes associated with that report do not get entered into the daily crime log as required under the *Clery Act*. This system renders it impossible for the Department to determine the full extent of crime that has been excluded from the daily crime log in violation of the regulations. The following two incidents are examples of this deficiency.

LUPD Incident #16-1382 (Informational)⁷⁸ – The incident associated with this report constituted a motor vehicle theft that occurred in the LUPD’s patrol zone. The crime is not entered in the daily crime log.

LUPD Incident #20-01612 (Informational) – The incident associated with this report constituted an alleged rape that was committed by a former Liberty President in the LUPD’s patrol zone. The crime is not entered in the daily crime log.

Relatedly, the Department has found that Liberty’s inaccurate and incomplete daily crime log entries were further compromised by the University’s general failure to identify and properly categorize its own Clery Geography as referenced in Finding #9. Taken together, these deficiencies which applied to the daily crime logs for all the years under review rendered the University’s records as unreliable for compliance monitoring purposes. The Department has also found that Liberty has failed to update daily crime log entries, particularly the disposition of open cases, for the most recent 60-day period. Moreover, Liberty’s lack of adequate internal controls contributed to numerous daily crime log errors.

The *Clery Act* is intended to ensure that students, employees, and other community stakeholders have timely access to information about criminal offenses on campus and in the near-campus community. The crime log provides information to assist the community in making decisions regarding individual safety and security. Failure to comply with the daily crime log requirement deprives the campus community of vital safety and security information and violates the *Clery Act*.

⁷⁸ As detailed in Finding #5, this crime also constituted an underreported motor vehicle theft.

Required Action:

As a result of these violations and as part of the comprehensive file review described in Finding #5, Liberty must conduct a review of daily crime log data from 2016 to Present to identify errors and omissions in the information in the logs regarding incidents of crime reported as occurring on the University's Clery Geography, including the patrol zone. To accomplish this testing, the University must trace a random sample of 20% of all LUPD incident reports as part of the file review to the daily crime log for the purpose of identifying deficiencies in the log.⁷⁹ Errors and omissions must be categorized into the following categories of noncompliance: 1) omission of crime; 2) misclassification of crime; 3) failure to list all crimes associated with a reported incident; 4) inaccurate counts of crime; 5) disposition errors; 6) date errors; 7) location errors⁸⁰; 8) failure to update entries; and, 9) any other deficiencies.⁸¹ The University must prepare a summary report containing this information and submit it with its official response to this program review report. The Department will review Liberty's response and if additional testing is required, the University will be notified.

Liberty must also review and revise its policies, procedures, and internal controls to ensure that all incidents of crime that are reported as occurring on the institution's Clery Geography are entered on the daily crime log, as required. These policy and procedure revisions must provide for the designation of a capable official who will ensure that all incidents of crime reported are entered onto the log in an accurate and complete manner and that all fields of the daily crime log are updated within two business days as new information becomes available for at least the first 60 days that the incident is recorded, unless such disclosure is specifically prohibited by law or would substantially jeopardize the confidentiality of a victim or ongoing investigation. Additionally, Liberty must ensure that the log is made readily available for review by members of the campus community as well as the general public. A copy of the revised policies and procedures must be submitted with the University's response to this PRR.

Based on an evaluation of all available information, including the institution's response, the review team will determine appropriate additional actions, which may include additional testing, and advise the University accordingly in the FPRD.

⁷⁹ If it so chooses, the institution may utilize dropdown menus in its summary report to present these deficiencies.

⁸⁰ As noted in the Required Action sections of Findings #5 and #9, the University is required to conduct a comprehensive geography review. As part of this process, Liberty must classify each building, property, or other parcel, and determine if it is part of the University's Clery Geography. These determinations must be used to assess the accuracy of the locations referenced in the 20% sample. All errors must be reported in this field. Liberty is also required to disclose any omissions of daily crime log entries that resulted from its failure to properly identify and classify its Clery Geography at any point in the review period.

⁸¹ Any entry in the "Other" field must include an explanation of the daily crime log deficiency.

Finding #9: Failure to Define Clery Geography in Accordance with Federal Regulations

Citation:

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

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

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

Noncompliance:

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

1. Failure to Designate all “On-campus” Buildings and Properties as Clery Geography:

- a) **Liberty Christian Academy (LCA)** – LCA is a K-12 school for children that is located on campus. It is housed in a building complex that also contains Thomas Road Baptist Church (TRBC) and has direct access to Green Hall. LCA is fully owned by the University and is operated by employees paid by Liberty. Until 2019, Liberty failed to properly include LCA as part of its Clery Geography.
- b) **Fairfield Inn** – The Liberty campus contains a Fairfield Inn hotel location. The hotel is fully owned by the University. Until 2019, Liberty failed to properly include the Fairfield Inn as part of its Clery Geography.

