



November 3, 2016

Eric J. Barron, Ph.D.
President
Pennsylvania State University
201 Old Main
University Park, PA 16802

UPS Tracking #
1ZA879640195402597

RE: Campus Crime Final Program Review Determination
OPE ID: 00332900
PRCN: 201210327991

Dear President Barron:

The U.S. Department of Education (the Department) previously issued a program review report regarding the Pennsylvania State University's (Penn State; the University) compliance with the requirements of 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 original text of that report is incorporated into this Final Program Review Determination (FPRD). The University submitted an acceptable response to the Department's report. Penn State's response and the supporting documentation submitted with the response are being retained by the Department and are available for inspection by Penn State upon request. Please be advised that this FPRD may be subject to release under the Freedom of Information Act and may be provided to other oversight entities now that it has been issued to the University.

Purpose:

Final determinations have been made concerning the findings identified during the program review. The purpose of this letter is to advise Penn State of the Department's final determinations and to close the review. Additional information about post-review monitoring will be provided at a later date. Please note that this FPRD contains several findings regarding Penn State's failure to comply with the *Clery Act* and the *DFSCA*. Because these findings do not result in financial liabilities, they may not be appealed.

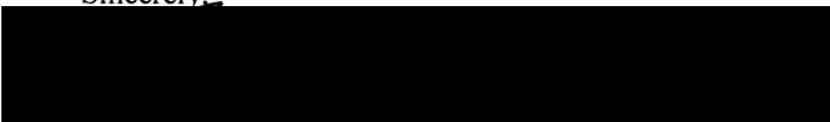
Due to the serious nature of these findings, this FPRD was referred to the Administrative Actions and Appeals Service Group (AAASG) for fine action pursuant to *34 C.F.R. Part 668, Subpart G*. A fine action will be initiated by the Department. Information about the fine action and Penn State's appeal rights will be provided under separate cover later today.

Record Retention:

Records relating to the period covered by this program review must be retained until the latter of resolution of the violations identified during the review or the end of the regular record retention period applicable to all Title IV records including *Clery Act*-related documents under *34 C.F.R. § 668.24(e)*.

Thank you for the cooperation extended to us during the program review process. If you have any questions about this FPRD or the program review process, please contact me on 215-656-6495 or at James.Moore@ed.gov or Mr. Donald Tantum on 215-656-6467 or at Donald.Tantum@ed.gov.

Sincerely,



James L. Moore, III
Senior Advisor
Clery Act Compliance Team

cc: Mr. Charles Noffsinger, Assistant Vice President, University Police and Public Safety

Enclosure:

Final Program Review Determination

Prepared for:

Pennsylvania State University

OPE ID: 00332900

PRCN: 201210327991

Prepared by:

U.S. Department of Education

Federal Student Aid

Clery Act Compliance Team

Final Program Review Determination
November 3, 2016

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

The *Clery Act* requires institutions to produce and distribute an Annual Security Report (ASR) containing its campus crime statistics. Statistics must be included for the most serious crimes against persons and property that occur in buildings or on grounds that are owned or controlled by the institution or recognized student organizations as well as on adjacent and accessible public property. These crimes are deemed to have been reported anytime such an offense is brought to the attention of an institution's campus police or security department, a local or state law enforcement agency of jurisdiction, or another campus security authority (CSA). There are several categories of CSAs. These include 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. Anyone designated to receive reports of crime and/or student or employee disciplinary infractions, such as Human Resources and Alternative Dispute Resolution professionals, are also CSAs. Finally, the law confers CSA status on 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. At most, institutions, the largest group of CSAs will fall into the last of these categories.

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

The *Clery Act* is based on the premise that students and employees are entitled to accurate and honest information about the realities of crime and other threats to their personal safety and the security of their property. Armed with this knowledge, members of the campus community can make informed decisions about their educational and employment choices and can take an active role in their own personal safety and to secure and protect their personal property. For that

reason, the office of Federal Student Aid (FSA) must ensure that the information disclosed in each ASR and AFSR is accurate and complete. FSA uses a multi-faceted approach to ensure that institutions comply with the *Clery Act*, which includes providing technical assistance and training programs and materials as well as monitoring and enforcement through program reviews.

FSA may initiate a campus crime program review subsequent to a complaint or in response to on public reports about crimes, crime reporting, and prevention at a particular institution. FSA also conducts Quality Assurance Reviews in cooperation with the FBI's Criminal Justice Information Service (CJIS) Audit Unit. Program reviews entail in-depth analysis of campus police and security records as well as interviews with institutional officials, crime victims, and witnesses. During a program review, an institution's policies and procedures related to campus security matters are also examined to determine if they are accurate and meet the needs of the campus community.

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

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

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

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

B. Institutional Information

Pennsylvania State University
201 Old Main
University Park, PA 16802-1503

Institution Type: 4-Year, State-Related

Highest Level of Offering: Master/Doctorate Degree

Accreditation Agency: Middle States Association of Colleges & Schools – Commission on Higher Education

Current Student Enrollment: Univ. Park - 46,848; Commonwealth Campuses - 30,965 (Approx. Fall 2015)

Percentage of Students Receiving Title IV, FSA Funds: 75% (Approx. Fall 2015)

Title IV Participation: (Per U.S. Department of Education Database)

2014-2015 Award Year

Federal Stafford Loan Programs	\$ 463,899,288
Federal Pell Grant Program	\$ 84,170,937
Federal Supplemental Educational Opportunity Grant Program	\$ 5,767,724
Federal Work Study Program	\$ 5,104,016
Federal Perkins Loan Program	\$ 7,461,548
Total	<u>\$ 566,403,513</u>

DL/FFEL Default Rate: 2012 – 5.7%
2011 – 7.7%
2010 – 8.0%

Perkins Default Rate: 6/30/2015 – 3.6%
6/30/2014 – 1.1%
6/30/2013 – 1.4%

The University

Founded in 1855 as Farmers’ High School of Pennsylvania, the Pennsylvania State University (Penn State; the University) is a comprehensive state-related institution. The University is organized into 14 distinct colleges and offers programs in more than 160 undergraduate majors and 150 graduate and professional fields. Situated on more than 7,300 acres in State College,

PA, Penn State owns or controls approximately 600 primary buildings on the University Park campus and many more on its 19 undergraduate Commonwealth Campuses. Penn State also has schools of law and medicine. In every respect, the University is extremely large. Penn State's operating budget for fiscal year 2012 - 2013 exceeded \$4.3 billion dollars. The University has one of the largest fraternity and sorority systems in the world and also one of the largest housing and residence life operations in American higher education, with the capacity to accommodate nearly 14,000 students.

At the time of the primary fieldwork, the Penn State University Police Department (PSUPD) was comprised of 47 full-time, law enforcement officers who are fully deputized with arrest powers and authorized to carry PSUPD-issued firearms. The PSUPD also employed two traffic and parking enforcement officers, six dispatchers, and approximately 150 Auxiliary Police Officers.

The PSUPD is described as a full-service law enforcement agency that provides 24/7 policing and protection services on campus and in the near-campus community. The PSUPD maintains working relationships with state and local law enforcement agencies including the Pennsylvania State Police Department, the State College Borough Police Department as well as other local agencies in Ferguson and Patton Township.

C. Background and Scope of Review

On November 4, 2011, the Pennsylvania Attorney General (PA AG) announced that an investigative Grand Jury had issued a Presentment (Indictment) against Gerald A. Sandusky (Sandusky), who served as an assistant football coach at Penn State from 1969 to 1999, on multiple charges related to acts of child sexual abuse beginning in 1998. The Presentment was posted on the PA AG's website on November 5, 2011. The charges included more than 50 felonies including multiple counts of involuntary deviate sexual intercourse, aggravated indecent assault, and unlawful contact with minors as well as additional charges for corruption of a minor and endangering the welfare of a minor. The Presentment indicated that several of these sex crimes occurred on the Penn State campus. In this report, these crimes and allegations will be referred to hereafter as "the Sandusky matter."

On November 5, 2011, the same day that Sandusky was arrested, the PA AG also announced charges against Timothy M. Curley, Penn State's Athletic Director, and Gary C. Schultz, Vice President at Penn State, on charges of failing to report the allegations against Sandusky to law enforcement and child protective services and for committing perjury during their testimony before the Grand Jury. Based on this public information, the U.S. Department of Education conducted an immediate risk assessment to determine if any action was appropriate. As a result of that assessment, the Department decided to initiate a campus crime program review to assess Penn State's compliance with the *Clery Act* and the *DFSCA*. On November 9, 2011, the University was notified that the Department would begin its review on November 28, 2011. At about the same time that the Department announced its review, the Penn State Board of Trustees took a number of actions. First, Graham B. Spanier was removed as President. Joseph V. Paterno was also removed as Head Coach of the football team. The Board also formed a Special Investigative Task Force (SITF) to conduct an internal investigation into the Sandusky matter. On November 21, 2011, the SITF retained Freeh, Sporkin, & Sullivan, LLP, as Special

Investigative Counsel (the Freeh Group) to investigate all issues and circumstances attendant to the Sandusky matter. Department officials established lines of communication with the Freeh Group and met with members of the team throughout its investigation. Freeh Group team members were on the Penn State campus continually until its report (the Freeh Report) was issued on July 12, 2012. On November 1, 2012, the PA AG announced an eight-count indictment charging former Penn State President Dr. Graham B. Spanier with perjury, endangering the welfare of children, obstruction, failure to report allegations of child sex abuse, and conspiracy¹. During a press conference called to announce the charges, the PA AG characterized the actions of Spanier, Schultz, and Curley as a “Conspiracy of Silence.” For his crimes, Sandusky was initially charged with 52 counts related to the sexual abuse of children, although four were eventually dropped. On June 22, 2012, a jury found him guilty on 45 of the remaining 48 charges and he was later sentenced to a maximum of 60 years in prison. The damage of Sandusky’s crimes on his victims and the University cannot be overstated. Just in financial terms, Penn State has paid more than \$93 million to 32 victims. On June 20, 2016, the University reported to us that a total of 45 individual have claimed that they were one of Sandusky’s victims. Of the 13 remaining claimants, Penn State acknowledged that eight have provided information about crimes that the University believes to be Clery-reportable offenses.

Although the Sandusky matter was the impetus for this review, the Department’s primary objective is to evaluate Penn State’s overall administration of the *Clery Act*. The University’s compliance with the requirements of the *DFSCA* and the Department’s *DFSCA* regulations at 34 C.F.R. Part 86 was also examined during the program review. In addition, Department officials sought to gain an understanding of the University’s culture, climate, governance structure, and overall environment to better understand the institution and inform the program review process. We also closely examined the influence of intercollegiate athletics on Penn State’s approach to policing, student conduct, and other factors that directly or indirectly influenced *Clery Act* compliance. The review was conducted by the Clery Act Compliance Team and led by Jim Moore and Don Tantum.

The review has included a careful examination of Penn State’s publications, written agreements, police incident reports, investigative reports, arrest records, and disciplinary files as well as the University’s policies, practices, procedures, and programs related to the *Clery Act*. The Department also conducted comparisons of the campus crime statistics submitted by Penn State to the Department and those provided to students and employees in the University’s ASRs on an ongoing basis through 2015. The review team also interviewed several current and former institutional officials with *Clery Act* responsibilities. To gain a broad perspective, Department officials also attended an on-campus student forum at Penn State in the first week of December 2011 as well as an alumni town hall forum in January 2012 and spoke to several current and former Penn State students about their experiences and opinions. Department officials also carefully reviewed the Freeh Group report and make mention of it in several sections of this document. In addition, the Department reviewed many other documents and reports prepared by various authorities and groups, including a report by the Pennsylvania Auditor General and the “Critique of the Freeh Report” prepared at the request of the family of the late, former Penn State

¹ At the same time, the PA AG announced additional charges against Curley and Schultz for child endangerment, obstruction of justice, and conspiracy.

football coach Paterno. The review team also carefully monitored all significant developments arising from the Sandusky trial as well as other related investigations.

The Department selected samples of PSUPD records including approximately 854 incident reports as well as numerous arrest reports, disciplinary referral reports, photographs, email exchanges, and other relevant materials for the period from 1998 - 2011.² The incident reports examined by Department officials documented Part I crimes³ reported to the PSUPD and/or the Office of Student Conduct. The Department also reviewed records of a sample of Part II arrests and disciplinary referrals for violations of certain laws pertaining to illegal drugs, illegal usage of controlled substances, liquor, and weapons. All documents that were requested were from the University Park campus. Not all records were reviewed for all compliance attributes. Both random and judgmental sampling techniques were used to select reports for this review. Selected incident reports from these samples were cross-checked against the daily crime log to ensure that crimes occurring within the patrol jurisdiction were entered properly.

The Department issued its initial program review report (PRR) on July 11, 2013. Penn State submitted its initial response in sections on March 31, 2014, June 2, 2014, and July 1, 2014. Pursuant to the Department's requests for additional information, the University submitted supplemental material on several occasions. The final production was received on September 12, 2016. At the time that the initial PRR was issued, Penn State officials were advised that the Department might issue supplements to the report. As the process continued, it was determined that these supplements were not necessary. All issues that are not completely resolved in this Final Program Review Determination will be addressed during post-review monitoring. The purpose of post-review monitoring is to ensure adequate corrective measures are fully implemented and sustained. Information gathered during post-review monitoring will inform the Department's determinations about Penn State's Title IV eligibility. Serious lapses in *Clery Act* compliance in the future could negatively affect the University's Title IV eligibility.

As noted above, a secondary objective of the review was to evaluate the cultural, climate, and governance issues that may have adversely affected the University's campus safety and crime prevention programs and its compliance with the *Clery Act* and the *DFSCA*. In addition to the specific findings of noncompliance identified during the review, the Department identified

² Participating institutions are required to maintain all documentation related to *Clery Act* compliance for the normal record retention period specified in 34 C.F.R § 668.24. Although the regulation establishes a normal record retention period of approximately seven years, there is no limitation that forecloses the Department from conducting examinations of an institution's compliance in earlier years. Moreover, Penn State officials stated that the PSUPD and most other offices that are central to campus crime and security operations had maintained records dating back to the 1980's, well before the first year of the review period. In the first discussion with Penn State officials about the review process, Department officials clearly instructed the University to take immediate action to ensure that no documents that were currently in the possession of any Penn State official, department, contractor, or other agent or representative, etc. were destroyed, altered or compromised in any way.

³ In basic terms, the Uniform Crime Reporting (UCR) system divides criminal offenses into two broad categories. Part I offenses are the most serious crimes against persons and property including, but not limited to, criminal homicide, forcible sex offenses, burglary, and arson. Part II offenses are slightly less serious crimes by comparison including, but not limited to, simple assault, theft, and many drug and liquor law violations. The *Clery Act* primarily requires the disclosure of campus crime statistics for Part I offenses as well as arrest and disciplinary referral data for Part II offenses related to certain drug, liquor, and weapons law violations.

additional and substantive weaknesses⁴ that provide further evidence that Penn State lacked adequate checks and balances in its internal control system that may have contributed to these systemic violations noted during the review period:

1. As the University grew, the Penn State Board of Trustees (BOT) failed to create an adequate control environment and was ill-equipped to effectively and consistently oversee University operations, especially on matters of compliance, governance, and risk management. Stated simply, in too many cases, there was no one “at the switch” to provide timely and effective oversight regarding *Clery Act* compliance and campus safety operations;
2. The Penn State BOT was overly-deferential to senior management, including the President’s Council. The evidence suggests that the BOT was willing to abide by a lax set of standards and rules. With regard to the Sandusky matters, senior management failed to inform the BOT of events that threatened to destabilize the University and the BOT failed to adequately inquire about these same events, even as credible information began to emerge in the press and from law enforcement officials;
3. Penn State failed to commit sufficient resources to *Clery Act* compliance, the PSUPD, and campus safety operations generally. In the ranking of priorities, public safety initiatives did not receive the attention that they deserved, in spite of the fact that the University has been and continues to be well-funded. During the review period, Penn State’s annual budget increased to more than \$4.3 billion;
4. Penn State failed to establish clear paths of communication and systems of coordination to ensure the effective compilation, disclosure, and dissemination of crime statistics and supporting documentation, especially where CSAs were concerned;
5. Penn State’s most senior officials failed to provide sufficient managerial oversight of those individuals and offices charged with *Clery Act* responsibilities. In his interview with the Department, former President Spanier, the signatory of the University’s PPA, stated that he relied on his subordinates to ensure compliance and was unaware of their failure to do so throughout the review period;
6. Penn State failed to establish a system that ensured standardization, custody, and control of important records needed to comply and document compliance with the *Clery Act*;
7. Penn State repeatedly failed to follow its own policies and procedures on child protection and the conduct of mandatory background checks;
8. Penn State also failed to adhere to its own internal processes when the Department of Intercollegiate Athletics took the lead in negotiating Sandusky’s retirement package and, in the process, fed unnecessary and presumptively inaccurate speculation that certain benefits were granted for inappropriate purposes. For example, it is now known that Sandusky did not qualify for the emeritus status that was conferred upon him as part of his retirement deal; it was this status in large part, that provided Sandusky with regular access to University facilities and made it difficult to remove

⁴ See Finding #2 for additional information on the Department’s assessment of Penn State’s administrative capability. A finding of significant administrative impairment is one of the most serious findings that the Department can make.

- him from campus once the threat posed by his continued presence was finally ascertained by senior University officials; and,
9. Penn State did not exercise adequate control over its intercollegiate athletic programs, especially the football program. These failures resulted in the imposition of serious sanctions by the National Collegiate Athletic Association (NCAA) and in some cases, undermined the University's ability to effectively hold student-athletes accountable for violation of its Community Standards, Penn State's label for its student code of conduct. Specifically concerning the *Clery Act*, our investigation indicates that these failures also manifested themselves in the attitudes and behaviors of some student-athletes and some crime victims as well, resulting in decreased crime reporting and compromised campus safety.

The Sandusky Matter and the Impact of Penn State "Football Culture" on Compliance

In the immediate aftermath of the Sandusky scandal, a wave of commentary and speculation ensued that suggested that "football culture" or Penn State's status as a so-called "football factory" was the primary reason why a child predator was allowed to commit his crimes with impunity for so long. Like the Freeh Group, our investigation identified numerous contributory factors that cannot be easily reduced down to simple platitudes. In dissecting the issues, it is very important to be clear about what this case is about and what it is not. Sandusky is responsible for the crimes that he committed. Criminal charges are still pending against other former University officials who were indicted for their failure to take action that could have stopped a predator and protect children. While there can be no doubt that Sandusky was empowered and abetted over many years, those acts must not be in any way imputed to the vast majority of Penn State officials who knew nothing of these crimes and were not in a position to stop them. During our review, we met many of them and found most to be caring, professional, and dedicated to the students and the institution that they serve. Many of these officials were deeply distressed and expressed profound sadness and anger throughout their meetings with Department officials. While the University is responsible for the many regulatory and other violations documented here and elsewhere, the students and alumni are not. Many of the current and former students that we met were nearly inconsolable and said that they feared that they would never feel the same way about their school again. While steps must be taken to ensure that such atrocities do not happen again, Penn State students should never have to bear the burden for what happened at their University.

As noted in this FPRD, the University did not comply with the *Clery Act* throughout most of the review period. Several reasons were proffered for these persistent failures, including a lack of resources and other competing priorities. Many officials, including PSUPD officers, tried to sound the alarm but were, for the most part, ignored. At the same time, significant resources were plowed into what was already one of the largest Division-I college sports programs in the country. Sports and sports-related matters were regularly on the agenda of the BOT. The Athletic Director was a direct report to the President and a member of his Council.⁵ At the same

⁵ The Department acknowledges that it is not uncommon for a Director of Athletics to report to an institution's President or other high-ranking official. The point here is that athletics, especially football, was a near-constant focus of the BOT and senior management, often to exclusion of other important issues like overall governance and

time, the University was only able to produce evidence of one *Clery Act*-related matter that made it to the BOT's agenda during the 14-year review period.

As noted above, the Department made a point of assessing the degree to which the University campus safety and *Clery Act* compliance was affected by issues involving student-athletes. Data compiled by the University's Office of Student Conduct showed that during the 2002 - 2003 academic year student-athletes represented 1.6% of the student body but were responsible for 5.16% of conduct code violations. The figures were similar in 2003-2004 where athletes were 1.5% of the student body but committed 3.05% of all violations. In 2004-2005, athletes were 1.82% of the student body and counted for 3.51% of all charges. Of particular concern, in 2003-2004, student-athletes were charged with 9.38% of all physical assaults while only accounting for 1.5% of the student body and 17.78% of all such violations in 2004-2005 when they only represented 1.82% of all students. Athletes were also cited for sexual assault at a higher rate than the general population accounting for 50% of sexual assault charges in 2002-2003 and 20% of those offenses in 2004-2005. A similar pattern was observed for charges of disorderly conduct and alcohol-related offenses during this period. In most years through 2010-2011, the football team also had the most drug and alcohol citations of any Penn State sports program.⁶ Credible research, including the studies and publications cited in this report, show that violent crimes on campus are highly-correlated with the use and abuse of alcohol and other drugs. Too frequently, certain student groups are singled out as being responsible for a disproportionate share of campus crime without any substantial evidence to support the accusation. That was not the case here as documented by the University itself. Student Conduct officials stated that there was a discernible sense among some athletes that the rules did not apply to them equally and the resultant uneasiness among other students or witnesses about reporting crimes committed by athlete offenders necessarily compromised campus safety and contributed to the compliance violations identified throughout this report.

With regard to point #10 above, the review team identified numerous instances where cultural and climate factors in the football program adversely affected campus safety operations, primarily involving the student conduct process. In this context, it is important to note that the *Clery Act* is a campus security and crime prevention law with a consumer information and protection focus. Effective implementation requires the participation and cooperation of officials across the enterprise. Stated simply, the *Clery Act* is not merely a campus policing law. At most institutions, other offices ranging from residence life to student affairs will play an essential role in the overall campus safety program and are indispensable to compliance with the *Clery Act*. The student and employee conduct function plays a major role on both counts.

compliance with Federal and state regulations and institutional policy. See the PA Auditor General's report on this topic for more information.

⁶ The Department acknowledges that part of the explanation for the elevated number of violations by football players is explained by the relatively larger number of participants. That difference alone; however, does not account entirely for the disparity. As noted above, former President Spanier expressed alarm about the frequent involvement of student-athletes, especially members of the football team, in serious violations of the law and the University's Community Standards.

Our investigation indicates that some of the problems between student conduct officials and the football program date back to a period where most of the disciplinary decisions involving football players were made by the coaching staff, primarily by long-time head coach, Joe Paterno. To be clear, our investigation did not specifically find that Mr. Paterno interfered generally in police investigations or routinely gave football players a “pass” for bad behavior. By all accounts, Paterno was regarded as a disciplinarian throughout most of his tenure. It is also true, however, that as the University took steps to enhance and formalize its student disciplinary processes, Paterno repeatedly resisted attempts to have these measures applied to his program. These attempts unquestionably adversely affected the administration of the student conduct process. What ensued was an overlong and dysfunctional standoff between the football program and student affairs officials with the President positioned somewhere between the two sides. Some members of the football team, aware of the conflicts, took the program’s attitude toward the student conduct process as license to break the rules. By September 2003, concerns about the escalating conduct problems reached President Spanier. After being notified of several serious conduct violations that occurred in a single weekend, the President sent an e-mail to Athletic Director Tim Curley where he stated that, “I am becoming increasingly concerned about the behavior of our student-athletes. I am saying this only to you, but I have heard numerous confidential reports last year and this year (call them rumors if you wish) that Penn State football players are often seen at fraternity and apartment parties around town, intoxicated, behaving badly, and tempting or threatening fights. I worry that this will blow up at some point.” However, Spanier and Curley were not in a position to do much about the problem. These dynamics compromised the effective operation of the student conduct process and contributed to problematic incidents, a few of which are summarized below:

- 1) In the fall of 2002, a Penn State football player was accused of committing a serious sex crime that resulted in a suspension for two semesters. Under the terms of such a suspension, a regular Penn State student would not be allowed to participate in campus activities or publicly represent the University. Nevertheless, the player was permitted to travel with the team to the Capital One Bowl and to play in the game. Student conduct officials were not informed of the decision and stated that they were surprised to see him in uniform as they watched the game on television.
- 2) In another 2005 case, a football player was found responsible for conduct violations related to the unlawful restraint and sexual assault of a young woman at the Nittany Apartments. Per the police report, the football player forced her into the bathroom, where he held her while she cried and attempted to leave. At one point, the report indicated that the attacker stated, “Girl, you know you want this. I’m a football player you know you want this.” Witnesses stated that they tried repeatedly to open the door, but the assailant was able to hold it in the closed position. The narrative report indicates that more than five minutes went by before the door was opened and the woman was able to get away. The player was found responsible and was temporarily suspended from the University. However, even though the player was found responsible of a violent sex crime, football officials expressed disappointment about the severity of the sanction and also questioned whether the player was treated fairly in the disciplinary hearing process.

- 3) In August 2005, senior officials from the football program sought to have the disciplinary sanctions imposed again a team member altered so that he would not miss too many “padded practices” and could “participate in preseason drills.” Documents acquired by the review team indicate that these officials thought that the team member had demonstrated progress in several areas and that he would be denied significant playing time as a punishment. The official continued, “he will begin the season as a fourth team [position deleted] (there is no fifth)... We were all planning to have him back after finals and it’s been a shock to everyone to find out that we won’t.” Numerous messages were sent between the football staff and student conduct staff over the next few days. At one point Athletic Director Curley stated that while he understood the position of the student conduct office, “it is important for me to touch base with Graham” to “keep him in the loop.” Student conduct officials stated that they felt that every effort was made to work with the student and football officials but they felt that they were still subjected to undue pressure. To this point, University Vice President Vicky Triponey stated that her office was concerned about “the underlying message here... regardless of how we would treat other students in this kind of situation and regardless of the fact that because of his past record, [name deleted] by all rights should have been permanently expelled after the last incident... if the coaches put enough pressure on us, the AD goes to the President with the concerns, and enough people make enough noise on the football player’s behalf, he can get the rules changed... and can come back into the very same environment where he has demonstrated numerous times in the past that he cannot abide by the University’s rules. Actually there are numerous other student activities besides football where the students begin their training and work prior to the first day of classes (cheerleaders, Blue Band members, RAs and other campus jobs various student leadership positions, hall councils, governing councils, etc.) and the question that [we] need to answer here is whether [we] would be inclined to grant this exception if it was one of those other students.”

In other cases, athletic department and football program officials questioned the nature or severity of sanctions imposed for various offenses. In one case, a member of the football team was directed to work at a concession stand until the AD intervened. In a September 6, 2005, e-mail message, Curley stated, “I just reread the recommended sanctions - did I read it accurately that you want him to work the concession stand at Beaver Stadium for the next three games? If so, this is crazy!! The public relations on this one would be absolutely nuts!!!” Differences between the football program and student conduct officials surfaced again after a high-profile incident at the Meridian Apartments complex near the Penn State campus. The incident occurred on April 1, 2007, and involved several members of the football team who allegedly broke into an apartment to confront a man who allegedly disrespected one of their teammates. The Meridian case, as it became known, received significant media coverage and became an embarrassment for the University. The case also exposed many of the longstanding conflicts between the student affairs operation and the football program. At 10:37 a.m. on April 6, 2007, Paterno’s personal assistant, who handled all of his electronic correspondence, wrote the following in an e-mail to the President and the Athletic Director:

“President Spanier and Tim:

I want to make sure everyone understands that the discipline of the players involved will be handled by me as soon as I am comfortable that I understand all the facts.

Joe”

President Spanier responded that afternoon with a message that simply said, “This is my understanding as well.” At 2:43 p.m., Spanier then forwarded Paterno’s message and his response to Triponey, who replied 16 minutes later and stated:

“Graham, thanks for sharing. I assume he is talking about discipline relative to TEAM rules (note: he does not say that). Obviously discipline relative to violations of the law is up to the police and the courts...and discipline relative to violations of the student code of conduct is the responsibility of Judicial Affairs. This has not always been clear with Coach Paterno so we might want to clarify that and encourage him to work with us to find the truth and handle this collaboratively with the police and the [U]niversity. The challenge here is that the letter suggests that football should handle this and now Coach Paterno is also saying that THEY will handle this and makes it look like the normal channels will be ignored for football players. Can you remind them of police and University responsibility?”

On May 9, 2007, a senior student conduct official who was responsible for aspects of the Meridian investigation wrote a memo to the file that stated:

“I spoke with [name deleted]. In this conversation, he told me why he did not come into my office for his scheduled Discipline Conference. He informed me that that his coach, Joe Paterno, had a text message sent out to all players on the team telling them that if they came into the Judicial Affairs office to respond to our Code of Conduct complaint they would be ‘thrown off the team.’ While trying to schedule [name deleted], the staff was told the same information. When I later inquired about having the text message sent to me as proof, [name deleted] called me back telling me he could not send me a copy of it and that Coach Paterno said “if you had a problem with that, you can call him directly.”

In many respects, the Meridian case and others like it hastened Triponey’s exit from the University. Other University officials told us that they do not agree with that assessment and offered a variety of other explanations for why her tenure came to an abrupt end. What is known is that when Triponey was hired as the Vice President for Student Affairs in July 2003, she was regarded as a very accomplished student affairs professional with a track record of success at prominent institutions with high-profile Division-I sports programs. As conflicts between the athletic department and the student affairs office mounted, Spanier again found himself stuck in the middle. Forced to choose between Triponey and Paterno, he took the predictable path. Over time, the prevailing disciplinary scheme became so unworkable that in 2006, Spanier appointed Vice Provost Emeritus Robert Secor to lead a committee to review the student conduct process and make recommendations. After more than a year of work, Spanier released the Committee’s 15-page report on October 1, 2007. The University represented that some of the reforms

discussed in the report helped to alleviate some problems but other problems persisted and remain. There is also no doubt that student-athletes continued to be very aware of the rifts between these administrators. For example in 2009, a football player who stood accused of a serious sex crime was called into the Office of Student Conduct for an interview. According to Student Conduct officials, the player's first question was, "Does football know I'm here?" The current status of the student conduct process and the interplay with the Department of Athletics will be monitored, as needed, as part of post-review monitoring.

The Department's review found that over time, "walls" built up around the football program, actually and figuratively. Access to the Lasch Football Operations Buildings is tightly controlled. While such complexes are not typically open to all, the review team found that even the most senior University officials had to make an appointment to gain entry. We also learned that around 2007, football administrators compiled a list of prominent local attorneys that was provided to team members with campus conduct or legal issues.⁷ Some football players were advised to retain legal counsel before interacting with the Office of Student Conduct over relatively routine disciplinary matters. In certain cases, members of the football team were able to retain the best legal representation available in very short order. The Department has no information about the payment of retainers and fees for legal services and makes no representation in this regard other than to point out that access to such services was just another thing that led some Penn State football players to believe that there were special rules for people with special talents.⁸

Our investigation also showed that some crime victims were afraid to come forward if the assailant was a Penn State athlete. In other instances, persons who did come forward were subjected to threats or other pleas to drop charges. In both cases, the validity of Penn State's crime statistics, a key component of the disclosures required by the *Clery Act*, were adversely affected. An example of this problem was noted in the Meridian case described above. Shortly after the first media reports of the incident, a note addressed to "To Whom it May Concern" was delivered to the apartment where the crime occurred.⁹ The note was attributed to a person or group called "The voice of the Penn State student body" and was obviously intended to intimidate the victims. The note stated that there are "people to blame on both sides" and that "the ball is in your hands" and also stated that "problem with pressing charges is that you not only punish them, but you punish the entire student body and alumni who have come before you." While the author(s) of this note do not speak for the larger Penn State community, there can be no question that acts such as this affect the willingness of crime victims to come forward and, for that reason alone, Penn State must continue to improve its culture and climate by resetting the role that athletics should play at the University.

At times, these cultural forces also affected the ability of the PSUPD to effectively do its work in cases involving football players. During a 2008 assault investigation, PSUPD officers solicited the help of a senior athletic department official to identify the perpetrator whom authorities

⁷ See Exhibit 1

⁸ In making this point, the Department does not represent in any way that the University and/or any specific student-athlete received a prohibited benefit under NCAA rules.

⁹ See Exhibit 2

believed was a student athlete, most likely a football player. According to the incident report, the athletic department official stated that he had “built a trust with football players” and that “he could not identify the individuals for fear of violating that trust.” Although several other Penn State athletes witnessed the assault, none agreed to help police identify the assailant. The victim, presumably out of fear, dropped the matter.

In another disturbing case that occurred in April 2008, a former member of the football team brandished a 12-inch knife and attempted to stab a current member of the football team. This crime occurred in the football team’s private dining room and witnesses reported that three coaches confronted the assailant and were able to subdue the assailant and take the knife from him. The assailant allegedly continued to yell at the victim saying that “he had more knives and a gun up here.” By the time PSUPD officers arrived at the scene, the assailant had left the area. Investigating officers learned from Assistant Football Coach Mike McQueary that another coach “had subsequently escorted [assailant’s name deleted] out of the dining hall to an unknown location.” The officer acquired the coach’s cell phone number and attempted to call him twice. Neither call was answered.

The officer’s report then indicates that he observed another member of the coaching staff exit the dining room talking on a cell phone and heard him say, “Are you with him now?” This officer, in the belief that this man may be talking to the coach that removed the assailant from the scene, stated that he “attempted to gain the man’s attention” but that “he continued walking down the stairs and appeared to be ignoring me. After catching up to the man and telling him to stop, he finally turned around. I asked if he was speaking to [the other coach] on the phone. The man quickly said ‘No,’ and turned and proceeded back up the steps into the dining hall.” The officer’s narrative continued, “From the man’s reaction, I suspected he was, in fact, speaking with [the coach] but did not wish to tell me. On my third attempt to call [the coach] by phone, he answered and confirmed his identity. [He] advised that he was still with the [assailant], and would bring him into the police station to talk in approximately fifteen (15) minutes. [The coach] would not tell me where they were” but did report that both men were OK. The coach that removed the assailant from the crime scene stated that he did so “to calm him down” and that they “drove around for about ten minutes.” The coach also stated that he then took the assailant “to his room to change clothes so he would look more presentable” during his police interview. The coach also acknowledged to police that he was on the phone with the coach that was approached by PSUPD officers outside of the dining hall.

The Department’s concern about this case is that this was a dangerous felony assault in which Penn State football personnel did not immediately seek to assist the PSUPD with their assessment and investigation of the situation. Moreover, the Department notes that while PUSPD personnel prepared a detailed incident report and investigative file, this incident was not included in the University’s crime statistics for calendar year 2008.

In one of his first interviews as Penn State’s new President, Rodney Erickson said that the Sandusky scandal should create an “urgency for discussions about the role of big-time athletics and where they interact with higher education.” The Department takes note of the University’s efforts to restore balance to the concept of the “student-athlete.” As part of its settlement with the NCAA, Penn State entered into an Athletic Integrity Agreement. The agreement addresses

many aspects of the student-athlete experience, including conduct and legal issues. The Department will examine the University's adherence with the elements of the agreement that may impact its compliance with the *Clery Act* as part of the post-review monitoring effort.

Disclaimer:

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

D. Findings and Final Determinations

Several serious findings of noncompliance were identified during the review. The findings identified in the Department's program review report appear in italics below. Please note that certain, minor, non-substantive edits were made to the text of that report. A summary of Penn State's response and the Department's Final Determination appears at the end of each finding.

Finding #1: Clery Act Violations Related to the Sandusky Matter

Citation:

The applicable statutes and regulations for each subpart of this finding are referenced in the "Citation" section of Findings # 3, 4, and 9.

Noncompliance:

As noted above, the indictment of Sandusky and the other University officials and press reports about the scandal were the impetus for this campus crime program review. Therefore, the Department determined that the review needed to consider whether the University had complied with the Clery Act in addressing the reports it received regarding Sandusky's actions on campus. As discussed below, we have determined that the University did not comply with the Clery Act requirements in regard to a number of incidents, reports, and actions involving Sandusky.

Although the starting point for the Department's investigation is calendar year 1998, the evidence presented at the criminal trial demonstrated that Sandusky committed numerous crimes involving child sex abuse well before 1998, and that several of these crimes occurred in buildings and/or on property owned by Penn State. The findings of the Department's review clearly indicate that senior Penn State officials failed to take decisive action to report and address many of Sandusky's most egregious offenses. In several material respects, these findings parallel both the evidence presented during Sandusky's trial and in the Freeh report.

A) Failure to Record the Sex Offense Reported to the PSUPD on May 4, 1998 on the University's Daily Crime Log

On May 4, 1998, the mother of an 11-year old boy called the PSUPD to report that Sandusky had inappropriately touched her son while they were in the shower area of the Lasch Building on the Penn State campus. Approximately thirty minutes later, a PSUPD detective was dispatched to interview the child. The PSUPD incident report provided to Department officials clearly demonstrates that the detective pursued the matter as an urgent criminal matter. Specifically, the detective consulted with officials from the Office of Child and Youth Services and the Centre County Prosecutor's Office. As noted in the Freeh Report, the detective sought to bring in reinforcements so that he would not "have to worry about Old Main"¹⁰ sticking their nose into the investigation." The child's psychologist noted in her written report that the investigating agencies seemed to appreciate the "gravity of the incident." The record also shows that the PSUPD detective continued to investigate the matter for several weeks and at one point sought the assistance of a detective from the State College Borough Police Department. The evidence demonstrates that the incident was reported to the PSUPD and was investigated as a serious police matter. As such, the incident was required to be entered on Penn State's daily crime log as required by the Clery Act. However, the crime log for the relevant period does not reflect the reported crime.

According to the Freeh Report, on May 19, 1998, the detectives instructed the mother of the victim to meet with Sandusky while they listened from another room and Sandusky admitted showering with and touching the victim. Investigative activity continued into early June 1998 when the Centre County District Attorney declined to prosecute the case. Documents reviewed by the Department and the Freeh Group suggest that some elements of the investigation were problematic. Those documents suggest that it was not clear who was in charge of the investigation and suggest that there was no cohesive investigative strategy. Furthermore, the record indicates that an overabundance of deference was vested in a report prepared by a counselor who was contracted to provide services for the Children and Youth Services. This counselor concluded that the boy was not being "groomed for future sexual victimization" by Sandusky, in spite of very serious and specific concerns that were raised by the victim's psychologist.

Documents secured by the Freeh Group and analyzed by the Department make it clear that this reported incident received the attention of the most senior and influential leaders of Penn State. Those records show that Schultz and possibly others were aware of these allegations in advance of a meeting with then-University President Spanier and Curley that took place on the evening of May 4, 1998. Emails and records we have reviewed make it clear that senior PSUPD officials shared relevant information with senior Penn State officials as their investigation progressed.¹¹ Schultz's notes indicate that on May 5, 1998, PSUPD Chief Harmon told him that the police were going to hold off making a crime log entry for the reported sex offense because the Chief believed there was no clear evidence of a crime. Penn State made this decision even though the incident had been reported to the PSUPD as a sexual offense and thus should have been

¹⁰ A common reference used at Penn State to refer collectively to the most senior University officials.

¹¹ See Exhibit 3

included in the crime log, even if the investigation had only begun earlier that day. In that context, the Department is also disturbed by Penn State's decision to ultimately classify the report of the crime as "Administrative Information," a categorization which would seem to ensure that the crime would not be added to the crime log. Indeed, no information regarding the incident was entered on the crime log at all until June 2, 1998, at which time an entry was made stating only that the detective had requested an incident report number for an "ongoing investigation."

Institutional Response:

In regard to Finding 1(A), Penn State denied that it violated the *Clery Act* when it failed to record in its crime log the May 4, 1998, report that Sandusky had inappropriately touched a young boy while showering naked with him in the Lasch Building locker room. The University's response is two-fold. First, it argued that the Department lacks the authority to require that the complaint filed by the mother of the 11-year-old victim and subsequent investigation be recorded in its crime log because at the time of these events, there was no Federal requirement that a crime log be maintained by PSUPD. The University noted that the amendment to the *Clery Act*, which created the Federal requirement for institutions to maintain a daily crime log, was not passed into law until October 1, 1998, five months after the May 4, 1998, event in the Lasch Building locker room.

The University's second argument was that even if there had been a Federal crime log requirement on the date of the shower room incident, the details of what transpired between Sandusky and the 11-year-old boy were not sufficiently clear to make a determination that the interaction rose to the level of a sex offense.¹² As such, it argued that there was no clarity that the reported incident was a crime, so there was no need for it to have been recorded on the crime log.

Final Determination:

Finding #1(A) cited Penn State for its failure to properly record in its crime log the sex offense reported to the PSUPD on May 4, 1998. Specifically, on that date, the mother of an 11-year-old boy called PSUPD to report that Sandusky had taken her son to work out, and when he returned home at 11:00 p.m. that evening his hair was wet. This led the mother to question the boy as to what he had done to get his hair wet. When pressed, he indicated that he and Sandusky had showered together naked and that Sandusky had inappropriately touched him while they were in the shower area of the Lasch Building on the Penn State campus. The investigation of these events would later reveal, among other things, that the boy's workout with Sandusky lasted a mere 20 minutes before Sandusky insisted on going to the locker room and coaxing the boy to undress and shower with him.

Penn State is correct in its assertion that, as of the time of the reported incident, the *Clery Act* did not require institutions to maintain a crime log. However, Penn State's 1998 and 1999 ASRs

¹² It should be noted that there was a second boy in the shower at the time of this incident, but it does not appear that his parents registered a formal complaint at the time of the incident.

included the following representation of University policy: “Police Services publishes a press log every day, which is available to members of the press and public. This log identifies the type, location and time of each criminal incident reported to Police Services.” By making these representations in the Clery-required ASR, the University committed itself to producing and maintaining a daily log that provided information about “each criminal incident reported to Police Services.” Under the *Clery Act*, institutions are required to comply with the policies and procedures established by the institution and published in the Clery-required ASR, which is distributed to students and employees.¹³ Furthermore, given the representations made by Penn State in the ASR, the University community and other stakeholders had a reasonable expectation that crimes reported to PSUPD were being properly recorded in the crime log (a.k.a the press log) maintained by PSUPD.

Accordingly, we find that the University violated the *Clery Act* when it failed to properly record the reported forcible sex offense committed against a minor child by Sandusky in the shower room of the Lasch Building. The University’s two-month delay in recording and classifying this crime solely as “administrative information” fails the reasonableness standard by which all actions under the *Clery Act* are judged. Contrary to Penn State’s current position, PSUPD treated the reported incident as a crime and investigated it accordingly. The report resulted in a six-week investigation by PSUPD and the Office of Children and Youth Services. Officials at the highest level of the University were informed of the allegations, and a referral was made to the county prosecutor’s office. These facts demonstrate that PSUPD officers treated the incident as a *reported* crime; thus, it was required to be documented in the University’s log and disclosed in accordance with the policy statement included in its ASRs. Moreover, the Department notes that the policy included in the ASRs covering this time period did not state that any reported incidents would be excluded from the log or provide information about any rules governing the eventual disclosure of withheld information.¹⁴

A review of the crime log entries from the first six months of 1998 reveals there were many incidents that were much less serious than the allegation against Sandusky that were nonetheless recorded in the crime log. These entries included harassing phone calls by known and unknown perpetrators, petty thefts, minor accidents, a man sleeping in a stairwell, a man in a tree looking in a window, and kids harassing other kids at a day camp. Even mundane, non-criminal acts that involved PSUPD were recorded, *e.g.*, a slip and fall in a public shower, a student falling on the sidewalk and suffering a sprained ankle, and a special tour of PSUPD headquarters given to a Girl Scout Troop. In light of these entries, Penn State’s contention that the reported incident of a middle-aged man inappropriately touching an 11-year-old boy, while naked and showering with him, did not rise to the level for inclusion in the daily crime log strains credulity.

¹³ The Department has consistently made clear that an institution must act in conformity with the policies, procedures, practices, or pronouncements that are included in its consumer information publications. This is true even if the stated policy, procedure, or practice exceeds the requirements of Federal statutes and/or the Department’s implementing regulations.

¹⁴ Under the *Clery Act*, a temporary delay in the recording of an incident on the crime log may be permitted under very limited circumstances. However, the log in question here and the requirement to disclose offenses in it and to make the log publicly available was created by a disclosure in the ASR. That policy did not provide for the withholding of any reported offense and specifically stated that the log included information about “each criminal incident reported to Police Services.”

Furthermore, it must be noted that on July 29, 2013, Chief Harmon indicated in sworn testimony during the preliminary hearing in the matters of *Commonwealth v. Curley*, *Commonwealth v. Schultz*, and *Commonwealth v. Spanier* that he purposefully did not include the forcible sexual offense allegation in the crime log to avoid the scrutiny of the press and because the investigation was ongoing when the crime was first reported. Even assuming, *arguendo*, that a delay in recording the incident in the crime log during the investigation was defensible, failure to make a proper recording of the crime following the investigation is wholly indefensible. Even if PSUPD had ultimately determined that the report was unfounded (which it did not do), such a determination should have been noted in the log entry. Disguising the reported crime by labeling it as administrative information and not properly recording the incident in the crime log violated the *Clery Act*. This conclusion is further supported by statements given by the former PSUPD officer who participated in the initial investigation of the shower room incident. During an interview with Department officials on March 5, 2014, this officer indicated that he originally classified the 2001 incident as a criminal act involving child abuse and not administrative information. He filed the reports accordingly within PSUPD and did not learn of Harmon's reclassification of the event as "administrative information" until he was informed of this in relation to the current investigation. He further indicated that he could think of no legitimate basis for such reclassification.