2. Failure to Designate all “Non-campus Property” as Clery Geography:

Liberty failed to identify the Center for Engineering Research and Education (CERE) as a non-campus building. The Department found that from 2019, when the facility was opened, until the beginning of this program review, the CERE should have been categorized as being part of the University’s Clery Geography.⁸²

Based on representations by the University as well as interviews with institutional officials, Liberty did not designate this building as being a part of its Clery Geography until at least February of 2022. Under the University’s policy, the LUPD is responsible for designating buildings and properties that are part of the University’s Clery Geography, including its patrol zone.⁸³ In the March 21, 2022, response to the program review announcement letter, Liberty produced a map of its building and properties used for educational purposes, entitled “Clery Geography Map.” The map clearly indicates that the CERE is part of the LUPD’s patrol zone but not identify it as a non-campus building. The Clery Compliance Officer, who is one of the key individuals involved in the designation of the University’s Clery Geography, stated that he was not aware that the CERE had ever been designated as Clery Geography prior to the beginning of the program review. On March 21, 2022, Liberty produced a property list to the Department. This was the first time that the CERE was correctly designated as a non-campus building.

University officials responsible for real estate management conceded that the institution has experienced difficulties in defining its campuses and identifying all of its real estate holdings.⁸⁴ A former Liberty President purchased many parcels of real estate where the purpose of the purchase is yet to be determined. Accordingly, the

⁸² The CERE was purchased by Liberty in 2017 but was not used for research and academic purposes until 2019.

⁸³ The Department is aware of Liberty’s currently proposed – but not yet approved – Clery Geography policy, which consists of a committee that designates buildings and properties as being a part of the University’s Clery Geography.

⁸⁴ The Department recognizes that some of Liberty’s real estate holdings were purchased solely for investment purposes.

University has not been able to accurately classify those buildings and properties that are part of its Clery Geography and as a result, has not be able to establish its public property boundaries accurately.

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

Liberty failed to incorporate immediately adjacent and accessible public property for the entire review period.

The University has a border that lies adjacent to a long strip of Ward's Road in Lynchburg, Virginia. Liberty has a Memorandum of Understanding (MOU) with the Lynchburg Police Department (LPD). There is no indication that the University has assessed the LPD reports concerning incidents that occurred on or reasonably close to immediately adjacent and accessible public property. Accordingly, such Clery-reportable crimes that have occurred over the course of this review period have never been reflected in the institution's crime statistics. The Department has identified approximately 50 LPD incident reports of 2016 to August of 2022 crimes that occurred close to the Ward's Road tunnel and/or the tunnel's walkway, which are owned and controlled by Liberty. The Department expects that the comprehensive file review will identify the precise number of these incidents that were Clery-reportable crimes that should have been included in the institution's crimes statistics.

It is impossible for any institution to determine its immediately adjacent and accessible public property as Clery Geography until the rest of its Clery Geography has properly been determined. Based on interviews with current and former officials, the University is still in the process of identifying all of Liberty's real estate that was purchased by a former Liberty President, and the intended use of those properties. Because of Liberty's failure to properly define its Clery Geography, the University was never able to accurately determine its immediately adjacent and accessible public property as Clery Geography. Unless, or until, an institution properly defines its Clery Geography, there is no way to count all of its Clery-reportable crimes that must be included in the institution's crime statistics as published in its ASRs and its reporting to the Department.

4. Failure to Recognize On-campus Residences:

The Liberty Godparent Home (LGH) is an on-campus building that houses pregnant women who are unmarried. Over the course of this review period, numerous Liberty students were forced to live at the LGH as a condition of their continued enrollment at the University.⁸⁵

⁸⁵ As part of its response to this PRR, Liberty must provide a list of all students who were required to live at the LGH and/or were required to seek counseling or spiritual guidance from LGH staff during the review period.

By housing Liberty students in the on-campus LGH, the University should have recognized the LGH as being an on-campus residence building, and it has never done so. This also means that Liberty was fully obligated to comply with the HEA fire safety provisions with respect to the LGH and has not done so since LGH's inception.⁸⁶

5. Failure to Recognize Separate Campuses:

- a) **Liberty University Online Facility** – From May of 2016 to Present, the Liberty University Online business facility has been located on Graves Mill Road in Lynchburg, Virginia. Right before that, the facility was located in the River Ridge Mall complex.⁸⁷ Liberty has never properly recognized either of the two Liberty University Online locations as being separate campuses.
- b) **Liberty Mountain Medical Group (LMMG) Facilities** – The LMMG operates out of two distinct buildings – one on Wards Road in Lynchburg, Virginia and the other on Lakeside Drive in Lynchburg, Virginia. Both LMMG buildings operate as medical facilities and academic medical practices for Liberty University College of Osteopathic Medicine (LUCOM) students. The Wards Road location has been in service since 2015 and the Lakeside Drive location since 2021. From 2015 to Present, Liberty has never properly recognized the Wards Road location of LMMG as being a separate campus. Additionally, from 2021 to Present, the University has never recognized the Lakeside Drive location of LMMG as being a separate campus.