By its actions, the University failed to provide the public with necessary information that members of the University community were entitled to pursuant to the University's own policies, as articulated in the 1998 and 1999 ASRs, and violated its obligations under the *Clery Act* when it failed to abide by its own published policies. Had the public been privy to such information at the time, they could have taken action to protect themselves and/or their minor children when visiting Penn State's facilities. If the reported crime had been properly recorded on the University's crime log describing the type, location, and time of the event, even without listing Sandusky's name, the public awareness created would have been a strong deterrent against Sandusky's future use of Penn State facilities for the grooming and abuse of children. For all of the aforementioned reasons, the initial findings in Part 1(A) of the program review report (PRR) are hereby sustained.¹⁵

B) Failure to Include the 2001 Forcible Sex Offense/Child Sex Abuse Incident in Penn State's Campus Crime Statistics

All of the inquiries into the Sandusky matter, including the Department's review, have concluded that Sandusky committed additional sex offenses against children after the 1998 incident. Many of these incidents went unreported for years; however, others were brought to the attention of senior University officials including individuals that are CSAs for Clery Act purposes. None of

¹⁵ In upholding this component of the finding, the Department notes that the Clery violations related to the 1998 incident were in reality worse than was known at the time that the PRR was issued in 2013. Based on interviews and sworn testimony in various proceedings, it has been established that the classification of the incident report was changed to "Administrative Information" by the PSUPD Police Chief at the direction of his boss. If the incident had continued to be identified as "suspected child abuse," it would have had to be included in Penn State's crime statistics as a forcible sex offense. Given the details of the crime, a timely warning would have been necessary as well.

those incidents were included in Penn State's campus crime statistics reported to the Department and provided to students, staff and the public.

Specifically, University records show that on February 9, 2001, a then-graduate assistant in the football program witnessed Sandusky sexually abusing a child in the shower area of the support staff locker room in the Lasch Building on the Penn State campus; he reported the incident to University officials, including Schultz, who was the senior executive over the PSUPD. The witness has consistently testified that he witnessed Sandusky engaging in aggressive and criminal sexual contact with a boy of approximately 10-12 years of age. The witness testified under oath that he clearly heard "rhythmic slapping" and saw Sandusky standing behind the boy and believed that Sandusky was forcibly sodomizing the boy.

The witness reported the incident to Paterno, the football coach at Penn State, a man whom he knew well.¹⁶ Paterno met the requirements to be considered a CSA for Clery Act purposes. In his Grand Jury testimony and at Sandusky's criminal trial, the witness stated that he trusted and respected Paterno and expected that he would know what to do with this information. Records examined by the review team--most notably the e-mail exchanges between senior University officials--clearly show that the witness described a criminal act that was sexual in nature and involving a young child. During his brief Grand Jury testimony, Paterno testified that he understood the witness was reporting a likely criminal act.

The record also demonstrates that the witness also reported the incident to Schultz and Curley, and did so, in more detail than he had provided to Paterno. In the nearly two weeks between the initial report to Paterno, the witness' subsequent meeting with Schultz and Curley, and a February 25, 2001, meeting between Spanier, Schultz, and Curley, senior and influential leaders at Penn State engaged in a steady pattern of activity indicating that they considered the matter to be of serious concern, including consultations with legal counsel. The billing records of that attorney indicate he responded to the University's inquiry by conducting legal research to provide guidance on child abuse reporting obligations. Nevertheless, this incident was not included in the University's campus crime statistics for calendar year 2001.

In later attempts to explain their actions, these same officials maintained that there was no report of child sex abuse. However, the Department's review indicates that the weight of all of the documentation and evidence contradicts this claim. Documentation of these facts includes e-mail exchanges between senior University officials that support this finding of violation.

Specifically, on February 27, 2001 at 8:10 p.m. (18 days after the incident and 17 days after the initial report to Paterno) Curley sent the following email to Spanier and Schultz:

*"I had scheduled a meeting with you this afternoon about the subject we discussed on Sunday. **After giving it more thought and talking it over with Joe yesterday—I am uncomfortable with what we agreed were the next steps.** I am having trouble going to*

¹⁶ The graduate assistant reported the incident to Paterno, who reported it to Curley, per a loose but discernible policy that was in place within Penn State's Department of Intercollegiate Athletics. Several Penn State officials verified the existence of such a policy.

everyone, but the person involved. I think I would be more comfortable meeting with the person and tell him about the information we received. **I would plan to tell him that we are aware of the first situation.** I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also, **we feel a responsibility at some point soon to inform his organization and maybe the other one about the situation.** If he is cooperative we would work with him to handle informing his organization. If not, we do not have a choice and will inform the two groups. Additionally, I will let him know that **his guests are not permitted to use our facilities.** I need some help on this one. What do you think about this approach?" (Emphasis added)

Later that night at 10:18 P.M., Spanier responded to Schultz and Curley with the following:

"Tim: **This approach is acceptable to me.** It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. **The only downside for us is if your message isn't "heard" and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road.** The approach you outline is humane and a reasonable way to proceed." (Emphasis added)

The evidence suggests that Curley and the other senior University officials failed to take any of the very modest actions that were discussed. As a result, the serious concerns expressed by these senior officials about the risks posed by Sandusky's continued presence on campus went unaddressed for years. Further, Sandusky continued to hold camps for children on Penn State property without any additional supervision or control by the University. Curley's office had exclusive control over the approval process for youth camps but did nothing to stop Sandusky from holding sleep-away camps for children on the Penn State campus.

For Clery Act purposes, an incident of crime is considered to be reported as soon as relevant information is brought to the attention of a campus police or security entity or a campus security authority. It is not the responsibility of a crime victim or witness to use any particular words or phrases to describe an incident. Instead, it is the province of law enforcement or other trained security professionals or CSAs to assist the victim or witness in making an accurate and complete report. Similarly, a victim or witness cannot be expected to classify an incident in conformity with Uniform Crime Reporting standards or the Clery Act.

Paterno, Curley, and the graduate assistant were CSAs for Clery Act purposes. Although unaware of his Clery Act obligations, the graduate assistant reported the incident to his superiors. The report was clearly credible and did result in significant activity by the officials involved in the e-mail exchanges. Department officials surveyed the staff locker room where the reported incident occurred and examined the sight lines referenced by the witness regarding his positioning in front of his locker as well as his proximity to the specific area of the shower where he reported seeing Sandusky and the child. From the witness' locker, there is a perfect sight line via a mirror in the sink area into the specific shower area that permitted the witness to see the sex crime in progress, further bolstering his credibility. The Grand Jury specifically stated that it found the witness to be very credible and, as such, based many of its findings and conclusions

on the witness' testimony. Similarly, the PA AG also asserted its confidence in the veracity of the witness' testimony and based much of its case around it. The Department reviewed all of the records associated with this incident including court transcripts and reached the same conclusions about the quality of the witness' testimony.¹⁷ The witness reported a Clery-reportable crime, a forcible sex offense against a child, to senior officials who also were CSAs as well as to the senior executive with authority over the PSUPD. The incident was not unfounded nor was the witness' veracity or motives called into question. On these facts, Penn State was required to disclose this crime in its 2001 campus crime statistics and violated the Clery Act by failing to do so.¹⁸

Institutional Response:

In its response, Penn State argued the 2001 forcible sex offense/child sex abuse incident was properly excluded from the University's crime statistics as reported in their 2002 ASR. To support this contention, it asserted that the witness to the event, McQueary, was not a CSA as defined under the *Clery Act*, and therefore, had no duty to report the incident for inclusion in the University's Clery crime statistics.

Penn State admitted that it is well established that "team coaches" are considered CSAs under the *Clery Act*, as they have significant responsibility for student and campus activities. *See 34 C.F.R. 668.46(a)(4)*. They also admitted that McQueary was a coach for the Penn State football team. However, the University asserted that while McQueary may have been a coach, he should not be considered a "team coach" because he was one of the lowest levels of coaches on the field and interacted with other coaches more so than with football team members. The University then concluded that as a "coach," but not a "team coach," McQueary should not be considered a CSA under the *Clery Act*.

In regard to Paterno, the University conceded that Paterno was a CSA for *Clery Act* purposes and, as such, if he had knowledge of a criminal act of child sexual abuse, the University would have been obligated to include the reported incident in the crime statistics reported in the 2002 ASR and provided to the Department. The University further conceded that Paterno testified under oath that he understood what McQueary reported to him regarding Sandusky's interaction with the child in the Lasch Building locker room shower was likely a criminal act. However, the University specifically refused to concede it violated the *Clery Act* in regard to this or any other

¹⁷ It should be noted that the Department opted not to conduct an independent interview with the graduate student. Because the witness was still employed by Penn State at the time, the Department could have compelled the individual to answer questions. Penn State was willing to produce the witness and the witness was willing to appear; however, the Department determined that the witness had already answered the most important questions under oath and that these answers were readily available in court documents. For that reason, the Department agreed to not conduct an independent interview with the witness while the PA AG's investigation was ongoing.

¹⁸ It must be pointed out that it appears that none of the senior officials involved in this matter were ever specifically trained on the reporting obligations conferred upon them as CSAs or ever requested training. In fact, the review team determined that no formal *Clery Act* training was provided to anyone at Penn State during the 1998-2001 time period. While it is impossible to determine if *Clery Act* training would have led to a different outcome, this failure to train staff about crime reporting requirements is a further indication that *Clery Act* compliance was not a priority for Penn State.

Sandusky incident. To come to this conclusion, the University has taken the nuanced position that it does not accept that the statements made by Paterno under oath to the Grand Jury were in fact true; but *IF* they were true, then the University violated the *Clery Act*.

In regard to Curley, the University defended his silence and inaction and stands by his failure to contemporaneously report this forcible sex offense. Ultimately, the University argued that it was unclear what exactly Paterno and Curley were told by McQueary at the time, or what they understood his words to mean, so there was no way to know if any of them believed the events reported rose to the level of a Clery-reportable forcible sex offense.

Final Determination:

Finding #1(B) cited Penn State for its failure to include in its campus crime statistics the 2001 forcible sex offense committed by Sandusky against a minor child in the Lasch Building locker room. Specifically, the review team determined that on February 9, 2001, McQueary, a coach for the University's football program and a CSA for *Clery Act* purposes, observed Sandusky committing a forcible sex offense on a child. McQueary reported this crime to Paterno (also a CSA), who then reported the crime to senior institutional officials Curley (also a CSA), Schultz, and Spanier. Three CSAs had knowledge of this crime; as such, the University was obligated to include the incident in its crime statistics published in the 2002 ASR and in its submission to the Department.

This incident was investigated by the independent counsel hired by Penn State to probe its actions in regard to this and other related incidents in response to the NCAA inquiry of the University's actions regarding Sandusky. *See* Freeh Report. The independent counsel's report found that McQueary, Paterno, and Curley were campus CSAs for Clery-reporting purposes. *See id.* It further found that the incident in the Lasch Building locker room witnessed by McQueary and reported to Paterno and then to Curley, among others, was a Clery-reportable offense—to wit a forcible sex offense committed by Sandusky against a minor child. *See id.* The report further found that pursuant to the *Clery Act*, this incident should have been reported to the PSUPD for inclusion in the University's crime statistics. *See id.* The University was given the opportunity to accept or reject the findings contained in the Freeh Report, and then University President Rodney Erickson accepted the findings on behalf of the University as reflected in the Consent Decree executed with the NCAA on July 23, 2012.

The Department has closely examined findings contained in the Freeh Report and has conducted its own independent investigation in relation to this matter. Based on this evidence, the Department has reached the same conclusions as the Freeh Report in relation to this incident, and, therefore, is in agreement with the University inasmuch as it accepted the findings of the Freeh Report. With the Department and the University seemingly in agreement regarding the facts of this particular incident, and in agreement that those facts constituted a violation of the *Clery Act*, for most Universities that would have been the end to the present inquiry—not so for Penn State.

Instead, Penn State has chosen to go another route. In its response to the Department's PRR, the University contradicted its earlier acceptance of the Freeh report findings, and,

instead, rejected the findings of the Freeh Report in relation to this incident. Contrary to the Freeh Report's findings, the University asserted that it did not violate the *Clery Act* in relation to this incident. In doing so, the University offers factual and legal arguments that are at best incongruent and at worst in direct opposition to the findings of the Freeh Report. The Department notes that there is no legal prohibition that would bar the University from taking contradictory positions in two separate investigations involving the same set of facts.¹⁹ However, particularly given the University's widely publicized prior acceptance of these facts, it does strain the credibility of the University to do so. The Department is dismayed by the lack of accountability the University has evidenced in relation to the Sandusky matter and the *Clery Act* by taking this course of action. Nonetheless, it is the Department's responsibility to address the defenses raised by Penn State in response to the Department's initial findings in the PRR.

Having thoroughly examined Penn State's response, the Department is unimpressed with the legally creative, yet ultimately threadbare, explanations proffered by the University to defend its decision not to include the February 9, 2001, forcible sex offense/child abuse incident perpetrated by Sandusky in its campus crime statistics reported to the Department and published in the University's 2002 ASR. The Department is also disappointed that, given the opportunity to review its own actions in regard to this incident, the University has taken no ownership of its past mistakes. Rather, it seeks to defend its prior actions with semantic arguments and a legally unsupportable reading of the *Clery Act*.

The University has argued that the Department's initial finding that McQueary was a CSA when he witnessed the 2001 incident is in error. In its response to the initial findings, it argued that McQueary was only a "coach" for the Penn State football team but not a "team coach," since he was the lowest level coach on the field, so he should not be considered a CSA for *Clery Act* purposes. It should be noted that "team coaches" are explicitly listed as CSAs in the Department's published guidance on *Clery Act* regulatory compliance. See *The Handbook For Campus Crime Reporting at Chap. 4 (2011)*.

The Department views the University's arguments regarding the coach/team coach distinction in this instance to be straightforwardly absurd. There is no legal support for the distinction Penn State has attempted to claim. McQueary was a coach for the football team with significant responsibility for student and campus activities, and therefore, a CSA. See *34 C.F.R. 668.46(a)(4)*. As such, the sex offense he witnessed in the Lasch Building locker room should

¹⁹ The Consent Decree between Penn State and the NCAA contains the following statement: "In light of this record and the University's willingness, *for the purposes of this resolution* (emphasis added), to accept the Freeh Report, which the University itself commissioned, traditional investigative and administrative proceedings would be duplicative and unnecessary." The Department grants that such legalese is likely an effort on behalf of the University to not be held legally responsible to its highly publicized acceptance to the terms of the NCAA Consent Decree in venues other than the NCAA administrative hearing process. As such, we recognize the University may have intended at the time to avail itself of the opportunity to seek different factual findings based on the same facts, depending on what may best suit its needs in a given venue at a given time. The Department takes a dim view of this effort. Nonetheless, given the conditional nature of the University's acceptance of the Freeh Report, the Department did not rely on the University's acceptance of the Freeh Report as a basis for its Final Determinations in the matter, as there was sufficient evidence to hold the University responsible for its *Clery Act* violations without such reliance.

have been included in the crime statistics reported in the 2002 ASR. Penn State's attempt to assert the "coach/team coach" distinction as a reason for not reporting Sandusky's 2001 forcible sexual assault/child molestation in its crime statistics strains the University's credibility—at best.

Penn State's argument regarding McQueary's status is also irrelevant because it is clear that other CSAs were informed of the reported incident. McQueary testified under oath that he reported the interaction between Sandusky and the young boy in the shower to Paterno as extremely sexual in nature. He further testified that he later met with Curley and Schultz and told them that he observed Sandusky in the shower with a young boy and that he "thought that some kind of intercourse was going on." While Curley and Schultz dispute McQueary's version of what he told them about the incident, Paterno testified to the Grand Jury on January 12, 2011, that McQueary described the incident to him as "fondling" and of "a sexual nature." The conduct described by McQueary and Paterno constituted a Clery-reportable forcible sex offense and thus should have been included in the 2002 ASR. McQueary, Paterno, and Curley were CSAs with knowledge of this crime; as such, it created an obligation on behalf of the University that this incident be included in the campus crime statistics. For all of the aforementioned reasons, the initial findings contained in Part 1(B) of the PRR are hereby sustained.

C) Failure to Issue a Timely Warning Regarding the 2001 Forcible Sex Offense/Child Sex Abuse Incident

As discussed above, on February 9, 2001, a graduate assistant for the University's football program and a CSA for Clery Act purposes observed Sandusky committing a forcible sex offense on a child. He reported this crime to Mr. Paterno, who also qualified as a CSA and who reported it further to senior institutional officials and the administrative head of the PSUPD.²⁰ Under 34 C.F.R. § 668.46(e), institutions that participate in the federal student financial aid programs under Title IV of the HEA, like Penn State, must issue timely warnings anytime a Clery-reportable crime is reported to a CSA or the police that may pose an ongoing threat to students, employees, or other members of the campus community, including guests such as campers or persons attending concerts or sporting events. In this case, there is no indication that the senior University administrators considered reporting the crime to the PSUPD directly (in violation of their responsibilities as CSAs) or considered whether a timely warning was appropriate. Even if the PSUPD was not informed directly about the case, a timely warning was required. Under 34 C.F.R. §668.46(e), a timely warning is required if a crime that represents a threat to the campus community is reported to a CSA. As discussed earlier, the 2001 crime was reported to CSAs and to Schultz, the VP of Business and Finance, who managed the PSUPD. The decision by those institutional officials to not report the crime to the PSUPD does not excuse the institution's failure to issue a timely warning in a situation in which it was clearly required.

²⁰ As previously noted, the 2001 sex offense was reported to multiple CSAs as well as Schultz who, as VP of Business and Finance, had oversight of the PSUPD. During our site visits, we asked PSUPD officials about their knowledge of the 2001 incident. All of those officials represented that they had no knowledge about this reported crime. Indeed, the current Assistant Vice President (AVP) of Public Safety produced a report that purportedly documents his direct questioning of every current and former living member of the PSUPD about their knowledge of the 2001 incident after it became public in November 2011. The AVP reported that all of the respondents reported that they knew nothing about the 2001 incident.

Timely warnings are intended to aid in the prevention of similar crimes.

We believe that the evidence shows that it was unreasonable for the University not to issue a timely warning in this situation. The report indicated that Sandusky, a former Penn State assistant football coach who had open access to the Penn State campus as well as access to many children who attended camps and events on campus, had committed a forcible sex offense on a child. More than 20,000 children participate in youth camps at Penn State every year. Many thousands more attend concerts, sporting events, and programming on the campus. Penn State is essentially an open campus and many of its facilities, such as athletic fields and exercise facilities, have traditionally been open to the public, including school-aged children. Other children are cared for at on-campus child centers and preschools. A reasonable person would have reported the 2001 sex offense to the police and notified the public of the potential threat to children. Penn State's officials did neither. In failing to do so, the University violated the Clery Act. The issuance of a timely warning in this case may have helped to identify Sandusky's pattern of child sex abuse and possibly prevented Sandusky from committing additional crimes against children. Indeed, the decision to not issue such a warning is particularly egregious in light of the steady stream of young people who participate in a vast array of programming on the University Park campus. For these reasons, the Department finds that Penn State was required to issue a timely warning pursuant to this reported forcible sex offense.

Institutional Response:

In its response, Penn State disagreed with the Department's assertion in Finding 1(C) that the University should have issued a timely warning upon receiving a report of the February 9, 2001, forcible sex offense committed by Sandusky against a minor child in the Lasch Building locker room. The University argued that the *Clery Act* "as a technical matter" only requires the issuance of a timely warning when the University has knowledge of a serious crime that poses a threat to its students and employees—not to any broader category of individuals that may be on campus. The University's argument is essentially that since Sandusky's victim was a child and likely future victims would be children, the University had no duty to issue a timely warning because these children Sandusky targeted were not students or employees at the University. Penn State also argued that the nature of the reported crime was unclear at the time, but even if it was a Clery-reportable crime, it appeared that this was a one-time event and the offender was identified so it was not likely to reoccur. Therefore, the University contends that a timely warning was not necessary.

Final Determination:

Finding #1(C) cited Penn State for its failure to issue a timely warning regarding the 2001 forcible sex offense committed by Sandusky against a minor child. Specifically, the review team determined that on February 9, 2001, McQueary, a coach for the University's football program and a CSA for *Clery Act* purposes, observed Sandusky committing a forcible sex offense against a child in the Lasch Building locker room. McQueary reported this crime to Paterno (also a CSA), who then reported the crime further to senior institutional officials Curley (also a CSA), Schultz, and Spanier.

As noted in the previous finding this incident was investigated by the independent counsel and included in the Freeh Report. The Freeh Report found that pursuant to the *Clery Act*, this incident should have been contemporaneously reported to the PSUPD and should have been reviewed to determine if a timely warning should have been issued to the campus community. Pursuant to *34 C.F.R. §668.46(e)*, institutions must issue timely warnings when a Clery-reportable crime is reported to a CSA and there is ongoing threat to students, employees, or other members of the campus community.

The Department does not agree with Penn State's assertion that a timely warning was not required in relation to this incident because Sandusky's targeted victims were adolescents and "technically" such warnings should only be issued for ongoing threats to students or employees of the University. Timely warnings are necessary for threats posed to the campus community, and are not restricted only to threats posed to students and employees. Penn State, like many other institutions, invites members of the public onto its campus to use its facilities and to attend events. Some of these events are specifically directed to individuals under the age of 18. In fact, Penn State encourages potential students, many of whom are minors, to visit and tour its campus each year. Furthermore, many freshmen at Penn State are minors and students and employees bring their own children on campus regularly to use the campus facilities, including working out unsupervised at the campus athletic facilities. The larger campus community also included guests, campers, and attendees of concerts and sporting events. Penn State's argument that a timely warning is not required if a crime targets these younger individuals instead of students and employees is an illogical reading of the regulations and is inconsistent with the purpose of the *Clery Act*. Furthermore, given the institutional harm that has been brought upon Penn State by its handling of the Sandusky matter, it is a bit concerning for the University to proffer a defense strategy seeking to abrogate the University's responsibility to provide protection for children on campus.