6. Failure to Accurately Define Clery Geography:

Until February of 2023, Liberty designated the Scaremare building as being on-campus. It should have been accurately classified as a non-campus property.

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

Required Action:

As a result of these violations and as part of the comprehensive file review described in Finding #5, Liberty must conduct a comprehensive review to identify and properly classify all buildings and properties that constitute its Clery Geography. During a meeting between the Department and the University that occurred on March 3, 2023, the Department notified Liberty that it must conduct a comprehensive review of all the buildings and properties owned or controlled for

⁸⁶ The LGH was established in 1982.

⁸⁷ The review period starts at January 1, 2016, so the Liberty University Online facility was located at the River Ridge Mall for approximately the first five months of the review period.

educational purposes. As part of this reassessment of all properties, Liberty must also account for its immediately adjacent and accessible public property, including all walkways. Liberty has advised the Department that the University has already begun work on this analysis. Because of the University's admitted issues identifying all of Liberty's real estate⁸⁸ that was purchased by the former Liberty President, and the intended use of those properties, the Department will require that the University certify that it has identified all of the properties that should have been included within its Clery Geography.

After the real estate review is completed, Liberty must reevaluate its crimes statistics in light of any changes to its Clery Geography resulting from this review and revise its crime statistics accordingly for the five most recent calendar years. The University will then be required to produce a 2023 ASR that includes all new and revised informational and statistical disclosures and to actively distribute this report to the campus community. Necessary adjustments to Liberty's Clery Geography must be completed as part of this process.

Based on an evaluation of all available information including Liberty's response, the Department will determine if additional actions will be required and will advise the University accordingly in the FPRD.

Finding #10: Failure to Comply with Clery Act Record Retention Requirements

Citation:

The *Clery Act* and the Department's regulations require that institutions participating in the Title IV, HEA programs maintain records in a systematically organized manner. An institution shall make its records available for review by the Secretary or the Secretary's authorized representative. 34 C.F.R. §§ 668.24(d)(1) and (d)(2). An institution must keep the records until the end of the retention period applicable to that record. 34 C.F.R. §§ 668.24(e)(3). Records that document compliance with the *Clery Act* are generally required to be kept for a period of nearly seven years. This is required since all supporting records must be kept for three years following the publication of the last ASR to which they apply, and data included in the ASR includes the previous three years data. 34 C.F.R. § 668.24(e)(3)(ii). At a minimum, an institution must preserve records that document its efforts and actions to comply with the *Clery Act*. Records must be managed in a cognizable manner so that they can be located and produced to the Department and to other oversight entities consistent with the Department's regulations. The Secretary considers that an institution has failed to provide reasonable access to personnel under 34 C.F.R. § 668.24(f)(2)(ii).

Noncompliance:

Liberty failed to retain the required records necessary to establish its compliance with the *Clery Act*. This failure has caused actual harm to individuals who have tried to access their own

⁸⁸ This reference to "Liberty's real estate" includes all buildings, properties, and other parcels that are owned by corporate entities created or controlled by the University including foundations, holding companies, partnerships, related parties, and other affiliates.

educational and employment records and has compromised the Department's ability to conduct required oversight and monitoring activities.

Federal regulations require institutions to cooperate with the Department in the conduct of investigations, reviews, and other oversight activities. 34 C.F.R. § 668.24(f). Institutions agree to comply with these requirements when they execute their Program Participation Agreement. No institution is required to participate in the Title IV, HEA programs and, as a condition of participation, each institution agrees to comply with all applicable requirements when they choose to participate. The oversight process relies heavily on the timely production of records and information to the Department. In this case, several University offices were unable to effectively and timely assist in that process due to the University's ongoing failure to sufficiently maintain records related to *Clery Act* compliance, including reports of crimes, conduct violations, and other matters, in a manner that allows retrieval and production of such records.

This systemic failure manifested itself in several ways over the course of the review period and touches on the operations of numerous institutional offices most relevant to this program review, including, but not limited to, the LUPD, HR, Student Affairs, Intercollegiate Athletics, OEC, and OCL, among others. The Department found that the University never established a specific institution-wide record retention program, and thus the policies varied from office to office, where they existed at all. Numerous institutional officials reported that they were not aware of any specific record retention policies that applied in their work areas.

Prior to the Department's initial compliance assessment which started in May 2021, until the present, Liberty could not produce reliable documentation to substantiate the accuracy and completeness of its crime statistics. University officials have openly conceded this point to the Department since the earliest days of the review process.⁸⁹ The Department has worked diligently to develop an understanding of whatever work was done at the time to compile and disclose required information, even though that task has been complicated by lack of available records and the unreliability of others. What is known is that Liberty's crime statistics were seriously flawed throughout the review period and that the lack of reliable source documents has made the process of determining the full extent of the deficiencies nearly impossible.

It is now evident that multiple offices that had campus safety and student and employee conduct-related functions failed to produce and retain required records and, in some cases, selectively destroyed or otherwise removed or expunged records that needed to be retained. In some cases, the only existing student-level records were destroyed. For example, several of the Jane Doe plaintiffs and their legal counsel as well as several University-affiliated persons reported that they were unable to access key records, even as other records from the same data sets, such as email messages, were made available. The fact that many of those records were retained while some of the most relevant ones were destroyed raises a special concern for the Department. Individuals reported that they were unable to acquire certain records, including but not limited to

⁸⁹ In a letter dated March 21, 2022, Liberty stated that its production of an "audit trail" represented the "University's crime statistics as they appeared in the original version of each ASR for each year and a separate accounting for any revisions that were made at any point thereafter, with a brief explanation for why those incidents were not reflected in the initial compilation."

email messages,⁹⁰ that were needed to advance their cases or for other lawful and legitimate purposes related to their educational or career pursuits. The Jane Doe plaintiffs' counsel told the Department that Liberty was unable to produce his clients' email records for litigation purposes. Additionally, one of the Jane Does provided the Department with a video and an audio recording of her virtual conversation with University Information Technology (IT) in an attempt to retrieve her old student emails. IT was unable to fulfill her request and failed to explain why it would not provide her with the messages.

Concerns about document preservation and a host of other matters continued to come to the Department's attention throughout the program review. During this program review, the Department determined that senior officials in HR sought the assistance of IT staff to wipe certain computer hard drives on April 26, 2022, the very week that the review team first visited the campus. In the Department's announcement letter, dated February 18, 2022, Liberty was specifically advised that:

“All [University officials] must be instructed to not alter, destroy, or remove any document, record or other source of information that may be directly or indirectly relevant in any manner to the Department's inquiry. This instruction applies to all such records and information, regardless of the date of creation or its current custodian or location.”

Liberty was also advised that any failure to cooperate with the program review team would result in the Department initiating an administrative action against the institution. On March 1, 2022, Liberty's current President sent the Department a letter that states the following:

“We understand and acknowledge the Department's right of access to appropriate records and personnel and affirm our commitment to provide the Department with responsive information to the data requests. Liberty's Office of Legal Affairs has already taken immediate steps to preserve all records and information that are potentially relevant to this review, including disseminating a comprehensive document preservation notice to appropriate employees (including Campus Security Authorities) on February 23, 2022, and initiating a legal hold on their email accounts. The Office of Legal Affairs has also taken steps to inform all employees with significant responsibilities for *Clery Act* compliance about this review. It is my direction and expectation that every employee cooperates with this review by producing their records and information (including the records and information requested in your review), being available for interviews and

⁹⁰ In Liberty's rudimentary record retention environment, the email platform essentially served as a system of record for certain aspects of the campus safety programs, especially with regard to reports of sexual violence. This inability of persons to gain access to key communications was noted in the Jane Doe litigation, but it was also raised by current and former students and employees who were victims of crime during the review period.

meetings, providing accurate, complete, and reasonably prompt responses to all requests made by the Department, and by otherwise cooperating with this review.”

Liberty’s current President’s letter affirmed that Liberty understood its obligations and had taken steps to preserve documents in accordance with the Department’s instructions.

In regard to the April 26, 2022, hard drive incident, HR’s hard drives that were allegedly wiped included those once held by the current Executive Vice President (EVP) of HR and his predecessor, as well as other HR department leaders. Based on interviews with a former Liberty dean and a University IT support specialist, this event occurred within just a few hours after the Department formally interviewed the EVP of HR and his Executive Director, a discussion that dealt with the subjects of conduct and disciplinary investigations and the importance of maintaining records. During the interview, the review team reminded those individuals of the mandates to maintain records that were specified in the announcement letter. As illustrated later in this Finding, the document destruction happened within a few hours after the Department had reminded the EVP of HR and his Executive Director to preserve all records for the duration of the program review process. Furthermore, there had been very specific orders given by both the current President of Liberty and the University’s outside counsel and consultants.⁹¹ Per the review team’s discussion with the University IT support specialist, the request for IT to wipe an HR hard drive was atypical according to IT protocol.