The University's argument that the specific circumstances of the 2001 Sandusky incident did not warrant a timely warning because they were not likely to be repeated is also misplaced. In his May 4, 2016, opinion regarding Penn State's insurance coverage for the Sandusky-related crimes, the presiding judge found that it was "common knowledge" to the American public at the time of the 2001 incident that sexual predators are often repeat offenders, as there had been countless media accounts regarding repeated sexual offenses committed by priests, teachers, and others. *See Pennsylvania State University v. Pennsylvania Manufacturer's Association Insurance, P.C.C.P. PA 1st Dist. Ct. Case No. 03195*. At the time of the 2001 incident, the University knew that Sandusky had previously been investigated by PSUPD in relation to an alleged sexual offense committed in 1998 with remarkable similarities to the current allegation, as both involved Sandusky showering naked with young boys in the Lasch locker room. Penn State also knew that Sandusky had keys to several athletic facilities and continued to access all such facilities on campus. In fact, pursuant to Sandusky's retirement agreement, the University even provided Sandusky with an office in the Lasch building for a ten-year period following his 1998 retirement. Accordingly, sufficient facts existed such that a timely warning should have been issued to members of the campus community following the 2001 incident. Despite its protestations to the contrary, Penn State at this point and time had sufficient knowledge that an ongoing threat existed because of the presence of a suspected child molester with unfettered access to the Penn State campus and facilities. Had the University issued a timely warning

alerting of this danger, the campus community would have been able to make informed decisions regarding their own personal safety and the safety of their children. For all of the aforementioned reasons, the initial findings contained in Part 1(C) of the PRR are hereby sustained.

D) Failure to Record the 2001 Forcible Sex Offense/Child Sex Abuse Incident on the University's Daily Crime Log

As noted above, the Department has determined that the 2001 forcible sex offense/child sex abuse incident reported by a graduate assistant to multiple CSAs was a Clery-reportable crime. However, that crime was not entered into Penn State's crime log in violation of 34 C.F.R. §668.46(f).

Institutional Response:

In its response, Penn State disagreed with Finding 1(D) of the PRR and argued that it did not violate the *Clery Act* by failing to record the 2001 Sandusky incident in the daily crime log. Citing to 34 C.F.R. §668.46(f) (2001), it asserted that the University was only required to maintain a daily crime log of crimes reported to the police or campus security department. They argued that an alleged crime, witnessed by a CSA, would need to go into the ASR, but there was no requirement that the crime be recorded in the crime log unless it was reported to campus police. In regard to the 2001 incident, the University asserted that such a report did not occur; therefore, there was no need for the crime to be recorded in the campus crime log.

Final Determination:

Finding #1(D) cited Penn State for its failure to record in its daily crime log the 2001 forcible sex offense committed by Sandusky against a minor child. Specifically, the review team determined that on February 9, 2001, McQueary, a coach for the University's football program and a CSA for *Clery Act* purposes, observed Sandusky committing a forcible sex offense against a child in the Lasch Building locker room. McQueary reported this crime to Paterno (also a CSA), who then reported the crime further to senior institutional officials Curley (also a CSA), Schultz, and Spanier.

As noted in the previous finding this incident was investigated by the independent counsel and included in the Freeh Report. The Freeh Report found that pursuant to the *Clery Act* this incident should have been contemporaneously reported to the PSUPD and should have been recorded in the crime log. The Freeh Report concluded that the University violated the *Clery Act* by failing to record the incident in the crime log. As with the other Freeh Report findings, the University publicly accepted the finding and acknowledged that it had violated the *Clery Act* in relation to the NCAA investigation of this matter.

However, once again, the University in its response to the Department's PRR effectively contradicted its earlier acceptance of this *Clery Act* violation and argued that even if the 2001 Sandusky incident was a Clery-reportable crime, the University was only obligated to report the occurrence in its annual crime statistics and not the daily crime log. In support of this reasoning,

the University proffered that the daily crime log was maintained by PSUPD and the University officials who were aware of the crime did not report it to PSUPD. Once again, the Department notes that while there is no legal bar to the University arguing alternate findings of facts or law after having publicly adopted the findings in the Freeh Report, it does strain the credibility of the University to do so.

In essence, Penn State relied on the cover-up of the 2001 Sandusky incident by its CSAs and senior-most officials and on its own administrative incompetence as defenses for not recording the incident in the crime log. The Department has considered the University's claims and explanations thoroughly and has determined them to be logically unsound and factually impossible. For these reasons, the Department disagrees with and is unpersuaded by the arguments put forth in the response. In upholding this element of the finding, we note that Penn State's interpretation would create a perverse incentive for institutions to steer students and others to report crimes to officials outside the campus police department to avoid having to list those crimes in the log. It would also mean that the crime log would be unreliable and irreconcilable with the institution's publicly-available crime statistics. Such an approach is inconsistent with the purpose and proper administration of the *Clery Act*.

Schultz, Curley, and Spanier exchanged explicit and detailed emails regarding the 2001 accusation against Sandusky and the course of action they decided to take was to sweep this event under the rug and to not report it to PSUPD or outside authorities. *See Exhibit 5.* They did this fully aware of the magnitude of the issue and potential consequences they might face down the road if their actions were uncovered. The University's attempt to use this cover-up and failure to report a forcible sex offense to PSUPD as a defense for its *Clery Act* violations is deeply troubling to the Department.

As of the date of this incident, and for the entire period of this review, Penn State's Clery compliance was coordinated through PSUPD by a member of PSUPD. There was no mechanism at Penn State for a crime to be included in the ASR without going through PSUPD. Therefore, had any of the relevant CSAs (McQueary, Paterno, or Curly) properly reported the 2001 incident to the on-campus Clery coordinator at PSUPD for inclusion into the ASR, the incident would have also been recorded by PSUPD in the campus daily crime log. For all of the aforementioned reasons, the initial findings contained in Part 1(D) of the PRR are hereby sustained.

E) Failure to Issue an Emergency Notification after Senior Penn State Officials and Board of Trustee Members Learned of the Forthcoming Forcible Sex Offense and Child Sex Abuse Charges Against Sandusky

In 2008, Congress amended the HEA to add a new emergency notification requirement to the Clery Act. It requires institutions to issue immediate warnings upon confirmation of any dangerous condition that could pose a risk to the health or safety of members of the campus community. The emergency notification requirement is purposely broader than the timely warning requirement. Timely warnings must be issued in response to the occurrence of an on-campus Clery-reportable crime that may pose an ongoing threat. Emergency notifications, on the other hand, are required upon confirmation of an immediate threat to the health or safety of the campus community. Such a threat could be caused by a multitude of dangerous conditions

including, but not limited to, criminal, atmospheric, and environmental events. Specifically, the need to issue an emergency notification might arise pursuant to an active shooter, a riot, an impending tornado or hurricane, upon learning of the presence of uncontained asbestos in a dormitory, an outbreak of a contagious disease, or a credible bomb threat, to name a few examples. The Higher Education Opportunity Act (HEOA), which included this new notification requirement, was signed into law on August 14, 2008, and this provision was effective upon enactment.

The information gathered by the Department's review team indicates that senior institutional officials at Penn State were familiar with serious and credible charges that Sandusky had committed sex offenses involving children on the Penn State campus. This knowledge both pre-dated and post-dated the enactment of the emergency notification requirement. Based on the information reviewed by the Department, we believe that a reasonable person would have seen Sandusky's continued presence on campus as presenting an immediate threat to members of the campus community. The Department also finds that members of the campus community, and especially the parents and guardians of minor children, were entitled to be advised of this threat. Based on the information that was known to senior University officials, Penn State had an affirmative duty to issue an emergency notification at certain points after the enactment of the emergency notification provision on August 14, 2008.

In November 2008, Sandusky was removed as a volunteer coach at Central Mountain High School after engaging in inappropriate sexual conduct with a young boy. In May 2010, Sandusky was denied a volunteer coaching position at Juniata College after failing a routine background check. Individuals within the University's Department of Intercollegiate Athletics were aware of these events. Starting in January 2010, the PA AG began a steady stream of contacts with the University regarding Sandusky. The PA AG subpoenaed Sandusky's employment and personnel records, questioned University officials about past allegations of sexual impropriety by Sandusky, and eventually compelled several Penn State officials to testify before the Grand Jury. Penn State officials took the PA AG's contacts and requests for information seriously and coordinated responses through its legal counsel. By March 2011, articles about the Sandusky investigation began to appear in local newspapers.

At no point did these events cause senior Penn State officials to take any action to warn the campus community about the potential risk posed by Sandusky's continued presence on campus. Privately, however, some senior officials, including the then-Chair of the Board of Trustees expressed serious concern about Sandusky's presence on campus after seeing him at a Penn State football game shortly before the Presentment was released. Furthermore, there is evidence that some minimal efforts were made to terminate, or at least limit, Sandusky's access to campus facilities, although these efforts were unsuccessful. A former senior official in the Athletic Department told the review team that in early 2011 he was directed by the University's then-General Counsel to reclaim Sandusky's keys to the football operations building and other facilities; however, Sandusky refused to return the keys and no further attempts were made to terminate his access until the University changed the locks. This attempt to terminate Sandusky's access suggests that senior University officials did in fact perceive Sandusky as a possible threat to the campus community.

When Department officials asked Penn State officials why Sandusky was allowed to continue to use University facilities, several current employees, legal counsel, and a former member of the Board of Trustees stated that Sandusky's access privileges were a condition of his retirement agreement and a normal part of the benefits conferred upon persons with emeritus status. However, human resources officials also confirmed that Sandusky did not meet the requirements for emeritus status and that his emeritus status was not conferred in the prescribed manner and that it could have been rescinded or modified for cause. In any case, the granting of emeritus status to an individual does not excuse an institution from its legal obligation to comply with the Clery Act's emergency notification requirement if that individual represents a threat to others. At a minimum, the Department believes that a reasonable person who had the information available to the University in early 2011 would have provided an emergency notification of the potential threat to the campus community. Based on interviews conducted by the review team and the campus community's response to the Grand Jury Presentment, it is clear that many members of the campus community would have likely made very different decisions about their actions, especially about their child's participation in various activities and programs conducted on the Penn State campus if they had been given relevant information.

Institutional Response:

In its response, Penn State disagreed with Finding 1(E) of the PRR, which indicated that the University had violated the *Clery Act* by failing to issue an emergency notification to the campus community regarding Sandusky's presence on campus in 2008 or anytime thereafter. Under the Department's regulations, if there is an immediate threat to the health or safety of students or employees on campus the institution must issue an emergency notification. Penn State argued that Sandusky's presence on campus was not a significant emergency or dangerous situation posing an immediate threat to the health and safety of students and employees. Also, it argued that because Sandusky's access to the campus was intermittent, issuing an emergency notification would not have been feasible and likely would have been prohibited by grand jury secrecy rules if based on knowledge the University had due to grand jury subpoenas.

Final Determination:

Finding #1(E) cited Penn State for its failure to issue an emergency notification to the campus community regarding Sandusky's continuing presence at the University Park campus in 2008 and thereafter. In 2008, Congress amended the *HEA* to add an emergency notification requirement to the *Clery Act*. It requires institutions to issue immediate warnings upon confirmation of any dangerous condition that could pose a risk to the health or safety of members of the campus community. The emergency notification requirement is purposely more broad than the timely warning requirement. Timely warnings must be issued in response to the occurrence of an on-campus Clery-reportable crime that may pose an ongoing threat. Emergency notifications, on the other hand, are required upon confirmation of an immediate threat to the health or safety of the campus community. Such a threat could be caused by a multitude of dangerous conditions including, but not limited to, criminal, atmospheric, and environmental events. Specifically, the need to issue an emergency notification might arise pursuant to an active shooter, a riot, an impending tornado or hurricane, upon learning of the presence of uncontained asbestos in a dormitory, an outbreak of a contagious disease, or a

credible bomb threat, to name just a few examples. The emergency notice amendment to the *HEA* was signed into law on August 14, 2008, and was effective upon enactment.

The information gathered by the Department's review team indicates that senior institutional officials at Penn State had knowledge of credible charges that Sandusky had committed sex offenses involving children on the Penn State campus in both 1998 and 2001. Furthermore, Sandusky had continuing access to the University's facilities, including maintaining an office in the Lasch building, the very location these acts were allegedly perpetrated. Following the enactment of the emergency notification provision in 2008, the Department believes that with this knowledge a reasonable person would have seen Sandusky's continued presence on campus as presenting an immediate threat to members of the campus community. The Department also finds that members of the campus community, and especially the parents and guardians of minor children, were entitled to be advised of this threat. Accordingly, Penn State had an affirmative duty to issue one or more emergency notifications to the University community after the emergency notification provision went into effect on August 14, 2008.

The following events occurred after the emergency notification provision was enacted into law and were known by various University officials. Collectively they provide further support to the Department's determination that an emergency notification regarding Sandusky's continued presence on the campus should have been issued, if not on the date of the enactment of the emergency notification provision then sometime thereafter. The notification need not have mentioned Sandusky by name, but should have advised that a reported child predator was intermittently on campus and that his actions presented a significant emergency or dangerous situation that posed an immediate threat to the campus community:

1. In November 2008, Sandusky was removed as a volunteer coach at Central Mountain High School after reports that he engaged in inappropriate sexual conduct with a young boy, prompting an investigation by Clinton County Children and Youth Services.
2. In May 2010, Sandusky was denied a volunteer coaching position at Juniata College after failing a routine background check.
3. On September 16, 2010, a newspaper reporter contacted Spanier and inquired about his knowledge of an investigation of Sandusky for suspected criminal activity.
4. In March 2011, articles about the Sandusky investigation began to appear in local newspapers.

As early as 1998, senior University officials were well aware of the potential threats posed by Sandusky's continuing presence on the campus. The depth of these concerns is reflected in notations made by Schultz as early as 1998 in regard to the Sandusky investigation and memorialized in his own records of the events. Schultz's handwritten notations from the time of the incident include the following ominous and ultimately neglected concerns about "other children" and opening "Pandora's box."

Immediately following the 1998 investigation, the University allowed Sandusky to retire with a highly unusual six figure lump-sum payout and signed a contract granting Sandusky's request for an office in the Lasch Building locker room. The also granted him continued access to athletic

facilities, game tickets to football games, and access to a stadium skybox. At Spanier's behest, Sandusky was also given Professor Emeritus status at the University.

The empowerment and opportunity afforded to Sandusky by his connection to Penn State to predate young boys cannot be overstated. Without Penn State, in the eyes of many young boys, Sandusky may have been seen as nothing more than a man nearing senescence, which is to say, someone in whom they would show little if any interest. Penn State bestowed upon him the titles of Assistant Football Coach, Professor, and Professor Emeritus. In the words of a former coaching colleague, Sandusky was "revered." His image was everywhere, including a mural in the center of State College where his visage was adorned with a halo. Sandusky's ability to clothe himself in these titles, and their association with a collegiate football dynasty, earned him the adulation of the impressionable young boys he preyed on and the trust of their parents. Indeed, both parents and children felt lucky that such an important man would take interest in them and spend time with them. Sandusky's letters to his child victims, written naturally on Penn State letterhead, offer further proof of how he used his connections to the University to predate children and keep them in his fold. *See* Exhibit 4. Furthermore, his unfettered access to Penn State's facilities afforded him the ideal location, the Lasch Building showers, to use as a pretext to have the young boys undress with him. It should be noted that besides the 1998 and 2001 incidents, it is now known that Sandusky showered naked with other young boys and had sexual contact with several young boys in the Lasch building locker room and at other campus locations.

In sustaining this component of the finding, the Department notes that the University could have avoided the need to issue an emergency notification by taking other effective steps to prohibit Sandusky from using its facilities and using his association with Penn State football to groom and predate children.²¹ The most obvious of these would have been to ban Sandusky from Penn State's campus and revoke his free tickets to football games.²² The Department's interview with a senior University human resources manager indicated that Sandusky's Professor Emeritus title was not properly conferred. As such, representations by University officials indicating that they

²¹ Timely warnings need only be issued when a Clery-reportable crime may pose a serious on-going threat. As noted in this finding, an emergency notification may be triggered by a wider array of emergencies, dangerous conditions, or other risk factors, including ones that have been present in the environment for an extended period of time such as asbestos or lead paint.

²² The Department notes that this was not the first time that Penn State dealt with an influential member of the community that exhibited behaviors consistent with those of a potential child predator in a lenient manner. Specifically, in 1988, the PSUPD questioned a man who had been reported for inappropriate interactions with teenaged boys outside of a University recreational building. The suspect, a male in his 50s, approached a 13 year-old boy at 9:45 p.m. and told the boy he was taking a survey. He asked the boy "if he was strong" and "if he was a wrestler." When approached by PSUPD, the suspect confirmed the reports and was directed by a PSUPD officer to cease all such activities and leave campus. Five years later in 1993, the same individual engaged in similar acts on campus, this time with a 16 year-old boy. He was reported to PSUPD by the boy's father. This time, the incident was investigated and determined to be disorderly conduct/harassment. The subject was issued a "Notice Against Trespass," which proscribed strict limitations on his access of various Penn State facilities. These limitations were repeatedly violated. For reasons that remain unclear, no criminal charges were pursued despite multiple violations of the no trespass order. In fact, the subject continued to enjoy access to the campus facilities for the next two decades, up to and including 2016.

could not take action to limit Sandusky's access to the University or take away his keys to University athletic facilities because of his emeritus status are misplaced.²³ Having taken no effective steps to reign in or restrict this ongoing danger posed by Sandusky to the University community, Penn State was obligated to issue an emergency notification to the campus community. Such a notification would have limited the ability of this child predator from using his association with the University and his access to the campus as a platform to groom and predate children. The emergency notification requirement was intended to ensure that people are informed about such threats so that they can make informed decisions and act in their own best interest and the best interest of their loved ones. Many children, including those of Penn State employees, attended daycare and after-school programs on campus. Children also utilized the campus library, attended football games, and participated in sports camps.

Sandusky's continued contacts with and presence on the University Park campus was frequent and substantial following his 1999 retirement and included:

1. Full access and keys to University athletic facilities;
2. University provided office in the Lasch building;
3. Premium seating in the exclusive Nittany Lion Club at Beaver Stadium, which he used to bring children as his guests; this raised internal concern among administration officials in 2010 but led to no effective action limit his access;
4. Second Mile²⁴ mentoring programs on the University Park and Altoona campuses from 2006 to 2009;
5. Second Mile Day Camps at the Altoona campus from 2001 to 2008-09;
6. Sandusky Football Camps at the Behrend campus from 2000 to 2008 and the Harrisburg campus from 2007 to 2008. See Exhibit 6; and
7. Access to University golf courses for his personal use, where he brought children as guest. He also utilized the courses for Second Mile fund raising tournaments from 2003 to 2011.

Penn State's failure to act, despite possessing sufficient evidence about the danger Sandusky posed denied many of the opportunity to be informed about serious threats to the health and safety of campus community members and, in so doing, violated the emergency notification requirement of the *Clery Act*. Penn State deprived students and employees as well as the parents and guardians of an estimated 20,000 children participating in youth camps at Penn State every year and the many thousands more attending concerts, sporting events, and other activities on the campus of critical safety information involving a dangerous situation existing on the Penn State

²³ In 2010, University Counsel Cynthia Baldwin, directed Fran Ganter, Head of Football Operations, to retrieve keys to the athletic facilities in Sandusky's possession. Sandusky refused, indicating that relinquishing the keys might be construed as an admission he had done something wrong. Baldwin concluded that Sandusky could not be forced to relinquish his keys because of his Professor Emeritus status and the keys were left in his possession.

²⁴ In a deposition taken as part of a private lawsuit, a former Second Mile official testified that Second Mile senior management instituted a policy in the fall of 2008 that prohibited Sandusky from being alone with children participating in the organization's programs. Nevertheless, Sandusky continued to have an official role with the organization for nearly two years.

campus.²⁵ It is apparent and incontrovertible that if campus community members would have had basic information about this threat then many would have taken decisive action, especially where the movements, involvements, and well-being of their minor children were concerned. For all of these reasons, the initial findings contained in Part 1(E) are hereby sustained.

Conclusions on Finding #1

The intent of the Clery Act is to inform the public about crime trends and security risks on America's college campuses. The dissemination of campus crime statistics provides information about campus crime trends over a three-year time horizon. That information is to be supplemented by timely warnings and emergency notifications about contemporaneous and ongoing threats and by mandatory entries on an institution's daily crime log. The history of the Clery Act is one of expansion to address growing concerns about persistent and emerging threats to the health and safety of campus communities; however, the goals of the Clery Act can only be advanced--and the intent of the Act realized--when institutions carefully implement it and institutional officials in powerful positions are proactive, vigilant, honest, and transparent about campus safety issues. As is clearly evident now, that did not happen at Penn State, either in terms of Clery Act implementation in general or in terms of definitively addressing Sandusky's crimes.

The Department believes that these facts are relevant in an overall discussion of Penn State's Clery Act violations in regard to the Sandusky matter. The Clery Act requires institutions to provide information that can help members of the campus community and other stakeholders to be informed about crime and emergencies on campus so that they can make sound decisions and provide for their own safety and security. In this context, all of the Clery Act's disclosure requirements, including the reporting of accurate crime statistics, timely warnings, emergency notifications, crime log entries, and policy information, are inextricably connected and work in concert with each other as part of an overall safety and security program. In its handling of the Sandusky matter, the University failed in every material respect to comply with the Clery Act, but the failure to take any action to address Sandusky's actions, such as those discussed by University officials in the e-mail exchanges, makes this compliance failure even worse. The five specific violations identified in this finding represent the Department's findings thus far regarding Penn State's specific Clery Act violations related to the Sandusky matter. Each violation on its own is a serious infraction. Taken together, this pattern of noncompliance indicates a severe administrative impairment that calls into question the University's ability and willingness to properly administer the Title IV Federal student financial aid programs. Penn State's failure to comply with the Clery Act in regard to this matter deprived the members of the Penn State campus community of vital safety information that would have empowered them to make informed decisions about their own safety.

²⁵ Guardians include those maintaining full or partial custody of a child as determined by court orders, and employees and /or volunteers or others persons, charged with supervision, or others having significant interactions with same on Clery geography.

Required Action:

The University must address each component of the finding above in the same manner as directed in the “Required Action” section of each finding that is implicated directly or indirectly by Finding #1. At a minimum, these include Findings #3, 4, 5, 6, 7, and, 8.

Final Determination Conclusion:

The intent of the *Clery Act* is to inform the public about crime trends and security risks on America’s college campuses. The campus crime statistics provide information about campus crime trends over a three-year continuum. That information is supplemented by timely warnings and emergency notifications about contemporaneous and ongoing threats and by mandatory entries on an institution’s daily crime log. The history of the *Clery Act* is one of expansion to address growing concerns about persistent and emerging threats to the health and safety of campus communities; however, the goals of the *Clery Act* can only be advanced - and the intent of the Act realized - when institutions carefully implement its mandates and institutional officials in powerful positions are proactive, vigilant, honest, and transparent about campus safety issues. As is clearly evident now, that did not happen at Penn State, either in terms of *Clery Act* implementation in general or in terms of addressing Sandusky’s crimes.

The Department believes that these facts are relevant in an overall discussion of Penn State’s *Clery Act* violations in regard to the Sandusky matter. The *Clery Act* requires institutions to provide information that can help members of the campus community and other stakeholders to be informed about crime and emergencies on campus so that they can make sound decisions and provide for their own safety and security. In this context, all of the *Clery Act*’s disclosure requirements, including the reporting of accurate crime statistics, timely warnings, emergency notifications, crime log entries, and policy information, are inextricably connected and work in concert with each other as part of an overall safety and security program. In its handling of the Sandusky matter, the University failed, in every material respect, to comply with the *Clery Act* but the failure to take any action to address Sandusky’s actions, such as those discussed by University officials in the e-mail exchanges, makes these compliance failures even worse. See Exhibit 5.

The five specific violations identified in this finding represent the Department’s findings regarding Penn State’s specific *Clery Act* violations related to the Sandusky matter. Each violation on its own is a serious infraction. Taken together, this pattern of noncompliance indicates a severe administrative impairment that calls into question the University’s ability and willingness to properly administer the Title IV, Federal Student Aid programs. Penn State’s failure to comply with the *Clery Act* in regard to this matter deprived the members of the Penn State campus community of vital safety information that would have empowered them to make informed decisions about their own safety.

As a result, Penn State was required to take all necessary corrective actions to cure the violations identified in the PRR and to adequately address the organizational weaknesses that contributed to the violations. Specifically, the University was required to develop and implement a system of policies and procedure improvements to ensure that this finding does not recur. As part of that

process, the University was to develop and implement a comprehensive corrective action plan and conduct an institutional self-study.

The Department carefully examined the University's narrative response to the PRR and its supporting documentation. Based on that review, the violations identified in Finding #1 (A)-(E) are hereby sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed for the future by the institution's new internal policies and procedures. As such, the Department has determined that Penn State's remedial actions meet minimal requirements. For these reasons, the Department has accepted the institution's response and considers this finding closed for purposes of this program review.

Penn State is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result. Penn State is reminded that the exceptions identified above constitute a serious violation of the *Clery Act* that by its nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. Nevertheless, Penn State's management must understand that each of the violations documented above deprived students and employees of important information they needed to make informed choices about their own safety, the safety of their minor children as well as the safety of the many members of the near-campus community that enjoyed broad access to campus and its facilities.

Finding #2: Lack of Administrative Capability

Citation:

To begin and to continue to participate in any program authorized under Title IV of the HEA, an institution must demonstrate that it is capable of adequately administering the program under the standards established by the Secretary. Among other requirements, the Secretary considers an institution to have administrative capability if it administers the Title IV, HEA programs in accordance with all statutory provisions of, or applicable to, Title IV of the HEA, and all applicable regulatory provisions prescribed under that statutory authority. 34 C.F.R. § 668.16(a). The Secretary's standards of administrative capability also require that an institution employ "an adequate number of qualified persons" as well as ensure that program activities are undertaken with appropriate "checks and balances in its system of internal controls." C.F.R. § 668.16(b)(2); 34 C.F.R. 668(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 Program regulations, including the Clery Act.

Noncompliance:

Penn State has substantially failed to develop and implement an adequate Clery Act compliance program since the Act's inception. This finding applies to the main University Park campus, the Commonwealth Campuses, and the rest of the University's educational locations and sites.²⁶ At the time that the program review was announced in November 2011, the University had started a draft Clery Act implementation and compliance plan for the first time. However, this plan was never completed. Accordingly, the Department finds that the University lacked the ability and/or willingness to properly administer the Title IV Federal student financial aid programs.

The regulations that govern the Title IV Federal student financial aid programs establish certain standards that all participating institutions must maintain to be considered administratively capable. The findings detailed in this program review report indicate that Penn State lacked an adequate system of internal controls and did not exercise or maintain compliance with the Clery Act during the 14-year program review period. The evidence reviewed by the Department shows that Penn State: failed to adequately report required crime statistics; failed to identify employees meeting the definition of CSAs and require them to provide crime statistics for inclusion in the ASR; failed to develop and adequately implement certain required crime reporting and security policies and procedures; and otherwise failed to meet its responsibility to provide vital and timely security information to the campus community and the Department. The evidence also demonstrates that PSUPD personnel did not receive adequate training in Clery Act compliance and that the University failed to exercise sufficient oversight, governance, or coordination of those University officials and departments that were responsible for policing, student and employee conduct, and the delivery of other safety-related services. The result of these breakdowns was a general failure to keep students, employees, other stakeholders, and the larger campus community fully informed of crime and other threats to their safety and security as they would have been had the University developed and implemented a comprehensive and fully-compliant Clery Act program.

Compliance with the Clery Act, the DFSCA, and the Department's regulations are specifically required by the terms and conditions of Penn State's PPA under which the University participates in the Title IV programs. The University's current PPA was executed on June 22, 2009, and is effective through March 31, 2015. The University's two prior PPAs were executed on August 18, 2003, and September 24, 1999. All three of these PPAs were signed by the University's then-President, Dr. Graham B. Spanier. These PPA requirements can be found at 34 C.F.R. § 668.14(c).

As noted above, the University has failed to meet its regulatory responsibilities in numerous and serious ways. Such a failure calls into question the willingness and the ability of Penn State to meet its obligations to its students, employees, the campus community, and the Department.

Impaired administrative capability increases the likelihood that the statutes and regulations that govern the Title IV Programs will not be followed. With regard to the Clery Act, such

²⁶ As noted earlier, this program review does not address Clery Act compliance at Penn College.

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, Penn State is required to take all necessary corrective actions to cure the violations identified in this program review report and to adequately address the organizational weaknesses that contributed to the violations. In addition, the University must develop and implement a system of policies and procedure improvements to ensure that these findings do not recur. As part of that process, the University will be required to develop and implement a comprehensive corrective action plan and conduct an institutional self-study. Instructions for both of these requirements will be outlined in a supplement to this program review report.

Institution's Response:

In its response, Penn State argued that as a threshold matter, the administrative capability provisions of the Department's regulations at 34 C.F.R. §668.16 are not applicable to the *Clery Act*. Accordingly, it asserted that it should not be held to the administrative capability requirements of these regulations in regard to its Clery-compliance regime. After making this threshold legal argument, Penn State denied the various findings enumerated by the Department to support its determination that the University lacked administrative capability.

The University's arguments had two primary themes. It primarily asserted that under the *Clery Act* the Department cannot "require particular policies, procedures or practices by institutions of higher education with respect to campus crimes or campus security," citing 20 U.S.C.A. §1092(f)(2). The University then asserted that at all times it acted in good faith to comply with the *Clery Act*. To support these assertions, Penn State offered as evidence piecemeal efforts by the University that it argued were proof of its compliance with the *Clery Act*. The University cited primarily to its maintenance of a Clery crime log and its publication of the Clery-required ASR each year. It further asserted that since the Department cannot require particular policies or programs in a compliance regime, there were no grounds for the Department to rule that the University's Clery compliance efforts were insufficient.

Final Determination:

In Finding #2, the Department found that Penn State lacked the administrative capability required for Title IV participating institutions because it substantially failed to comply with the *Clery Act* and the *DFSCA* throughout the review period. The regulations that govern Title IV Federal student financial aid programs establish certain standards that all participating institutions must maintain to be considered administratively capable. In regard to Penn State's administration of its compliance with the *Clery Act*, the Department has determined that the University delegated nearly all responsibility to the PSUPD, while simultaneously providing scant funding and no training for many years to support PSUPD compliance efforts. In doing so,

the University largely ignored many of its Clery-related responsibilities. Namely, it failed to employ sufficient staff to ensure compliance and failed to have in force any system of checks and balances to ensure compliance. Substantive steps to bring the University into full compliance with the law did not begin until after the Department's program review was initiated. As noted in the report, the Department has determined these findings constitute serious violations of the statutes and regulations governing campus crime reporting and, therefore, call in question the University's ability to properly administer this Title IV program.²⁷

As a result of these findings, the University was required to conduct an institutional self-study of its *Clery Act* compliance program and prepare a report of its findings. Based on the outcome of the study, the University was required to review and revise all campus security-related policies and procedures to show that it was capable of administering the *Clery Act*. Six of Penn State's compliance failures were specifically cited by the Department in the PRR in making its finding regarding administrative capability, including that the University:

1. Failed to properly record and compile accurate crime statistics for the ASR;
2. Failed to provided adequate compliance training to PSUPD officers;
3. Failed to properly identify and train CSAs;
4. Failed to develop and implement required crime reporting and security policies and procedures and include them in the ASR;
5. Failed to provide vital and timely security information to the campus community and the Department;
6. Failed to exercise sufficient oversight, governance or coordination of University officials and departments responsible for the *Clery Act*; and,
7. Failed to develop and implement a compliant drug and alcohol abuse prevention program, as required by the *DFSCA*.

As noted above, Penn State argued initially that the administrative capability requirements for institutions participating in the Title IV Federal student financial aid programs do not include compliance with the *Clery Act*; however, the University is incorrect in such assertions. *Under Section 487(a) of the HEA and the Program Participation Agreement (PPA) signed by Penn State, the University's continuing eligibility to participate in the Title IV programs depends on, inter alia, its compliance with the Clery Act. See §487(a)(7) and (12); 34 CFR §668.14(b)(9) and (c)(2). Moreover, under the Department's regulations, an institution is considered administratively capable only if it administers the Title IV programs in accordance with all applicable statutory and regulatory provisions, which includes Clery Act and DFSCA requirements. See 34 CFR §668.16(a).* In fact, the Department has historically and routinely held schools to the standards of administrative capability found in 34 C.F.R. §668.16 in regard to their compliance with the *Clery Act*. *See Paul Smith's College of Arts and Sciences, PRCN 2007302262285 (Dep't of Education Nov. 7, 2008) (FPRD), Eastern Michigan University, PRCN 200730825904 (Dep't of Education Nov.14, 2007) (FPRD), Salem International, PRCN 200130318804 (Dep't of Education April 14, 2004) (FPRD).*

²⁷ While the evidence indicates that many of these violations were likely present throughout the Penn State system, the specific violations cited in this finding only apply to the University Park campus. The Department is considering the need for reviews at other Penn State campuses.

The University agreed to be held to the high standards expected of participants in the Title IV programs when it signed the PPAs for the periods under review. These PPAs specifically included *Clery Act* compliance and *DFSCA* requirements. The PPAs in effect for periods from 1999 to 2015 were signed by Penn State President Spanier.

The Department now addresses the University's remaining arguments in turn. The University argues that the Department cannot require institutions to adopt particular policies, procedures, or practices in regard to *Clery Act* compliance. The Department agrees with this assertion to an extent, in that no single *Clery*-compliance regime is mandated. However, there must still be evidence of a system in place for compliance. *Clery Act* compliance rules are written broadly so that the 6,000+ institutions that are Title IV program participants can develop policies and procedures that fit their particular circumstances. Institutional *Clery*-compliance plans vary widely depending on the institution's geographic location, campus size, and student body size, among other factors. Accordingly, the Department accepts a broad-range of internal compliance regimes that are specifically tailored to an institution's needs in determining if it is administratively capable in regard to its *Clery Act* compliance.

However, the Department would be derelict in its duties under Title IV if it were to accept broad and unsupported claims of *Clery Act* compliance with scant facts to support them, as the Department found during its review and as Penn State proffered in its response. Penn State failed to provide adequate factual support for its claims of compliance. The Department bases its findings on evidence uncovered in its own investigation as well as the findings contained in the Freeh Report.²⁸ After a full review of all available evidence, including the University's response to the PRR, the Department has determined that as of November 2011 when the Department's program review was announced, the University did not have a written or cohesive plan for ensuring compliance with the *Clery Act*. A draft plan was initiated in 2009 but was never completed or finalized prior to the Department's review.

Furthermore, pursuant to *34 CFR §668.16(b)(2)* an institution must have an adequate number of qualified persons to administer the Title IV programs. However, from 1991 to 2007, the day-to-day *Clery Act* compliance functions were delegated solely to the PSUPD's Crime Prevention Officer (CPO), who indicated that he received no formal *Clery*-related training until 2007. Furthermore, the CPO indicated he had no knowledge that the University had an obligation under the law to collect crime data from the University's thousands of CSAs prior to 2007. Further, Stephen Shelow,²⁹ the director of the PSUPD at the time, indicated that he did not believe that anyone at the University understood that *Clery Act* compliance data needed to be gathered from anywhere outside the PSUPD before 2007. A failure to collect information from CSAs means that Penn State was almost certainly publishing inaccurate crime statistics in violation of the *HEA* and the Department's regulations defining administrative capability for participating institutions.

²⁸ The University was given the opportunity to accept or reject the findings contained in the Freeh Report, and then University President Rodney Erickson accepted the findings on behalf of the University as reflected in the Consent Decree executed with the NCAA on July 23, 2012.

²⁹ Mr. Shelow was appointed as the University's first Assistant Vice President of Public Safety in 2011.

In 2007, Shelow, believing that the University's Clery compliance had not been well handled in prior years, made nascent efforts to improve Penn State's compliance. Several PSUPD officers were sent to a Clery-compliance training seminar, including a sergeant who had recently been assigned to take over Clery compliance duties within PSUPD. An online CSA incident reporting form was developed and some outreach efforts to train CSAs in various departments throughout the University were conducted. Unfortunately, these efforts were largely ineffective due to the University's failure to devote proper manpower or resources to the compliance effort. The sergeant assigned to administer Clery compliance was tasked with a number of collateral duties, including oversight of all criminal investigations conducted by the department.

Interviews conducted by the Department reveal that, realizing the inadequacy of Clery-compliance manpower and resources, Shelow made a request to his superior, SVP of Finance and Business Gary Schultz, that a Clery-compliance coordinator be hired. Schultz acknowledged the need for such a position, but unfortunately indicated that the University had other priorities at that time and indicated no funding for the position would be forthcoming. Ultimately, the position was not filled until 2011 following Sandusky's arrest.

After 2007, CSA training was sporadically provided for a couple of years, but Clery compliance remained lacking throughout the University from 2007 until 2011. This conclusion is underscored by the fact that the online Clery-reporting system, introduced in 2007 for CSAs, resulted in only one report over the next four years until 2011. This was despite the fact that over 3,000 CSAs existed on campus.

In its response to Finding #2 of the PRR, Penn State attempted to prove its administrative capability by proffering an audit of PSUPD crime reports from 2007 to 2011 to show that the Clery-crime statistics published in its ASR for these years were largely correct. Unfortunately, this misses the point entirely. During the period covered by this review, Penn State did not have a functioning plan to identify, train, or receive reports from its CSAs, which by the University's own count is reported to be over 3,000. Thus, the University has no idea if the PSUPD reports reflect crimes that may have been reported to CSAs outside the PSUPD. Since the University did not have any system for collecting information from the CSAs, it was administratively incapable of properly collecting and counting Clery-reportable crimes for all periods prior to 2011. Due to this systematic failure of PSUPD and the University's administration, the true number of Clery-reportable crimes that occurred at Penn State for all years prior to 2011 is unknown and will remain unknowable.

Further, the University's assertion that it was acting in good faith, while ignoring the role of CSAs during this time period, is undercut by the fact that the PSUPD CPO reported to his supervisor in 2007 that the University was non-compliant with the *Clery Act* and "could get hurt really bad" unless additional personnel were assigned to assist with compliance. The response to this early and prophetic warning was that there was not enough money in the budget to spend on basic compliance efforts. The Department notes that for the 2006-2007 school year alone, the University received \$433,317,511 in Title IV funds from the U.S. Department of Education. The University's refusal to pay relatively minimal sums requested by its own personnel to bring it into compliance with the *Clery Act* further bolsters the Department's position that the University's own actions and lack of sufficient interest in bringing itself into compliance were

strong contributing factors in rendering itself administratively incapable in implementing the *Clery Act*.

The determination that Penn State lacked administrative capability necessarily relates to all aspects of the University's *Clery Act* compliance regime. The ten other Findings that are part of this FPRD are hereby incorporated by reference in support of the Department's Final Determination that the University lacked administrative capability.

The University administration has performed or pledged to perform the following actions to address its lack of administrative capability in implementing the *Clery Act*:

1. Standardize the letter that each campus uses to solicit statistics of Clery crimes from local police agencies;
2. Standardize the CSA Incident Reporting Form and train CSAs on how to use it;
3. Formalize CSA training through an online training module;
4. Implement systems for tracking the training of CSAs, including the implementation of software referred to as the Compliance Tracking Tool, which allows representatives of Office of Human Resources (OHR) and the Clery Compliance Manager to designate individuals as CSAs and track their compliance with training requirements. The online training module is linked to the Compliance Tracking Tool and automatically updates that program when a CSA has completed training. At any given moment, the Compliance Manager can easily access information related to the identity of the University's CSAs and the status of their training;
5. Formalize and supplement its procedures for collecting and classifying crime statistic data, distributing the ASR, maintaining its crime log, and issuing timely warnings;
6. Coordinate with the OHR to create a database that houses information related to employee misconduct and provides information relevant to certain Clery-reportable incidents;
7. Formalize procedures that require the use of uniform documentation methods for incidents involving criminal conduct, the recording of any arrest on campus as an incident, the referral of incidents of student misconduct to the Office of Student Conduct (OSC), and the referral of incidents of employee misconduct to OHR. The Police Records Coordinator, who plays a key role in the collection of crime statistics for the University Park campus' ASR, will benefit from access to the University's Records Management System Database (RMS Database) and Computer Aided Dispatch System (CAD) map overlay. The RMS Database houses information related to incidents handled by the University Police, State College Borough Police, Patton Township Police, and Ferguson Township Police. The RMS Database contains information relevant to Clery reporting, including the National Incident-Based Reporting System (NIBRS) or Uniform Crime Reporting (UCR) code for the incident, the location of the incident for Clery reporting purposes, a designation for hate crimes, and notations relating to the referral of the incident to OSC or OHR; and,
8. Establish a *Clery Act* Compliance Interdisciplinary Review Team that is responsible for the comprehensive oversight, review, revision, and implementation of all Clery-related University policies and procedures.

The Department has carefully examined all of the available information, including the University's narrative response and supporting documentation. As a result of this extensive examination, the Department has determined that this violation is hereby sustained.

For the purposes of this review, the Department has determined that the University's remedial plan meets the minimum requirements to demonstrate that Penn State is administratively capable of meeting its obligations under the *Clery Act* going forward. Therefore, the Department considers this finding closed for the purposes of this program review. However, Penn State must take any additional actions that may be needed to address all deficiencies, including but not limited to, those that were identified by the Department in the PRR and any other deficiencies or weaknesses that were detected by the University during the preparation of its response to ensure that these violations do not recur. The Department's finding that Penn State is administrative capable going forward is contingent upon the University's continued cooperation with the Department during the next five years during which the University's actions will be closely monitored.

As part of the ongoing monitoring program, the Department will continue to evaluate the University's progress in improving its compliance with the *Clery Act* and the *DFSCA*, and will make appropriate recommendations to the School Participation Division in regard to all future institutional eligibility determinations regarding Penn State's ability to participate in Title IV programs. If the Department determines that Penn State has engaged in a pattern of substantial misrepresentation of its *Clery Act* or *DFSCA* compliance in terms of the accuracy and completeness of its crime statistics, policies and procedures, programs, forms and publications, marketing materials, or in any other manner fails to take adequate remedial actions to address the violations identified in the review, a referral for an adverse administrative action may be initiated.

Finding #3: Omitted and/or Inadequate ASR and AFSR Policy Statements

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 report 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 must also be disclosed in detail. The institution must include the policies and crime statistics in a single comprehensive document, the ASR. With the exception of certain drug and alcohol program information, cross referencing to other publications is not sufficient to meet the publication and distribution requirements of the Act. § 485(f) of the HEA; 34 C.F.R. § 668.46(b); 34 C.F.R. § 668.41(e).

Federal regulations also specifically require all participating institutions to develop and implement emergency response and evacuation procedures and to publish them in the ASR. At a minimum, the procedure must state that the institution will, immediately and without any delay, disseminate emergency notifications (ENs) upon confirmation of a significant emergency or other immediate threat to student and employee health or safety. The policy also must state how institutions will go about confirming immediate threats and how ENs will be communicated to students, employees, and the larger community. An institution's procedure must state who may issue an EN, the process for determining the content of an EN, and its approach for determining what segments of the campus community should receive an EN. Institutions must also conduct announced and/or unannounced tests of its emergency procedures on at least an annual basis and publicize the nature and results of the test(s). 34 C.F.R. § 668.46(g).

Federal regulations require any institution that provides any 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 security 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 notification must include a statement that when a student is determined to be missing for 24 hours that their contact person will be notified within 24 hours, if they are under 18 that their custodial parent will be notified, and that in all instances law enforcement will be notified 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. Also, an institution that provides on-campus housing must maintain a fire log, which must record the reporting of a fire by date, nature and general location. Entries on the fire log are required to be made within two business days and the fire log for the previous 60 days must be made available to the public for inspection. 20 U.S.C. § 1092; 34 C.F.R. § 668.49.

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

It should be noted that prior to the year 2000, the regulations for institutional security policies and crime statistics were in 34 C.F.R. § 668.47. In 2000, the regulations were moved to 34 C.F.R. § 668.46.

Noncompliance:

Penn State failed to develop numerous required statements of policy, procedure, practice, and programs or to include adequate statements of required policies in its ASRs during the review period and, very possibly, since the enactment of the Clery Act. We also found that, in some instances, Penn State may have had appropriate policies but failed to implement them. The scope of this violation represents a general failure to comply with the Clery Act and indicates a systemic lack of administrative capability. Our review of the University's ASRs revealed more than 85 separate policy violations. Appendix A contains a detailed breakdown of these violations.

The extent of Penn State's persistent policy failures suggests a serious administrative impairment. The University averaged nearly seven such violations of omission or inadequacy per year during the review period. Many of the Department's findings of noncompliance and other systemic weaknesses in Penn State's campus security operations that were identified throughout the program review can be tracked to exceedingly poor policy development and implementation and a general lack of communication and training efforts designed to promote knowledge of the limited policies, procedures, and programs that the University did have. Stated simply, Penn State was always behind in its implementation of the Clery Act and was not well-positioned to catch up. The extensive list of violations identified in Appendix A supports this assertion and is of great concern to the Department. The Department did notice some slight improvement in the adequacy of Penn State's ASRs after University employees participated in Clery Training around 2007. The Department noticed additional improvements in the ASR distributed after the start of this program review. Penn State's draft ASR for 2012 appears to have addressed most of the omissions and/or inadequacies identified in its ASRs for prior years.