In normal cases, institutional officials are required to complete a form that must be approved prior to the removal of any data from a hard drive. As part of this process, an individual must identify the files to be removed from the drive and whether or not those files must be retained elsewhere. None of these steps were completed in this case. The IT support specialist consulted with his supervisor because of the departure from the normal process. The supervisor directed the IT support specialist to carry out his task regardless of the policy because the requesting official was an Executive Vice President. Because of the abrupt wiping of electronic data, Liberty cannot substantiate what specific information was erased, but again, these actions raise a special concern for the Department that will require a detailed explanation by the University in its response to this report. As it stands, the Department considers this a failure by the University to retain records in accordance with the instructions in the program review announcement letter.

The damage resulting from the failure to retain, manage, and produce documents is described throughout this PRR. As noted in Finding #1, the retention and production of documents go hand-in-hand. It does not appear that any institution-wide record retention program has ever existed at Liberty with respect to its campus security operations, although some individual offices did establish their own guidelines for their operations. Similarly, the University has been unable to provide the basic documentation to substantiate the accuracy and completeness of the University’s campus crime statistics. Shortly after the review was announced, the University advised the Department that it would create new audit trails in an attempt to identify the incidents that were used to compile the crime statistics included in its ASRs during the review

⁹¹ See letter from Liberty’s President dated March 3, 2022.

period.⁹² A condition of this type could easily and legitimately be taken as evidence that the institution simply estimated its crime statistics or otherwise made them up to serve the longstanding narrative as discussed in Finding #6 that it was the safest college in Virginia.⁹³

When a program review is announced, the Department requests credible documentation that supports the statistics disclosed in the ASR and in other publications. Such supporting documentation is referred to as an “audit trail.” While there is no *Clery Act* requirement, in the first instance, to maintain a formal audit trail, institutions *are* obligated to keep credible records to substantiate the accuracy and completeness of their own crime statistics. Liberty did not do so. Once a program review begins, the Secretary or designated representatives may require institutions to create and submit reports of information needed to conduct oversight or other required functions. Because Liberty did not have records that supported its data, it hired a consultant to try to create an audit trail and identify backup documents that could be provided for the Department’s review. Given the range and severity of the problems with the University’s recordkeeping systems and processes, this was not an easy task. Even after the Department allowed the University’s consultant significant time to provide the necessary documentation, the records that were developed by the consultant for the Department’s benefit were of limited use other than to expose other systemic weaknesses in the University’s documentation and records management systems.

During the course of the Department’s field work, the review team also identified an additional incident involving the destruction of records, namely hardcopy incident reports, near the loading dock of DeMoss Hall in 2016. On this occasion, an LUPD officer observed stacks of incident reports laying on tables in an unsecured room. The officer and other persons who witnessed the situation learned that the records were to be shredded. The officer contacted the LUPD headquarters. Shortly thereafter, a supervisor arrived on-scene as did members of the command staff. The officer was advised to return to service. Through interviews with current and former Liberty employees, including a former LUPD officer who was on-scene for the incident, the LUPD command staff, including the Chief, started what was characterized later as an “investigation” for which no reports were generated or at least maintained.

To be clear, a key component of an effective records management program provides for the systematic destruction of records that no longer need to be retained. Typically, records are reviewed and designated for destruction on a prescribed schedule and in accordance with procedures and under the supervision of authorized persons. Orders are issued and records of completed work are maintained. There are oddities here that may in fact be a consequence of the other administrative impairments noted throughout this report. The office that performs this task could not identify who ordered the destruction and could not locate any of the paperwork that is normally created for the destruction of records. Additionally, if this specific occurrence of document destruction was truly routine and appropriate, it seems implausible that the LUPD command staff would find it necessary to initiate an investigation.

⁹² These issues were discussed between Liberty officials and the Department on several occasions including a May 16, 2022, meeting.

⁹³ As discussed in Finding #6, Liberty had long represented that it was the “safest college in Virginia” and one of the safest in the nation.

The Department's concerns in this regard are heightened precisely because of the occurrences throughout the program review process that indicate Liberty does not understand or simply does not respect the Title IV record retention and production requirements that apply to all participating institutions. On at least four occasions, the University, through its Office of Legal Affairs, has characterized the production of basic records to the Department as "voluntary," which implies a lack of legal obligation. The production of records in response to a request from the Department is *not* voluntary and the regulations are clear that production of program review data is an obligation of Title IV participation.⁹⁴

Effective document retention processes are required to allow timely document production in response to a request from the Department. Liberty's inadequate record retention practices put officials who were tasked with assisting the review team in an unenviable, and at times, impossible position due to the inconsistent policies directives from senior officials further complicated the matter. For example, as a standard part of its data requests, the Department typically requests minutes from board meetings and other convenings that speak to the focus areas and governance decisions of senior leadership. Most institutions freely produce these records with few deletions or redactions except where a privilege pertains, or a trade secret might be revealed. In this case, the institution reluctantly produced copies of minutes that were redacted in their entirety, apparently on the basis of a policy put in place by the Office of Legal Affairs. A former President of the University, who himself is an attorney, conveyed to the review team that most of the dialogue that took place and records shared during these meetings did not involve privileged communications.

The failure to adequately retain and manage records regarding reported incidents of potential Clery-reportable crimes and other compliance-related documents and to produce them pursuant to a request from the Department is an indication of serious administrative failure, violates applicable Federal law, and contributes to the ongoing production and dissemination of inaccurate and incomplete campus safety information through the ASRs and other publications, and representations made by University officials. These failures also inhibit the ability of the Department to conduct required oversight activities.

Required Action:

As a result of these violations, Liberty must develop policies and procedures to ensure that all records of Clery-reportable offenses and other matters related to the University's efforts to comply with the *Clery Act* requirements are retained and effectively managed going forward. As part of this process, the institution must ensure that adequate information on all Clery-reportable crimes is produced and retained in a manner that allows the documents and information to be identified and retrieved as needed and that supporting information that substantiates the accuracy and completeness of all crime statistics is available for review by the Department. Copies of these additional policies and procedures must accompany the University's response to this PRR. In addition, the University must produce the destruction orders for the 2016 incident referenced above and all other *Clery Act*-related records that are covered during the review period.

⁹⁴ See four letters from Liberty's Office of Legal Affairs to the Department dated June 13, 2022, August 15, 2022, September 2, 2022, and February 15, 2023.

Liberty must conduct a diligent search for relevant records and record systems that have not been previously brought to the Department's attention. A list of all such formal or informal records management systems and/or record collections that are identified and a detailed description of each must accompany the institution's response. If Liberty locates any documentation regarding the April 26, 2022, wiping of hard drives, then the University must provide this information as part of its response.

Based on a review of all available information including Liberty's response, the Department will determine if additional actions will be required and will advise the University accordingly in the FPRD.

Finding #11: Failure to Publish and Distribute Annual Security Report in Accordance with Federal Regulations

Citation:

The *Clery Act* and the Department's regulations require that all institutions participating in the Title IV, HEA financial aid programs must prepare a comprehensive ASR that contains, at a minimum, all of the statistical and policy disclosures identified in *34 C.F.R. § 668.46 (b)*. The ASR must be prepared and distributed as a single document. The only exception to this requirement is that the ASR may cross-reference information regarding the institution's alcohol and other drug abuse prevention programs required by *§120 (a)-(d)* of the HEA. *34 C.F.R. § 668.46(a)(10)*.

Federal regulations also require institutions to actively distribute the ASR to all enrolled students and current employees through appropriate publications and mailings. Acceptable means of delivery include regular U.S. Mail, hand delivery, or campus mail distribution to the individual, or posting on the institution's website. If an institution chooses to distribute its report by posting to an Internet or Intranet site, the institution must, by October 1 of each year, distribute a notice to all students and employees that includes a statement of the report's availability and its exact electronic address, a description of its contents and a statement that a paper copy will be provided upon request. *34 C.F.R. § 668.41(e)(1)*.

Participating institutions must also provide a conspicuous notice to prospective students and employees that includes a statement about the ASR's availability, its contents, and its exact electronic address if posted to a website. This notice must also advise prospective students and employees that they may request a paper copy of the ASR. *34 C.F.R. § 668.41(e)(4)*. An institution may produce the ASR and Annual Fire Safety Report as a single publication, as long as the text of the title page clearly notes that the content of both reports is included therein. *34 C.F.R. § 668.41(e)(6)*.

Noncompliance:

Liberty failed to actively distribute accurate and complete Annual Security Reports to its enrolled students and current employees during the review period. Overall, as this report shows,

the University's reports were riddled with deficient policy statements and inaccurate, incomplete, and unreconciled crime statistics disclosures; however, in four of those years, the institution did distribute a report to required recipients by the regulatory due date. Upon inspection of the original and revised reports, the review team found that the University never distributed the revised version of the report, known as the Annual Campus Safety & Fire Safety Report, for 2018, 2019, and 2020.

Liberty distributed the original 2018 ASR on September 29, 2018, the original 2019 ASR on September 30, 2019, the original 2020 ASR on December 22, 2020,⁹⁵ and the original 2021 ASR on September 29, 2021, all by the regulatory due date. However, the University subsequently made substantive changes to the required content of each of these reports but never sent the revised reports to required recipients. Instead, the revised reports were simply posted to the website without any notification to the Liberty community.