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 Act.

Required Action:

As a result of this violation, the University is required to take all necessary corrective actions to cure 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. As part of that process, Penn State must appoint an interdisciplinary team that includes officials from all offices with Clery Act responsibilities to conduct annual reviews of the University's policies and procedures to ensure that they are in compliance with the Clery Act and that they still reflect current institutional policy. This team must include representatives from the Commonwealth campuses. The team must produce a report outlining with particularity how it will accomplish these requirements.

Institutional Response:

The University responded to the numerous violations identified in this finding by grouping their responses into the following 13 main categories:

- A. Failure to list the persons and organizations to which the crimes should be reported in the 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, and 2011 ASRs.**

Noncompliance:

The University did not provide a list of titles of each person and organization to which students and employees should report criminal offenses.

Institutional Response:

Penn State disagreed with the Department's finding. The University claimed that it only needed to provide either a list of individuals or an organization, which they designated as the University Police, to which students and employees should report crimes. Penn State also argued that they were not required to provide any list of persons or organizations to which crimes should be reported.

Final Determination:

Finding #3 cited Penn State for violations of the *Clery Act* and the Department's regulations, as outlined in the noncompliance section above. In relevant part, the review team found that they failed to include in their 1998 to 2011 ASRs a list of the titles of each person or organization to which students and employees should report criminal offenses, as required by the *Clery Act* 34 C.F.R. § 668.47(a)(1) (1998) and 34 C.F.R. § 668.46(b)(2)(iii) (2002). Furthermore, the regulations in 34 C.F.R. § 668.47(a)(6)(i) (1998) speak to those criminal offenses reported to local police agencies or to any official of the institution who has significant responsibility for student and campus activities. Campus Security Authorities (CSA) can be a campus law enforcement unit and any official of an institution who has significant responsibility for student and campus

activities, including but not limited to student housing, student conduct, athletics, Greek affairs, etc. One of the central precepts of the *Clery Act* is an acknowledgement of the fact that students and employees in a higher education setting will often opt to not report crimes directly to law enforcement and will instead choose to first, and perhaps solely, report to another trusted source. This required disclosure reflects that reality and stands for the principle that victims and witnesses should have these options and deserve to know where such reports can be directed and what actions will follow from filing a report. While it is not necessary, advisable, or in many cases even possible to list every CSA, the intent of the regulation is to provide a list of CSAs that the institution has designated as the preferred receivers of reports from students and employees beyond the PSUPD or local law enforcement. Of course, a student may elect to go another route such as reporting to another CSA, seeking other services such as counseling, or opt to report to more than one official so that the incident can be dealt with on multiple fronts. As a result of these violations, Penn State was required to develop and implement new policies and procedures to guide the production and distribution of accurate and complete ASRs in accordance with *34 C.F.R. § 668.46(b)*. In its response, Penn State officials did not concur with the finding as they interpreted the regulation as allowing them to only list the PSUPD as a place to report crimes.

The Department has carefully examined all available information, including Penn State's narrative response and supporting documentation. The Department also acknowledges that especially during the very early years of the review period, there was a significant lack of clarity among some in the regulated community about the application of this provision. Giving the University every benefit of that doubt, this component of the initial finding is not upheld; however, Penn State was clearly advised that future ASRs must include many more emergency contacts given the prominent role that CSAs play in the University's campus safety program. While it may be permissible for a very small school to only list one CSA contact, a limited disclosure of this type is not workable or acceptable for a large institution like Penn State. Department officials will work with the University to ensure that its CSA disclosures for all of its campuses are adequate during post-review monitoring.

B. Failure to provide information about types and frequency of programs designed to inform students and employees about campus security procedures and to encourage students and employees to be responsible for their own security and the security of others in the 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008 ASRs.

Noncompliance:

The University did not provide a statement about the types and frequency of programs designed to inform all students and employees about campus security procedures and practices.

The ASR did mention that the residence halls offered programs with the University Police throughout the year and listed five programs. However, this statement does not describe

any programs or describe the frequency of programs offered to students who do not live in the residence halls or programs for employees. In addition, the University did not include a statement that encourages students and employees to be responsible for their own security.

Institutional Response:

Penn State disagreed with the Department's finding. The University claimed that it is not required to encourage students and employees to be responsible for their own security in the policy statement in the ASR as long as the programs themselves inform students and employees to be responsible for their own security. In other words, Penn State contends that the regulation requires that the ASR include a description of the types and frequencies of certain programs and not a statement encouraging students and employees to be mindful of their own security.

Final Determination:

The review team found that Penn State failed to include adequate information about the types and frequency of programs designed to inform all students and employees of campus security procedures and practices that will prepare them to play an informed and active role in their own safety and security in its ASRs during the review period. After reviewing additional information provided by Penn State, the Department has determined that the University's ASRs for 2007, 2008, 2009, 2010, and 2011 included adequate information that met the regulatory requirements. The finding is sustained as to the ASRs produced from 1998 to 2006.

Penn State's ASR only mentions its non-specific efforts to encourage students and employees to be mindful of risks to their own safety and security. The only programming that is mentioned in these ASRs with any specificity is directed exclusively toward individuals who lived in campus housing. No programs in the ASR were provided to those students and employees who did not live in the residence halls in terms of safety programs, as the University suggests. These limited disclosures did not address the 27,000 Penn State students who lived off-campus in calendar year 2000 and the more than 16,000 people who worked at the University at that time. In sustaining this finding, the Department notes that the sample policy statement for this requirement in the 2005 and 2011 editions of the Department's Handbook for Safety and Security Reporting explained that the required disclosure is to act as a summary of programming that falls under the broad category of crime prevention and personal security. Disclosures of this type are especially important for incoming freshmen and transfer students at very large institutions. Several Penn State students reported to us that they were "overwhelmed" by the size of the University and the variety of activity when they first arrived on campus. Students also reported feeling "vulnerable" simply as a result of being new to the campus. One student stated that she felt she "stuck out" as a new member of the community and that people seemed to know that she was a recent arrival. Credible research shows that the first several weeks of a student's first term on campus can be very dangerous, especially for college women. Studies also show that effective outreach and

training during the so-called “Red Zone” can be an effective means of reducing those risks.³⁰ This persistent violation carried over from year-to-year and was not improved until 2007, the year that, as noted throughout this document, the first Penn State employees finally received their first *Clery Act* training. Based on the Department’s review, this finding is upheld for the nine-year period from 1998 to 2006.

- C. Failure to provide a policy statement concerning the monitoring and reporting through local police agencies of criminal activity committed by its students at off-campus locations of student organizations officially recognized by the institution in the 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, and 2011 ASRs.**

Noncompliance:

The University did not provide a statement concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of student organizations officially recognized by the University.

Institutional Response:

Penn State disagreed with the Department’s finding. The University claimed that it substantively complied with the requirements because the ASRs for each year described the cooperative relationship between the PSUPD and local police.

Final Determination:

The review team found that Penn State failed to disclose basic information about how it works with local law enforcement agencies to monitor and record criminal activity committed by or otherwise involving Penn State students at off-campus locations, including properties owned or controlled by recognized student organizations such as fraternities. 34 C.F.R. § 668.47(a)(7) (1998) and 668.46(b)(7) (2000).

The University’s response is addressing 34 C.F.R. § 668.46(b)(4)(ii), which addresses the working relationship of campus security personnel with state and local police agencies, including any agreements, such as written memoranda of understanding, between the institution and such agencies for the investigation of alleged criminal offenses. While this is also a requirement, the response does not directly relate to the University not providing the specific statement addressed in the finding concerning the monitoring and reporting through local police agencies of criminal activity committed by its students at off-campus locations, referred to in the above regulation stated in the finding.

³⁰ See among others, Risk of Unwanted Sex for College Women: Evidence for a Red Zone by Matthew Kimble, Ph.D., Andrada D. Neacsiu, B.A., William F. Flack, Jr., Ph.D., and Jessica Horner, B.A. *Journal of American College Health*, Vol. 57, No. 3; What Every College Student Needs to Know about Sexual Assault, Acquaintance Rape, and the Red Zone by Jody K. Althouse, Director of Outreach and Education, Centre County Women’s Resource Center, 2013.

In upholding this finding, the Department points out the importance of this disclosure requirement for an institution like Penn State, where many students live or attend several functions at fraternities. At Penn State, most of the fraternities are located off-campus. For these reasons, the 14 violations covering the entirety of the program review period are hereby sustained.

D. Failure to disclose the institution's official policy and procedures for requesting changes to a sexual assault victim's academic and/or living situation and of its procedures for adjudicating a charge of sexual offense in a student disciplinary proceeding in the ASRs for 2009, 2010, and 2011.

Noncompliance:

The University did not notify students that the institution will change a victim's academic and living situation after an alleged sexual offense, if the victim requests a change and the changes are reasonably available.

Penn State also did not publish procedures for campus disciplinary action in cases of alleged sexual offenses. These required disclosures include notifying the accused and the accuser that: (1) both are entitled to the same opportunities to have others present during a disciplinary proceeding, and (2) both must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sexual offense.

In addition, Penn State's policy disclosures did not inform students that the University's personnel will assist the victim with notifying the appropriate law enforcement authorities, including the campus police and the local police, if the student requests assistance. Penn State did not disclose to students that on-campus and off-campus mental health, counseling and student services were available.

Note: In previous years, the University did include the above elements in the Student Conduct Section of the ASR. The University must include these elements in the ASR and may not simply refer to these by providing a link to the material.

Institutional Response:

In its response, Penn State acknowledged that the 2009, 2010, and 2011 ASRs did not include all required policies and procedures for its campus disciplinary proceedings that would be followed in the case of an alleged sexual offense. University officials claimed that they complied with most of the disclosure requirements and that their omissions amounted to a few isolated technical deficiencies.

Final Determination:

The review team found that Penn State failed to disclose required information about the disciplinary proceeding procedures that are used in cases of alleged sex offenses in the

2009, 2010, and 2011 ASRs. In upholding this part of the finding, the Department notes that a complete explanation was provided in the 2008 ASR, which suggests that Penn State chose to reduce the information provided to students and employees in this required disclosure. The Department emphasizes that campus sexual assault prevention and response and the importance of a fair, impartial, and transparent disciplinary proceeding process have been and continue to be a major objective of the *Clery Act*. Some Penn State students that spoke with Department officials during the course of the investigation reported serious concerns about the campus disciplinary processes and the sexual assault adjudication process in particular. These concerns were heightened further when in some cases the alleged perpetrator was known to be an influential member of the campus community, such as an athlete, fraternity leader, or faculty member.

The response stated that a link to the omitted information was available, but the review team determined that the link was not operational. Even if it had been operational, it would not demonstrate compliance with the *Clery Act*. The ASR is to be a comprehensive document that includes all of the information required by the HEA and the regulations. Penn State defends its failure to provide the required policies and procedures in this area by suggesting that students would likely come across the information if they just looked for it in the places that it was likely to be, such as at the Women's Resource Center. The entire point of the requirement is to ensure that campus community members have access to the policies and procedures in one source they can consult without any need to contact an institutional official directly. Victims of sexual assault and other violent crime have an absolute right to clear information about their options to avoid living near or being forced to study alongside their perpetrators. For these reasons, the three violations cited in this part of the initial finding are hereby sustained.

E. Missing student notification procedures policy for the 2010 and 2011 ASRs.

Noncompliance:

In its ASR, Penn State mentions that it had a missing person's policy but referred the reader to another website to actually review the policy. The policy must be in the ASR in its entirety. Referring the reader to another link does not comply with the regulations. In addition, Penn State's policy statement did not include the following elements:

- A. A list of the titles of the persons or organizations to which students, employees or other individuals should report that a student has been missing for 24 hours;*
- B. The requirement that any missing student report must be referred immediately to the campus police department;*
- C. Each student living in an on-campus student housing facility has the option to identify a contact person for the University to notify, if they are determined missing by the campus police department, or a local enforcement agency;*
- D. Students' contact information will be registered confidentially;*

- E. The University must notify a custodial parent or guardian if a missing student is under 18 years old and not emancipated; and,*
- F. The University will notify local law enforcement agencies if a student is missing, regardless if the student has named a contact person.*

Institutional Response:

In its response, Penn State acknowledged that it did not include the missing student policy in its ASR for 2010 and 2011 but referred the reader to the Assistant Vice President of Student Affairs. The University stated that while they did not provide this information in the ASR, they direct the students to contact an Assistant Vice President for Student Affairs to get the information and provide his phone number and email address. The University noted that it corrected this violation in its 2012 and 2013 reports.

Final Determination:

The review team found that Penn State failed to include a missing student notification policy and procedure in its 2010 and 2011 ASRs. 2010 was the first year that institutions were required to include this information in the ASR, although many schools did so voluntarily as early as 2008. The University conceded that it did not include the required information in the ASR for the years cited; users of the report were instead directed to the Assistant Vice President for Student Affairs. Penn State's policy did not meet its legal obligations. Moreover, its approach would not serve the purposes of the statute – if someone is missing, a member of the campus community should not be required to track down a particular individual to find out the institution's policy and procedures. The most basic requirement was not met in this case and, for these reasons, the two violations cited in this part of the initial finding are hereby sustained.

- F. Failure to properly title the annual report to conspicuously indicate that the ASR and the AFSR were published as a consolidated document for the 2010 and 2011 ASR.*

Noncompliance:

The University published its fire safety report concurrently with the ASR but the title of the document did not clearly state that the Fire Report was included in the ASR as required by 34 C.F.R. § 668.41(e)(6) (2010).

Institutional Response:

Penn State effectively conceded that the combined reports in question were not titled properly but claimed that its violation was insignificant because it would be obvious to any reader of the ASR that there was a separate section including the Annual Fire Safety Report. The University also claimed that this error was corrected in the 2012 and 2013 documents.

Final Determination:

The Department's regulations at 34 CFR 668.41(e)(6) specifically provide that the AFSR can be published with the ASR if the title of the report clearly states that both reports are included. This was done to ensure that students and employees could quickly see what information is available. The University acknowledged that it did not comply with the regulation but claimed that readers should be able to divine the actual contents if they would only read the entire report. Penn State did not explain why it ignored the clear regulatory requirement. In upholding this part of the finding, the Department notes that students regularly report to the agency that they do not read the report all at one time but instead refer to it when they need information. Proper titling announces to users of the report the types of information that are included therein. For these reasons, the two violations cited in this part of the initial finding are sustained.

G. Failure to publish an adequate policy statement regarding emergency response and evacuation procedures in the 2010 and 2011 ASRs.

Noncompliance:

The University did not include in the ASR a statement of policy that the institution will, without delay, and taking into account the safety of the community, determine the content of an appropriate emergency notification and initiate the notification system, unless the notification, in the professional judgment of responsible authorities, would compromise efforts to assist victims or to contain, respond to, or otherwise mitigate the emergency. The institution did not include a description of the process the institution will use for: (1) confirming that there is a significant emergency; (2) determining the content of the notification; and (3) determining when to send the notification.

Institutional Response:

Penn State claimed that the ASR "complied with the fundamental objectives and spirit of the pertinent regulations," but conceded that it did not include all of the required information above in their Emergency Response and Evacuation Procedures but that their version meets the spirit of the pertinent regulations.

Final Determination:

The review team found that Penn State failed to include an adequate policy statement regarding emergency response and evacuation procedures in its 2010 and 2011 ASRs. The statement did not fully address Penn State's procedure for the issuance of emergency notifications, the central component of the requirement. The University conceded that specific requirements were not met but claimed that it complied with the "fundamental objectives and spirit" of the regulations because it did include a statement that the Office of Emergency Management has a comprehensive plan dealing with "all hazards, disaster and emergencies." A statement claiming that a plan exists does not satisfy the specific legal requirement that the University describe the process used to determine that a notice

is required and what it will say. Once again, in upholding this finding, the Department notes that the ASR need only address the specific disclosure requirements of the *Clery Act*. As long as that information is included in the ASR, an institution is certainly free to direct users of the ASR to supplemental material, such as a more comprehensive emergency management plan that students, employees, parents, or other stakeholders may find useful. Penn State did not satisfy its legal obligation to include specific information in the ASR by referring students and employees to another publication. For the stated reasons, the two violations cited in this part of the initial finding are hereby sustained.

H. Failure to provide a statement describing procedures, if any, that encourage pastoral counselors and professional counselors to inform persons of procedures to report crimes on a confidential basis for the 2002, 2003, 2004, 2005, 2006, 2007, and 2008 ASRs.

Noncompliance:

The University did not provide a statement describing the procedures, if any, that encourage pastoral/professional counselors to inform their clients of procedures to report crimes on a voluntary and confidential basis.

Institutional Response:

Penn State disagreed with the Department's finding and claimed that a policy statement was only required if such a confidential reporting process was in place.

Final Determination:

The review team found that Penn State failed to include in the ASR a statement describing procedures to encourage professional and pastoral counselors to report crimes in a confidential manner for inclusion in the annual disclosure of crime statistics. In its response, the University claimed that it did not have any such reporting processes in place and was, therefore, not required to include any related statement in the ASR. During our review, various institutional officials stated that an assortment of alternative reporting schemes were considered and/or tried during the review period; however, none ever became permanent. As noted throughout this report, Penn State failed to establish a basic reporting system to compile and disclose incidents of crime that were reported to CSAs, as required. Moreover, per the University's response, responsible officials apparently believed that nearly all crime reports were brought to the attention of the PSUPD. In light of the fact that Penn State was not able to comply with the required reporting processes, the Department accepts that it was unlikely that any discretionary reporting processes were in place during the review period. The Department also acknowledges that for a period of time, there was a significant lack of clarity in the regulated community about the application of this provision. For this reason, this aspect of the initial finding is not upheld; however, Penn State is advised that its future ASRs must include a clear statement about whether or not any such reporting programs are in

place. If a confidential reporting program is implemented, the disclosure must also explain how to file a report. 34 C.F.R. § 668.46(b)(4)(iii) (2000).

I. Failure to provide a policy statement regarding the procedures for students and others to report criminal acts or other emergencies occurring on campus for the 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, and 2006 ASRs.

Noncompliance:

The University did not include a statement of its current policies regarding its procedures for students and others to report criminal activity.

Institutional Response:

Penn State concurred that it did not provide the required policy statement but claimed that the requirement was met because the ASRs included other information directing readers to call the police when necessary. The University stated that the ASRs from 1998 through 2006 contained numerous references to contact information for the authorities to whom emergencies and criminal activity should be reported. Penn State claimed that in this way, the ASRs complied with the fundamental objectives and spirit of the *Clery Act*.

Final Determination:

The review team found that Penn State failed to provide a policy statement in their ASRs detailing the procedures for students and others to report criminal activity, as required by the regulations. The University stated that the information regarding who to contact is implied by the information they provided in the ASRs. The University first included a basic policy statement to address this issue in the 2007 ASR. The University acknowledged its failure to have the required statement and claimed that a fully-compliant disclosure was included in the 2012 and 2013 ASRs.

Penn State's response is especially problematic in light of the other findings of this report, especially with regard to CSA crime reporting. By the time that the response was written, the University was fully aware of its systemic and persistent violations related to its reporting processes and the resultant effect on its crime statistics. While Penn State could not identify the actual number of CSAs that were in place during each year of the review period, the University represented that there are currently 4,024 CSAs at the University Park campus, many of whom play key roles in various aspects of the campus safety program; however, no information about how to contact these offices was included in the ASRs for the years cited. For these reasons, the nine violations cited in this part of the initial finding are hereby sustained. 34 C.F.R. § 668.47(a)(1) (1998); 34 C.F.R. § 668.46(b)(2) (2000).

The Department carefully examined all available information, including the University's narrative response and supporting documents. Based on that review, the nine violations in the noncompliance section of the initial findings are sustained.

J. Failure to include a timely warning policy for the 1998, 1999, 2000, 2001, 2002, 2003 2004, 2005, and 2006 ASRs.

Noncompliance:

The University did not include a statement of its policies for making timely warning reports.

Institutional Response:

Penn State disagreed with the Department's finding. The University claimed the required information was provided by information posted on bulletin boards and that information about the services offered by the PSUPD and about its reporting procedures were freely available around campus. The University also defended its actual practice of issuing localized alerts after a "series of incidents occur in a residence hall complex or college" and claimed that the issuance of such notices that were typically placed on "bulletin boards in that area" were adequate to alert "residents or occupants."

Final Determination:

The review team found that Penn State failed to include a compliant timely warning policy in its ASRs from 1998 to 2006. The entire point of the timely warning policy requirement is to ensure that students, employees, parents, and other stakeholders are able to understand the University's approach to issuance of warnings, if they want to know. Timely warnings provide information about Clery-reportable crimes that may pose a serious, ongoing threat to members of the campus community or others who may be on the University's Clery geography at the time. Such warnings allow individuals and groups to make informed decisions in furtherance of their own safety and security and, in doing so, make it less likely that similar crimes will occur or at least mitigate the harm of subsequent incidents. Timely warnings must be issued in a manner that gets the word out quickly and effectively across an institution's Clery geography. Such serious threats tend to create a significant zone of danger and are rarely fixed to a localized area. This is certainly the case in an active assailant scenario or in the case of a robbery. An ongoing threat may also be posed by other crimes such as a sexual assault, especially when the suspect is a repeat offender or in any assault scenario that results in injury to a random person or group. In such cases, the community must be notified quickly or the desired preventative effect is lost. In this way, accurate and complete policy disclosure is essential as it guides the institution's conduct and gives community members some confidence that a process is in place and allows them to know where to look for important and timely information that will clearly advise them about how to proceed.

Penn State failed to provide a timely warning policy in its ASRs from 1998 through 2006. The University finally provided its first time warning policy in the 2007 ASR. The University disagreed with the finding by stating that they issued localized alerts. The University did not address the fact that there was no policy in the ASRs until 2007.

Since Penn State did not include an adequate timely warning statement in its ASRs, the nine violations identified in this component of the initial finding must be upheld. We note that in the University's response, they claimed that the policy was included in the 2012 and 2013 ASRs and is now complete and accurately reflects institutional policy. However, the Department has not reviewed these policy statements for these two years and are not addressing whether they comply with the regulations. Notwithstanding these purported improvements, the Department must point out the connection of this violation to other longstanding deficiencies noted in Findings #1, 4, 5, and 6.