To be clear, the Department expects and frequently requires institutions to make necessary revisions to its disclosures of policies, procedures, and statistics as needed to make them accurate and complete. For these changes to meet the applicable legal standards or the intended campus safety, crime prevention, and consumer protection purposes of the law, the campus community must know about these changes.

Failure to publish an accurate and complete ASR in accordance with Federal regulations, and to actively distribute those documents to students and employees, deprives the campus community of important campus security information that can empower its members to be informed and to play more active roles in their own safety and security.

Required Action:

As a result of these violations, Liberty must review and revise its policies and procedures regarding the preparation, publication, and distribution of its ASRs. The University also must continue to develop its campus safety and *Clery Act* compliance programs, as needed, to reasonably ensure that these violations or similar deficiencies do not recur. The University is strongly advised to carefully review all statements of campus safety and crime prevention policy and procedure and to take all necessary actions to ensure that its crimes statistics are accurate complete and fully reconciled with the statistical data submitted to the Department and that its informational disclosures are compliant with Federal law and reflect current institutional policy. Once the institution's new and revised policies and procedures are reviewed and approved by the Department, Liberty will be required to incorporate this material into its next ASR and to provide updates to the campus community about its efforts to improve and enhance its campus safety policies, procedures, and programs. Because of the timing of this directive and other factors, Liberty will not be required to make any changes to its 2022 ASR or any prior reports. Instead, institutional officials are directed to ensure that the contents of the 2023 ASR are, in fact, accurate, complete, and fully compliant with all Federal requirements.

⁹⁵ The Department extended the due date for institutions to issue their ASRs to December 31, 2020, due to the disruptions caused during the COVID-19 pandemic.

A copy of Liberty's new and revised policies and procedures must accompany the University's response. The University will also be required to submit its draft 2023 ASR to the Department no later than September 1, 2023.

Liberty will be required to actively distribute its 2023 ASR to enrolled students and current employees no later than October 1, 2023. The ASR may be distributed by hand delivery, by regular U.S. Mail, or by sending an email with a direct link to the ASR. Simply posting the report to a website or generally making the report available on campus will not suffice. The University is strongly advised to retain credible evidence of its distribution efforts.

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

Finding #12: Failure to Protect Whistleblower from Retaliation

Citation:

The *Clery Act* and the Department's regulations clearly states that a participating institution, or officer, employee, or agent of an institution, may not retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individuals for exercising their rights or responsibilities under any provision of the applicable regulation. *34 C.F.R. § 668.46(m)*.

Noncompliance:

The Department found credible evidence that Liberty retaliated against a former Senior Vice President of Communications and Public Engagement based in part on the employee's attempts to address serious violations of the *Clery Act*.⁹⁶ The issues raised by this example are strikingly similar to concerns raised by several individuals who are currently or were formerly affiliated with the University. In this specific case, the review team has identified factors that evidence that the former employee's attempts to see that the law was followed coincided closely with the termination of his employment. The Department specifically notes that the action to terminate in October 2021 occurred abruptly even as the employee was promoted to one of the highest-level positions at the University and recognized as a high performer. The former President of the University also spoke highly of this individual.

During multiple interviews with the review team, the employee explained that during this period he expressed serious disagreement with how the University had responded to the lawsuits filed

⁹⁶ This Finding is based on the Department's own interviews, document examination, and application of the regulatory standard to the available facts and information. The Finding does not rely, in any regard, on any actions of the parties or the Court, in any of the suits filed by the official referenced in this Finding or the University.

by the original Jane Doe plaintiffs.⁹⁷ The employee also participated in the internal investigation conducted by Gentry Locke, which were characterized as inquiries into Liberty's business operations and other related matters.⁹⁸ From at least April 2021 to October 2021, the employee expressed concern about the University's possible cover-up of sex crimes and other *Clery Act* violations. In addition to providing information to the internal investigators, the employee communicated these same concerns directly to the Interim President and other senior executives on several occasions, including at an executive leadership meeting on October 2, 2021. The employee was fired just two days later on October 4, 2021. The University maintains that the reason for the firing was that the employee's office was being "restructured." In this context, it is important to note that the Department has identified several cases where the pretext of restructuring a position or office has been used as a basis to terminate employees who raised campus safety concerns during the review period.⁹⁹ The employee was offered a severance package conditioned on signing a nondisclosure agreement, but the employee declined to sign the agreement.¹⁰⁰