K. Failure to provide a statement of the institution's policies for preparing the annual disclosure of crime statistics in the 2000, 2001, 2002, 2003, 2004, 2005, and 2006 ASRs.

Noncompliance:

The University did not include a statement of its policies for preparing the annual disclosure of crime statistics.

Institutional Response:

Penn State disagreed with the Department's finding. The University claimed that the information included in the ASR about the PSUPD, its emergency number, and the fact that the agency maintained a daily log of reported incidents was adequate to meet this disclosure requirement. The University also noted that the PSUPD produced a daily activity log that included the nature and location of the reported crime as well as the time that the incident was reported to the police, and that this log was made available to the press and public.

Final Determination:

The review team found that Penn State failed to include in the ASR a statement that explained how the University compiled its annual crime statistics. Management's response did not really address the identified violation but referred once again to contact information for the PSUPD and the fact that a daily activity log was maintained. The response does not explain how this information told students and employees how the crime statistics were prepared. If Penn State had explained that its crime statistics only included crimes reported to the PSUPD, it would have let the community know that the University did not have any method of collecting incident reports from its thousands of CSAs and would have likely exposed that, as a result, Penn State significantly and persistently understated the actual number of Clery-reportable incidents that occurred on campus. The University finally remedied this deficiency in a manner that met minimum requirements in the 2007 ASR. The assessment of the University's response actually showed that this violation applied to seven ASRs (including 2000 and 2001), not five as stated previously (2002-2006). Each of these violations is hereby sustained. *34 C.F.R. § 668.46 (b)(2)(ii) (2000).*

L. Failure to properly disclose required crime statistics in the 1998 and 1999 ASRs and to compile and disclose crime statistics on a calendar-year basis in the 1998 ASR.

Noncompliance:

The University failed to comply with the Department's regulations for the reporting of crime statistics in the ASR. The only crime statistics the University included in the 1998 and 1999 ASRs were for the categories of murder, sexual assault and abuse, violation of law (combining the categories of robbery and burglary) and assault. The 1998 ASR contained a section entitled "Crime Prevention" that contained some statistics for Clery-reportable crime offenses; however, statistics for categories of crime were improperly combined. Specifically, forcible and non-forcible sexual offenses were aggregated, as were robbery and burglary. Moreover, simple assaults were improperly combined with aggravated assaults, and motor vehicle theft statistics were omitted entirely.

The University also failed to include hate crime statistics concerning the criminal offenses of murder, forcible rape and aggravated assault that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity, as prescribed by the Hate Crimes Statistics Act (28 USC 534). Penn State also failed to provide statistical information regarding liquor law, drug law and weapons possessions violations.

In addition, the University's ASRs did not include crime statistics on a calendar year basis. Instead, Penn State reported crime statistics using an academic year basis. The institution used academic years, 1994-1995, 1995-1996 and-1996-1997 rather than calendar years 1995, 1996, and 1997, respectively.

Institutional Response:

Penn State partially concurred that the crime statistics were reported in inappropriate aggregate statistics in the 1998 and 1999 ASRs but argued that they were nevertheless reported. The University also acknowledges that they failed to report hate crimes in the 1998 ASR but stated that these were included in all subsequent ASR reports. In addition, the University acknowledges that the 1998 ASR reported statistics on an academic year basis rather than a calendar year basis.

Final Determination:

The review team found that Penn State failed to disclose its crime statistics in accordance with the required crime categories and by calendar year in the 1998 and 1999 ASRs. The Department could not determine the disclosure methodology that was used by the University in these years, but it appears that reported incidents were grouped in general categories that did not reflect the categories required by the *Clery Act*. 34 C.F.R. § 668.47(a)(6) (1998). One such category appeared to include all reported sex offenses, robberies, and burglaries while other categories, such as hate crimes and motor vehicle theft, were omitted entirely. Statistics were also erroneously disclosed based on the University's academic calendar. In its response, the University represented that the

statistics, although not organized into the proper categories or disclosed for the proper timeframe, were nevertheless technically correct save for the omission of required hate crime data. For obvious reasons, this component of the initial finding is upheld as to the two ASRs that were impacted by this deficiency.

Notwithstanding these serious and persistent failures, the review team's analysis of the response also showed that the identified violations were, for the most part, satisfactorily addressed by the University's revised internal policies and procedures and its most recent ASRs. As such, the review team has determined that Penn State's remedial action plan meets minimum requirements, although it will be subject to additional testing as part of the Department's post-review monitoring program. For these reasons, the Department has accepted Penn State's response and considers this finding to be closed for program review purposes. Nevertheless, the officers and directors of Penn State are put on notice that the University must take all additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the institution's response and as may otherwise be needed to ensure that these violations do not recur.

Penn State is once again reminded that the exceptions identified above constitute serious and persistent violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. The requirement to produce an ASR that includes all required statements of campus safety and crime prevention policy and procedure is fundamental to the campus safety and crime prevention goals of the *Clery Act*. Access to this information permits campus community members and their families to make well-informed decisions about where to study and work and empowers individuals to play a more active role in their own safety and security. Proper policy formation also serves as a guide to institutional officials to help ensure that operations are carried out in a manner that will maintain the safety of the campus community to the greatest extent possible. Penn State asserted that it has taken adequate remedial actions and, that by doing so, has brought its overall campus safety program into compliance with the *Clery Act* as required by the terms and conditions of its PPA. Notwithstanding these actions, the University is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding #4: 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. See § 485(f)(3) of the HEA. These warnings must be issued to the campus community in any case where an incident of crime listed in 34 C.F.R. § 668.46(c)(1) and/or (c)(3) that represents a threat to students or employees is reported to a CSA. 34 C.F.R. § 668.46(e).

Noncompliance:

Failure to Issue Timely Warnings of Ongoing Threats to Students and Employees

Penn State repeatedly failed to issue timely warnings to students and employees regarding Clery-reportable crimes that posed an ongoing threat to students and employees during the 1998-2011 review period. The following chart details a representative sample of timely warning violations identified by the review team:

<i>Year</i>	<i>Clery-Reportable Crimes</i>	<i>Timely Warnings Issued</i>	<i>Example</i>
2010	110	19	<i>Incident #PSU201000857</i> <i>(aggravated assault) - 3/18/10</i> <i>A group of four students entered the victim's on-campus residence hall room and assaulted him. One of the four assailants was known to the victim; one had been making harassing phone calls to the victim. The main assailant attacked the victim while he lay in bed. The victim was punched with closed fists and kicked, sustaining injuries including a bloody nose and a concussion. After this violent attack, the victim immediately called the campus police. No timely warning was issued.</i>
2008	116	15	<i>Incident #41-08-3322</i> <i>(attempted burglary) - 9/27/08</i> <i>Although this report was misclassified as "Loitering and Prowling at Nighttime/Criminal Mischief," this incident at the Ikenburry Hall apartments involved a person removing the window screen and opening the window to the room with the apparent intent to steal a computer that was visible from the suspect's location. The occupants heard a thud and then ran into the room, causing the suspect to flee. This attempted burglary reasonably constituted an ongoing threat to the campus community. The University should have issued a timely warning.</i>

2006	91	5	<p>Incident #41-06-2914 (aggravated assault) - 10/23/2006 <i>This incident occurred near Geary Hall and left a Penn State student with a concussion, a broken nose, and a fractured left orbital socket. The assault was reported to the police at 3:22 p.m. PSUPD officials had sufficient information about the assailant's proclivity for violence to ascertain that he posed an ongoing threat; however, PSUPD chose to proceed with an investigation without issuing a timely warning. With no additional leads, the investigation ended without the assailant being arrested or a timely warning being issued to the campus community.</i></p>
2005	112	8	<p>Incident #41-05-0999 (aggravated assault) - 9/18/05 <i>Witnesses reported that a student was put in a headlock and punched several times in the head. The student was then knocked to the ground and kicked in the face by five males. The victim, knocked unconscious, had his jaw broken. Although the assailants were still at large, no timely warning was issued to warn the community about this ongoing threat.</i></p>
2003	109	7	<p>Incident #41-03-2358 (forcible sexual offense and burglary) – 7/10/03 <i>This incident occurred in a residential hall. The suspect entered one room and sexually assaulted a young woman. That same night, the same male entered another unlocked room with the intent to complete another felonious sexual assault. No timely warning was ever sent.</i></p>
2002	91	4	<p>Incident #41-02-2586 (aggravated assault) - 7/5/02 <i>An aggravated assault occurred on the southeast side of Pollock Commons that left the victim with welts, bruises, and contusions as a result of being repeatedly hit with a metal chain. The injured student was assisted into the Police Department to give details about her assailant. The victim was able to describe the assailant in some detail as a white-haired man carting a chain. Although the student provided a detailed physical description of her attacker, the officers only provided information about the attack to the Patton Township Police Department. A timely warning was never issued to the college community to warn others of this serious ongoing threat.</i></p>

2001	101	7	<p>Incident #41-01-1831 <i>(forcible sexual offenses and burglary) - 8/25/01</i> <i>Between the hours of 3:00 a.m. and 5:00 a.m., a sexual predator entered the rooms of five women in a residential hall on campus. Four women were inappropriately touched; one woman fought to keep the assailant out of her room. The assailant was able to complete a forcible sex offense on two of his victims. No timely warning was sent about the ongoing danger or to warn the campus community that the perpetrator was still at-large.</i></p>
2000	76	0	<p>Incident #41-00-2145 <i>(forcible sexual offenses and burglary) - 9/10/00</i> <i>Between the hours of 3:00 a.m. and 5:00 a.m., a sexual predator entered the unlocked residential hall bedrooms of several women without their permission. The assailant systematically checked for unlocked doors and for women who were asleep. During the night, he committed at least six forcible sexual offenses and five burglaries. A timely warning was not sent even though the assailant was still at-large. At least 11 Clery-reportable crimes were committed during these home invasions. These offenses clearly posed a serious and ongoing threat to the campus community, thereby requiring the issuance of multiple timely warnings. No warning was ever issued in this case.</i></p>
1999	93	0	<p>Incident #41-99-0101 <i>(forcible sexual offense) - 1/19/99</i> <i>At 8:00 p.m., the victim and her roommate went to watch movies with the suspect. The victim, an epileptic, later remembered having a few drinks and then blacking out. At the sound of her alarm clock, she awoke to find the suspect on top of her, sexually assaulting her. She pushed the suspect off of the bed. Because the victim was intoxicated and could not consent to a sexual act, this crime is a Clery-reportable forcible sex offense and should have resulted in the issuance of a timely warning. No warning was ever issued.</i></p>

1998	78	4	<p>Incident #41-98-2721 (attempted burglary) - 10/22/98 A student was sleeping in her dorm room when she heard a noise at the window. She ran to her roommate's room to find a male halfway inside the room behind the closed curtains. The window was forced open, the screen was pushed open, and the bracket was broken. This attempted crime was Clery-reportable and, in any event, constituted an ongoing threat to the campus community. Therefore, Penn State was required to issue a timely warning; however, no such warning was ever issued.</p>
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In each of the 14 years in the review period, Penn State issued many “warnings” and “crime bulletins” for crimes that were not Clery-reportable. Alerts of various kinds were distributed by various means for offenses such as theft, suspicious activity, criminal mischief, and indecent exposure. This was especially common after the occurrence of several similar incidents, such as an uptick in bicycle thefts or a wave of nuisance offenses. At the same time, the University consistently failed to issue warnings in response to many serious Clery-reportable crimes that posed a serious, obvious, and ongoing threat to the health and safety of the campus community.

As explained further in Finding #7, Penn State did not have a substantive timely warning policy for many years. Even once a policy was developed, there is no indication that it was implemented across the University nor is it clear that all or even most of the responsible officials were even aware of the timely warning requirement. While there is no readily-apparent pattern to the University’s actions regarding the issuance of timely warnings and other alerts, it is clear that the University neglected its obligations to issue timely warnings in response to specific Clery-reportable offenses that posed a serious and ongoing threat to the health and safety of Penn State students and employees. In doing so, Penn State substantially failed to implement one of the most important provisions of the Clery Act.

In 2008, the University implemented a text message alert system. This system is primarily used for the issuance of emergency notifications.³¹ While the timely warning and emergency notifications requirements are closely-linked, one does not supplant the other.

Failure to Issue Warnings in a Timely Manner

Penn State failed to issue warnings in a manner intended to give clear and timely notice of ongoing threats to the safety of the campus community in a manner that would aid in the prevention of similar crimes.

³¹ Please be advised that additional analysis of the University’s compliance with the emergency notification requirement may be included in a supplement to this program review report.

In several instances, the “Crime Bulletins” that were posted by the University did not indicate the date or time of the warning or of the offense itself, which prevented readers of the warnings from ascertaining the immediacy of the threat. This serious and persistent omission also impedes the Department’s ability to accurately determine the amount of time that elapsed between the initial report of a Clery-reportable crime that constituted an ongoing threat and the subsequent timing and any warning that was issued in certain cases. Nevertheless, in many other cases, it is abundantly clear that warnings were not issued in a timely manner. Indeed, some warnings were issued many hours after the violent crimes that they announced were committed and, in other cases, warnings were posted weeks after the occurrence of a Clery-reportable crime that posed an ongoing threat.

Failure to Issue Campus-Wide Timely Warnings

Penn State’s timely warning policy, included in the University’s ASRs from 1998 through and including 2011, states that “Crime Alerts are posted throughout the University Community.” Given the size and layout of the Penn State campus – a student population exceeding 45,000 students, thousands more faculty and staff, 103 on-campus residence halls situated on more than 7,300 acres of land – it is not now nor was it ever reasonable to conclude that the posting of paper notices would be an adequate means of communicating information about serious and ongoing threats to the entire campus community. The Clery Act requires that timely warnings be communicated in a manner that can be reasonably expected to reach all students and employees. The method most frequently used by Penn State to issue Clery Act-required timely warnings during the review period did not meet this requirement. In fact, none of the methods of dissemination most frequently used by Penn State during the review period, other than e-mail, ever came close to meeting the campus-wide communication requirement, especially in light of the University’s size. As the Department has noted in other cases, paper notices distributed within a particular building or in and around a few buildings or other shallow penetration means of communication may be acceptable for certain institutions in certain situations. In this context, the Department notes that early versions of Penn State’s timely warning policy, to the extent that it actually had an operative policy, specifically stated that the entire campus would typically not receive all warnings of imminent or ongoing threats facing the campus community. In support of this finding, the Department points to the only statement in the 1998-2006 ASRs that could be construed as a timely warning policy:

“The Daily Collegian (the student newspaper), the Centre Daily Times (the local newspaper), and the local television and radio stations contact the office to acquire information from this log. Information deemed newsworthy is published in both newspapers and is broadcast by the local radio and television stations. In addition, if a series of incidents occur in a residence hall complex or college, notices are placed on the bulletin boards in that area alerting the residents or occupants.

As noted elsewhere in this report, this policy statement does not include information that the institution is required to include in its timely warning policy, including the officials or offices that are charged with issuing bulletins or exactly what mode(s) of communication will be used to disseminate this information.

As an example of Penn State's failure to provide proper timely warnings, in 1998, the University issued four timely warnings: one for robbery, two for burglaries and one for rape. None of the four reached the entire campus. Penn State documents indicate the following facts about the failure to disseminate these warnings to the entire campus:

- *PSU19981728 (burglary): A paper warning notice was "posted around central campus on bulletin boards."*
- *PSU19982433 (rape): The area of dissemination was "unk." The Department must surmise that this means "unknown" and that no information is available about the area of dissemination for this warning.*
- *PSU19983192 (burglary): Paper warning notices were posted on bulletin boards in certain buildings (Ferguson, Weaver, Amsby, Patterson, Borland, Ag Sciences, Admin, Tyson, and Common areas-bulletin boards). These represent only a small number of buildings and residences on campus.*
- *PSU19983209 (robbery): The area of dissemination was "unk."*

Some crime bulletins were also issued by Centre County Crimestoppers,³² a web-based crime information and prevention network that requires users to access the group's website. Some of these advisories may have reached students and employees on the campus and other University-related persons at near-campus locations. However, these messages do not satisfy Penn State's obligation to issue timely warnings in response to crimes that represent ongoing threats. Other alerts appeared on the PSUPD web page and the PSUPD Facebook Page. These networks/applications are all methods of reporting and posting information, but none fulfill the dissemination requirements for timely warnings.

Required Action:

As a result of this violation, Penn State must conduct a review of all Clery-reportable offenses reported from 2007 to the present and determine if a timely warning was required and whether or not a timely warning was in fact issued. If a warning was issued, the timing of the warning and the mode of communication must also be ascertained.

If a warning was not issued, Penn State must indicate whether or not the University now believes that a warning was required. If Penn State 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

³² Centre County Crimestoppers has never been directly affiliated with or controlled by Penn State. No crime bulletins or other information issued by this service constitute timely warnings under the *Clery Act*.

program review report. Copies of any timely warnings that have not already been provided to the Department must accompany the University's summary report.

In addition, Penn State must review and revise its timely warning policy. 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.

Institutional Response:

In its response, Penn State expressed disagreement with all aspects of the finding. The University argued that the *Clery Act* and its implementing regulations provided institutions with “broad discretion” regarding the issuance of timely warnings. In exercising this discretion, the University contended it consistently and correctly applied statutory requirements when it considered the need for a timely warning based on the specific details of criminal matters occurring on or within its Clery geography. The University also claimed that it had the authority to defer or limit the geographical reach of timely warnings and claimed its practices were consistent with the policy statements in its ASRs. Furthermore, the University disputed the Department's assessments of the incidents provided as examples of noncompliance in the initial report and, more broadly, disputed the assessment of any compliance efforts occurring at any time before January 1, 2006. It contended this date was the extent of its legal obligations for retention of applicable records. Finally, the University argued the Department's analysis and conclusions were contradictory to its own training materials and guidance. Despite its general disagreement with the criticisms of the timely warning processes and policy statements, the University detailed its implementation of actions required by the Department and its own internally developed protocols for improved compliance.

Final Determination:

Finding #4 cited Penn State for multiple violations of the *Clery Act* and the Department's regulations, as outlined in the noncompliance section above. Specifically, the review team found that the University failed in several respects to comply with the requirement to issue timely warnings to advise students, employees, and others on the University Park campus about Clery-reportable crimes that posed an ongoing threat during the review period from 1998 through 2011. In reaching this determination, in each of the 14 years in the review period, Penn State issued many “warnings” and “crime bulletins” for crimes that were not Clery-reportable. These advisories were distributed by various means often for offenses less serious than those covered by the *Clery Act*, such as theft, suspicious activity, criminal mischief, and indecent exposure. However, the University failed on numerous occasions to issue warnings in response to many more serious Clery-reportable crimes that posed a serious continuing threat to the health and safety of the campus community.

Failure to Issue Warnings in a Timely Manner

The review team found that Penn State consistently failed to issue required warnings in a timely manner that would aid in the prevention of similar crimes. To meet this element of the requirement, institutions must ensure that the warnings provide clear and concise information about the threat as well as clear instructions about the steps individuals in the campus community should take. A significant delay in issuing the warning or a lack of clarity effectively undermines the entire purpose of the warning. Based on interviews with institutional officials, the review team learned that Penn State often delayed issuing crime warnings until there was a string or pattern of Clery-reportable incidents. In the years prior to 2007, there was also confusion within the PSUPD and elsewhere in the University about the standard for issuing a warning, who was authorized to issue warnings, and by what means they were to be disseminated. Simply put, no one was “at the switch.” As documented in this report, Penn State expected the PSUPD to handle *Clery Act* compliance for the entire University in spite of the fact that its personnel did not have the requisite knowledge, experience, or systems to do so. This general expectation applied to timely warnings as well.

According to its response to the program review report, Penn State has assumed for years that nearly all crimes were reported to the PSUPD. As has been clearly documented, that was not the case. Crimes were reported to other University officials but the information was never passed on to the PSUPD. In many cases, crimes were reported to the PSUPD (or came to its attention) after the passage of significant time. Even when serious crimes were reported to the PSUPD through this process, warnings still did not go out on a consistent or timely basis. Most of the “Crime Bulletins” posted by the University included no information about the time or date of the incident or any information about when the warning was posted, which meant that readers of the warnings could not determine whether an immediate threat existed. Also, when warnings were posted there was no coordinated manner to ensure that they were taken down when the threat was eliminated. Readers often had no way to know if a posting held any meaning for them or not. In other cases, no warning was issued at all, as was the case in the examples noted below. The University argued that more warnings were not issued so that their impact would not be diluted by unnecessary alerts. The Department disagrees and notes that there is no evidence that Penn State had a consistent standard for determining when a warning was needed and appropriate. This does not mean that Penn State necessarily had to issue more warnings. Instead, our finding is that in cases where the crime represented a threat to the campus community, Penn State should have issued relevant warnings that were in fact timely, gave actual and clear notice about ongoing threats to health and safety, and that were disseminated in a manner that would reach throughout the expanses of its large and busy campus. Penn State failed to satisfy this obligation.

In its response, the University also argued that “timely” was not defined by the *Clery Act* or its implementing regulations and that institutions were given the discretion to determine on a case-by-case basis whether or when a timely warning must be issued. While we agree that an institution must make timely warning decisions on a case-by-case basis, it is clear that those decisions must be reasonable and that the reasonableness of the institution’s decision can be

reviewed by the Department or a court.³³ Accordingly, although an institution has some discretion in this area, it is not absolute. The Department has consistently held that the determination of whether a warning is timely is determined by the nature of the crime and the extent to which that crime may pose an ongoing threat. The determination of what is “timely” is dictated by the circumstances at hand and is substantially informed by an assessment of how a reasonable person with the requisite knowledge and experience would act in the same or similar circumstances. In upholding this component of the finding, the Department also notes that its standard for review focuses entirely on the incident at issue. For that reason, many findings are sustained even if nothing else happens. The converse applies as well.

Failure to Issue Campus-Wide Timely Warnings

The review team also determined that Penn State consistently failed to issue campus-wide timely warnings that would reach all of its students and employees within its Clery geography. This part of the finding is associated closely to other aspects of this finding and is explained to significant extent in the preceding paragraphs. The University stated that it disagreed with this and all other aspects of the finding and claimed that it met its obligations to issue timely warnings under *34 C.F.R. §668.46(e)*. However, Penn State’s own records showed that the long-standing practice of issuing localized warnings extended from the beginning of the program review period well into at least 2007. As noted throughout this FPRD, a few PSUPD officials finally received their first *Clery Act* training in 2007. After that time, some improvements to the timely warning process were made, although policies, procedures, and practices continued to fall short of the standard at least until the major reform effort that coincided with the Sandusky scandal, the Freeh Group investigation, and the Department’s review.