The *Clery Act* is, first and foremost, a public safety and consumer protection law based on the premise that access to accurate, complete, and timely information about campus safety and crime prevention will make campuses safer. To achieve the goal of making campuses safer, everyone must play a part. Members of a campus community must be vigilant and responsible to help ensure their own safety and that of others as well. The Department depends on concerned students, parents, employees, the media, and other stakeholders to inform us of concerns regarding dangerous conditions on campus, or whenever they have good reason to believe that an institution is not in compliance. To protect employees and students from mistreatment as a result of reporting compliance concerns to the Department, the *Clery Act* specifically prohibits any act by an institution to "retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual" for acting in accordance with the *Clery Act* or in response to a person's efforts to see that the *Clery Act* is effectively enforced on campus. For the *Clery Act* to be truly effective, students and employees must be assured that they can come forward with concerns about campus safety issues without fear of retaliation or other negative outcomes.

For all of these reasons, the Department makes an initial finding that the actions taken against the employee constituted a violation of the anti-intimidation/retaliation provision of the *Clery Act*. This statutory provision is specifically intended to prohibit the types of actions that were alleged to have been taken against the employee. The information further indicates that the disciplinary action taken against this individual was the result, at least in significant part, of his attempts to ensure that the *Clery Act* was followed by the University and enforced by the Department. For

⁹⁷ As the Senior VP of Communication and Public Engagement, he was the foremost official to relay communication to the campus community. It would be expected for such an individual to communicate the truth and to be concerned about communicating misleading or false information.

⁹⁸ Numerous current and former employees raised serious concerns about the supposedly anonymous nature of the process used in the Gentry Locke investigations. Employees were advised that they could enter the secure portal anonymously and that all reported concerns would be investigated thoroughly.

⁹⁹ Similar tactics have been used against students who have raised concerns about various aspects of campus life.

¹⁰⁰ Liberty often offers its terminated employees severance packages contingent upon signing nondisclosure agreements. The Department has found that this practice has been used as a tactic to intimidate individuals who may have knowledge about the University's potential areas of noncompliance and other wrongdoings.

obvious reasons, any detrimental impact that befalls any person affiliated with Liberty in response to the submission of a good-faith complaint to the Department triggers a special regulatory concern as it can have a chilling effect on the willingness of others to come forward.

The Department reminds Liberty that it is a violation of Federal law, in any regard, to retaliate, coerce, or intimidate any person who seeks to vindicate a right under the *Clery Act* or who takes action to see that the provisions of the law are followed by an institution. For this reason, the University must ensure that neither the institution or any person acting on its behalf takes any direct or indirect action against any individual or group, including, but not limited to, current or former Liberty students or employees, as a result of their willingness to participate in interviews, provide documents, or to otherwise assist the Department in the conduct of this program review.

Required Action:

As a result of these violations, Liberty is required to address with specificity the allegations of retaliation and mistreatment with respect to the employee in question in its official response to this PRR. All representations made and positions taken in the response to these allegations must be substantiated by credible supporting documentation. The University must also provide a list of all persons who had responsibilities for any aspect of the institution's campus safety policies, procedures, or operations that were terminated for cause during the review period. The Department advises Liberty to completely refrain from any retaliation against employees who have participated in this program review. Finally, the University is required to provide a full accounting of any steps taken to remediate the retaliatory acts alleged by the employee and to provide an update on the current status of any claims by the employee.

E. Summation:

As noted throughout this report, the findings documented by the Department constitute serious violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly "correct" violations of these important campus safety and crime prevention laws once they occur. Liberty has and will continue to have the opportunity to conduct a meaningful review of its crime statistics, geographical holdings, and current campus safety and crime prevention policies, procedures, and programs and to take effective remedial action. As part of this process, the University also must bring its programs and operations into compliance with all requirements of the *Clery Act* and do so in a manner that will provide reasonable assurance that these violations will not recur, as required by the applicable statutory and regulatory requirements and its PPA. Liberty will be required to provide credible evidence that supports all claims of either compliance or its remedial efforts. Notwithstanding any remedial efforts undertaken pursuant to these findings or for any other purpose, Liberty is advised that such remedial measures 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 remedial measures as a result.

In light of the violations identified during the review, the Department strongly recommends that the University re-examine its campus safety and general Title IV policies and procedures during

the preparation of its response to ensure that they accurately reflect current institutional practices and are compliant with the HEA and its implementing regulations. Copies of all new and revised policies and procedures as well as any internal guidance must accompany the University's response to this program review report. The Department provides a number of *Clery Act* training resources. Liberty officials can access these materials at <http://www2.ed.gov/admins/lead/safety/campus.html> and <https://fsatraining.ed.gov/>. The *Clery Act* regulations can be found at 34 C.F.R. §§ 668.14, 668.41, and 668.46.