In any event, it is now clear that the University did not meet the campus-wide notification requirement when it posted various bulletins, timely or otherwise, on or around a single building or at a few select buildings near the site of an offense. For the entirety of the review period, the *Clery Act* required that timely warnings be disseminated to the campus community in a manner that can be reasonably expected to reach all students and employees as well as visitors. Crimes and the threats that flow from them are not often stagnant – crime moves. Penn State’s own records make it clear that on numerous occasions, the safety of the entire campus community was potentially at risk. For these reasons, this component of the finding is hereby sustained.

Failure to Issue Timely Warnings

The review team found that Penn State failed to issue timely warnings in response to certain serious crimes that were identified in the incident report samples; ten such incidents were selected for inclusion in the program review report. The Department carefully considered all available information, including the University’s response, and based on that review, has accepted all or part of the University’s rationale for not issuing a warning for the following

³³. See In the Matter of Virginia Polytechnic Institute and State University, Dkt. No. 11-30-SF (Decision of the Secretary and Order of Remand, dated August 30, 2012); Havlik v. Johnson & Wales University, 509 F.3d 25 (1st Cir., 2007)

incidents: 1) PSU 201000857; 2) Incident #41-06-2914; 3) Incident #41-05-0999; 4) Incident #41-99-0101; and, 5) Incident #41-08-3322.

The Department has determined that this component is sustained as to the five incidents discussed below:

1. **Incident #41-03-2358:** (forcible sexual offense and burglary) – July 10, 2003. This incident occurred in a residence hall. The suspect entered one room and sexually assaulted a young woman. That same night, the same male entered another unlocked room with the apparent intent to complete another felonious sexual assault. No timely warning was ever issued.

The University disagreed with the Department's finding on the basis that it may have had other records available for review in this case that would have supported its inaction. The University contends that since it was not required to retain Clery-related records for any date earlier than January 1, 2006, relevant records may not have been preserved. Therefore, they argued that neither the University nor the Department was in a position to determine the need for a timely warning in this case.

The Department disagrees with the University's assertion. As previously explained, the record-retention period as applied to this case required Penn State to maintain records back to at least 2004. Moreover, the Secretary has authority to examine available records and make compliance determinations based on records preserved in excess of the record retention period. In any case, it is clear that this crime required the issuance of a timely warning.

2. **Incident #41-02-2586:** (aggravated assault) – July 5, 2002. An aggravated assault occurred on the southeast side of Pollock Commons that left the victim with welts, bruises, and contusions as a result of being repeatedly hit with a metal chain. The injured student was assisted into PSUPD to give details and a description of her assailant. The police were not able to locate the perpetrator. Although the student provided a detailed physical description of her attacker, the University did not issue a timely warning.

The University disagreed with the Department's determination that a timely warning was necessary as they did not view this incident as representing an ongoing threat to students or employees.

Penn State's own records show that this attack was perpetrated against a female victim by an assailant armed with a chain and that the assailant was still at large. The records also do not show that the victim was targeted by the assailant for a specific reason. In light of these factors, the decision by Penn State that the attack did not pose a serious ongoing threat is simply not reasonable.

3. **Incident #41-01-1831:** (forcible sexual offenses and burglary) – August 25, 2001. Between the hours of 3:00 a.m. and 5:00 a.m., a sexual predator entered the rooms of five women in a residential hall on campus. Four women were inappropriately touched; one

woman fought to keep the assailant out of her room. The assailant was able to complete a forcible sex offense on two of his victims. No timely warning was sent about the ongoing danger or to warn the campus community that the perpetrator was still at large.

The University claimed that the police did not learn of the incident until 3:57 p.m. that day. Once they learned of the incident, PSUPD officers purportedly identified the perpetrator and advised him one hour later he would be arrested. The University claims that this action eliminated the threat to the campus and that a timely warning was no longer needed.

The Department disagrees with the University on the law and the facts. The PSUPD's incident report clearly shows that one of the victims informed the resident assistant (RA) at 5:30 a.m. However, the RA, a CSA as defined by statute, did not contact the police to initiate an investigation that should have surely driven the issuance of a timely warning. This incident clearly presented a continued threat since the whereabouts of the perpetrator were unknown. The report indicated that the victim's mother finally called the police at 3:57 p.m. to ask why the police had not yet assisted her daughter – the victim of a sexual assault. This was when the police first learned of the incident. The primary failure in this case was the inaction of the RA, who had the responsibility to notify the police because of the nature of the crimes and the continued threat posed by the perpetrator.³⁴ Here again, the absence of clear procedure, effective training, and proper supervision made a bad situation worse. In the absence of police notification and the required timely warning, students and others were not informed of an extremely dangerous situation and were not given information that they were entitled to and that would have allowed them to best protect themselves. The danger existed from 5:30 a.m. until the police apprehended the suspect around 7:00 p.m. that evening. The suspect was finally arrested on multiple charges including burglary, criminal trespass, and indecent assault. Penn State's claim that the campus was safe when the suspect was notified of an expected arrest is also unreasonable. There is no reason to believe that an individual who has attempted to assault five women will necessarily stop when they are notified of a possible arrest.

For obvious reasons, the Department is in strenuous disagreement with Penn State's position that a timely warning was not needed in this case. The University is responsible for the actions of its CSAs and was notified of the assault once it was reported to a CSA, which in this case happened at 5:30 a.m. on August 25, 2001. CSAs should be trained to properly and timely report serious incidents, such as occurred here, to PSUPD. The University's assertion that no timely warning was necessary is baffling, especially considering the serious crimes committed in the course of this incident.

4. **Incident #41-00-2145:** (forcible sexual offenses and burglary) – September 10, 2000. Between the hours of 3:00 a.m. and 5:00 a.m., a sexual predator entered the unlocked residential hall rooms of several women without their permission. The assailant

³⁴ Investigating officers and other University staff appropriately counseled the RA about the delay in reporting this incident. See PSUPD Incident # 41-01-1831, Incident Report Supplement dated 08/28/01, pages 2 and 3.

systematically checked for unlocked doors and for women who were asleep. During the night, he committed at least six forcible sex offenses and ten burglaries. A timely warning was not sent, even though the assailant was still at large. At least 16 Clery-reportable crimes were committed during these home invasions. These offenses clearly posed a serious and ongoing threat to the campus community, thereby requiring the issuance of multiple timely warnings. No warning was ever issued in this case.

Once again, Penn State's response was that their records were likely incomplete as they were not legally required to preserve records of timely warnings issued in this timeframe. The Department notes however that PSUPD officials repeatedly assured the Department and the University's Associate General Counsel at the time that PSUPD records were maintained far beyond the Title IV record retention requirements and were materially complete dating back to at least the mid-1990s. That representation is in line with standard practice in police departments. Moreover, Penn State did not present any evidence of a policy or practice that resulted in the regular destruction of PSUPD records. We also note that Penn State itself has relied on the incident reports and case files maintained by the PSUPD for the University and its outside counsel to determine that numerous incidents that were classified as Clery-reportable crimes by the PSUPD should not have been.

In this case, PSUPD records stated that the sexual assaults and burglary incidents occurred on September 9, 2000, with the last incident taking place on September 10, 2000, between 4:30 and 5:00 a.m. Fourteen women informed an RA on Sunday morning, September 10, 2000, of the sexual assaults and burglaries. At a minimum, the RA, a CSA as defined by statute, had a responsibility to report this information to an appropriate official so that the need for a timely warning could be determined since the RA did not have the authority, technical expertise, or system access to issue any type of warning. However, PSUPD was not notified until 5:56 p.m., at which point an officer was dispatched to the dorm at 7:08 p.m. The police waited until the next day (Monday at 12:10 p.m.) to interview the original victim and then spoke with her again on Tuesday at 10:00 a.m. Police records show that the PSUPD did not have any information about the suspect's whereabouts between the time of the interviews and his eventual arrest, which did not occur until September 13, 2000, at 4:15 p.m. No timely warning was provided to the campus community during the time that the suspect's whereabouts were unknown, which presented a clear danger to the community.

For the reasons noted previously, the Department disagrees that the University did not have sufficient records to allow them to review this incident. The record clearly shows that PSUPD officers responded to this incident with a sense of urgency and gave it the attention that it deserved. The case was investigated carefully and resulted in a case file of more than 450 pages, providing an abundance of information for the University to have considered during the preparation of its response.

5. **Incident #41-98-2721:** (attempted burglary) – October 22, 1998. A student was sleeping in her dorm room when she heard a noise at the window. She ran to her roommate's room to find a male halfway inside the room behind the closed curtains. The

window had been forced open, the screen pushed aside, and the bracket broken. This attempted crime was Clery-reportable and constituted an ongoing threat to the campus community, yet no timely warning was issued.

The University stated that there was no dispute that an unlawful entry occurred. However, the University contended that it was not possible to determine the suspect's intent and, therefore, it cannot be classified as an attempted burglary.

PSUPD was notified of an attempted burglary at Hibbs Hall at 6:37 a.m., and officers arrived within about two minutes. The two roommates were able to give a description of the suspect, who was not immediately located and remained at large. The police went on to note this in the incident report as criminal attempt burglary, criminal trespass, and criminal mischief.

The Department once again vigorously disagrees with the University's contentions that the suspect's intent was unknown. A reasonable person would conclude someone breaking into a room at 6:35 a.m. has intent to commit a burglary inside (if not something far worse), as members of the PSUPD rightly noted in their incident report. Penn State's claim that the attempted break-in to the home of two female students was not worthy of a warning was clearly unreasonable.

As a result of these violations, Penn State was required to conduct a review of all Clery-reportable offenses occurring from 2007 to 2011, determine if a timely warning was required, and, if so, verify whether or not a timely warning was issued. If a warning was issued, the timing of the warning and the mode of communication were to be determined. In addition, if a warning was not issued, Penn State had to indicate whether the University retrospectively determined that a warning was required. If they determined that a warning was not required, the Department requested documentation to support such a conclusion.

There are several issues with Penn State's response. First and most significantly, the University did not conduct an adequate review to identify all Clery-reportable crimes that were reported to CSAs. This is a necessary precursor to a comprehensive inquiry into whether or not timely warnings were issued in all cases that required one. Penn State also failed to indicate the timing of the warnings that were issued, as directed in the required action section of the PRR. Although it is discussed elsewhere, the Department must reiterate that it could have required the institution to examine records from the entire review period. Barring that, the agency's normal process would have required a file review covering the entire record retention period. That approach would have required the Penn State to examine cases going back nearly seven years to 2004. Instead, University officials and their counsel were only required to examine records for the five year period between 2007 and 2011. This time period was agreed to specifically because Penn State officials stated that it would not be possible to conduct an accurate and complete report for a longer period. That limitation, however, only applies to the file review, which was a required part of the response to Findings #4, 5, and 6. Penn State was also required to respond to the specific exceptions noted in each finding regardless of the year of occurrence.

Notwithstanding the shortcomings of the file review, the Department takes note that the University did identify an additional nine incidents where a timely warning was not issued in accordance with the University's own policy as reflected in its ASRs.³⁵ As such, the Department disagrees with the University's arguments that it should not be held liable for timely warnings in incidents that date back longer than the record retention requirements set out in the Department's regulations.³⁶ The University maintained records past the timeframe required by the *Clery Act* of its own volition. Accordingly, these records are subject to review for compliance because the *Clery Act* does not restrict the Secretary's authority to inspect records in the possession of an institution at the time a review is announced. In fact, all of the source documents used by the Department to make these findings were provided by Penn State. Moreover, the University was and is required to maintain them for at least three years after this investigation comes to a definitive end. For all of these reasons, this component of the finding is hereby sustained.

Review the Timely Warning Policy

As noted under Finding #3, Penn State did not have a specific timely warning policy that met minimum requirements until 2007, and its ASRs were essentially silent on the topic for the majority of the program review period. Even once a policy was developed, the weight of the evidence shows that it was not effectively implemented across the University. Interviews with the officials that were responsible for *Clery Act* compliance indicate that they did not have a clear understanding of the timely warning requirement until after they received *Clery Act* training in 2007, the first year that the institution included a minimally compliant statement of policy in the ASR. While there was no readily apparent pattern to the University's actions regarding the issuance of timely warnings and other alerts, it is clear that the University either did not understand its obligation to issue timely warnings in response to certain *Clery*-reportable offenses that posed a serious and ongoing threat to students, employees, and visitors or simply ignored it. In doing so, the University substantially failed to implement one of the most important provisions of the *Clery Act*.

The Department's investigation clearly shows that the lack of clear and compliant policy and procedure contributed to the systemic breakdown in the issuance process and that both of these conditions are tied inextricably to the University's persistent failure to ensure that responsible staff members were trained on the campus safety and crime prevention requirements of the *Clery Act*. The problem did not start or stop there, however. A document search conducted with the assistance of a senior member of the former University President's staff retrieved precisely one reference to a *Clery*-related matter that came before the Board of Trustees during the 14-year review period. The subject matter of that agenda item was a report by the Association of

³⁵ Penn State's file review resulted in the identification of the following incidents where the University's policy required a timely warning that was not issued. The cases were identified by incident report number and include: PSU2007-2039; PSU2007-2040; PSU2007-2041; PSU2007-2042; PSU2007-2161; PSU2008-4544; PSU2009-3210; PSU2009-3618; and PSU2011-0643.

³⁶ The standard Title IV record retention requirement as applied to the *Clery Act* effectively dictates that an institution retain all documents and information that may be relevant to administration of its campus safety and *Clery Act* compliance program for three full years after the last time that said document is used or relied upon to substantiate the institution's actions or inactions. This period is often referred to as a seven-year period; however, for most purposes the actual duration of the period is six years and nine months.

American Universities that analyzed the lessons to be learned from the massacre at Virginia Tech, an event closely associated with the timely warning issue. As noted by the Freeh Group and the Pennsylvania Auditor General, the Board did not even have a standing committee responsible for compliance matters until after the Sandusky scandal finally forced major organizational changes. It is for these reasons, and others, that the Department required the University to conduct a thorough review and revision of its internal policies and procedures as well as the campus safety and crime prevention information that was provided to students and employees through the ASR.

As noted previously, Penn State did not have an acceptable timely warning policy prior to 2007. Prior to that time, the only non-specific reference to warnings in the yearly ASRs was as follows:

“Information deemed newsworthy is published in both newspapers and is broadcast by the local radio and television stations. In addition, if a series of incidents occur in a residence hall complex or college, notices are placed on the bulletin boards in that area alerting the residents or occupants.”

The University’s policy was deficient in nearly every respect. First, it provided only for the possible posting of “notices” in the event of “a series of incidents” that occurred in a residence hall complex or college. The *Clery Act* does not require a series of incidents to trigger a timely warning; a single incident could be sufficient. The policy also limited the postings to a single “residence hall complex or college” thereby limiting the reach of notices in both scope and venue. Given these facts, the University’s claims of compliance in terms of reliance, specificity, timeliness, or reach are, at a minimum, unreasonable given the deficiencies documented here. This is especially true because by 1998 Penn State had a range of effective technological options for distributing timely warnings, including campus e-mail.

Notwithstanding these serious and persistent failures, the review team’s analysis of the response also showed that the identified violations were, for the most part, satisfactorily addressed by the University’s revised internal policies and procedures. As such, the review team has determined that Penn State’s remedial action plan meets minimum requirements, although its current policies and practices will be subject to additional testing as part of the Department’s post-review monitoring program. For these reasons, the Department has accepted Penn State’s response and considers this finding to be closed for program review purposes. Nevertheless, the University must take all additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the institution’s response and as may otherwise be needed to ensure that these violations do not recur.

Penn State is once again reminded that the exceptions identified above constitute serious violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly “correct” a violation of this type once it occurs. Issuance of timely warnings to warn persons that may be at risk as a result of serious crimes on a school’s Clery geography is one of the most basic requirements of the *Clery Act* and is fundamental to its campus safety goals. The ongoing notification requirements of the *Clery Act*, timely warnings, emergency notifications, and crime log data provide vitally important up-to-date information that supplements the longitudinal

statistical data that must be included in the ASR and the Department's online campus crime statistics database. Penn State asserted that it has taken adequate remedial actions and, that by doing so, is now in compliance with the *Clery Act* as required by its PPA. Nevertheless, Penn State officials must understand that any failure to comply with any aspect of these requirements in terms of policy development and implementation or the actual issuance of warnings may violate Federal law and, more importantly, deprives students and employees of important information that will allow them to play an active and informed role in their own safety. For these reasons, Penn State is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

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

Citation:

The Clery Act and the Department's regulations require institutions participating in the Federal student financial aid programs under Title IV of the HEA, to compile and publish statistics concerning the occurrence on campus of the following incidents: homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. In addition, institutions are required to disclose arrests and disciplinary actions related to the violations of certain Federal or state drug, liquor and weapons laws. 34 C.F.R. § 668.46(c)(1).

The Department's regulations require that, for Clery Act reporting purposes, participating institutions must compile crime statistics using the definitions of crimes provided in 34 C.F.R. Part 668, Appendix A to Subpart D and the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection. 34 C.F.R. § 668.46(c)(7).

Additionally, 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; (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 Tool" and the College Navigator. 34 C.F.R. § 668.41(e)(5).

Noncompliance:

Penn State failed to compile and publish accurate and complete crime statistics for calendar years 1998 through and including 2011 (the statistics for 2011 were provided to the Department, in draft form). The Department has reviewed an initial sample of incident reports from the review period (1998 – 2011). Numerous reporting errors were identified as a result of that analysis. The most frequent types of violations included: (1) errors in identifying and classifying

reported crimes; (2) identification and disclosure errors commonly referred to as “under-reports”; (3) improper use of the claim that a crime has been “unfounded”; (4) persistent recordkeeping weaknesses; and, (5) systemic Clery Act and UCR compliance failures such as documenting multiple and distinct Clery-reportable offenses in a single incident report. In many of the latter cases, these offenses were separated by time and place and involved different victims, witnesses, and perpetrators but Penn State included them in a single incident for crime statistic purposes. Moreover, the PSUPD failed to maintain adequate documentation to substantiate its crime statistics for cases that were expunged pursuant to state court orders.

As noted throughout this report, the University substantially failed to implement a minimally-adequate Clery Act compliance program. Unqualified and untrained PSUPD personnel were assigned primary Clery Act duties for the University as an ancillary duty. The University’s practices made an already bad situation even worse as evidenced by the University’s wholesale failure to disclose forcible sex offense (FSO) statistics for an entire calendar year. Specifically, Penn State disclosed zero FSOs in its 2002 crime statistics as published in the 2003 ASR. In doing so, Penn State failed to disclose 12 FSOs that were reported to the PSUPD and were clearly documented in the University’s official records. In several of these cases, PSUPD officers wrote the incident reports documenting the reported FSOs and conducted in-depth investigations. PSUPD officials were unable to explain how such an obvious error was not identified and corrected before the ASR was published and disseminated to the campus community and the public. This very serious reporting error was only corrected after a national campus safety advocacy group questioned the accuracy and completeness of the University’s statistics more than two months after they were originally made public. Failures of this magnitude trigger a special regulatory concern for the Department and indicate a general failure to properly implement the Clery Act and calls into question the University’s ability and willingness to properly administer the Title IV, Federal Student Aid programs.

The following list details several classification and disclosure violations identified in our initial incident report sample from calendar years 1998 - 2011. These incidents are representative of the misclassified and under-reported incidents of crime that Penn State failed to disclose in the official campus crime statistical disclosure section of its ASRs during the 14-year review period. Our determination of the University’s failure to disclose certain incidents that were classified correctly are based on supporting documents provided by Penn State officials. Please note that the exceptions detailed below resulted in substantial misrepresentations of the University’s crime statistics in the ASR and in the submissions to the Department’s online campus crime statistics database. The requirement to disclose accurate and complete crime statistics separately in the ASR and to the Department are separate regulatory requirements.

2011:

Case ID: PSU 201105158 was classified as “departmental information,” Report Date: 11/25/2011. This report consisted of a detailed letter from an individual who was not a student at Penn State who reported being sexually assaulted multiple times on the University Park campus by Sandusky. These attacks occurred while the alleged victim was still a minor and purportedly took place in “the office, the showers, [and] the gym [between] 1978 – 1984.” Although the incidents occurred well in the past, the reporting of these sexual assaults occurred in 2011. The crime statistics submitted to the

Department for 2011 in advance of the University's most recent ASR did not include these reported incidents. The multiple offenses documented in the PSUPD's incident report must be disclosed as forcible sex offenses (FSO) in Penn State's 2011 crime statistics both in the ASR and in the University's 2011 campus crime statistics.

Case ID: PSU 201195947 was classified as "assault, indecent," Report Date: 11/16/2011. Multiple FSOs were reported to the Pennsylvania State Police and the PSUPD. These assaults allegedly involved yet another victim of Sandusky. The specific allegation of on-campus crime purportedly occurred at the McCoy Natatorium in 2000. This reported incident, described as an indecent assault, must be disclosed as a FSO in the University's 2011 campus crime statistics.

2010:

Case ID: PSU 201004022 was classified as "assault simple," Report Date: 10/31/2010. This crime was not included in Penn State's crime statistics for 2010. The victim of this crime was transported to the Mount Nittany Medical Center due to a number of lacerations that required stitches. In addition, the victim stated that he was rendered unconscious as a result of the attack. This incident should have been classified as an aggravated assault and included in the University's 2010 campus crime statistics.

Case ID: PSU 201003774 was classified as "drug law, now," Report Date: 10/24/2010. Officers responded to a residence hall in response to a complaint of the smell of burning marijuana. The student allowed the officer to search the room, where the officer found several pill bottles with traces of marijuana as well as pills that the student confirmed to be Ecstasy. The student was arrested for a drug law violation; however, Penn State's own supporting documentation indicates that this offense was not included in the University's 2010 campus crime statistics.

Case ID: PSU 201003493 was classified as "drug law, now," Report Date: 10/09/2010. A non-student in a football parking lot was arrested for three counts of possession of a controlled substance and one count of possession of drug paraphernalia. Penn State's own supporting documentation indicates that this drug law violation arrest was not included in the University's 2010 campus crime statistics.

Incident Number: PSU 201002513 was classified as "furnishing intoxicants to "minor" under the age of 21," Report Date: 8/27/2010. This incident was not included in the University's arrest statistics for liquor law violations for 2010.

2009:

Incident Number: PSU 200909018 was classified as "drug law violation," Report Date: 9/17/2009. Student was arrested on-campus (at the Hub) for illegally selling hallucinogenic mushrooms; however, Penn State's own supporting documentation indicates that this drug law violation arrest was not included in the University's 2009 campus crime statistics.

Incident Number: PSU 200904159 was classified as “drug law violation,” Report Date: 11/17/2009. Although this incident report was subsequently expunged, Penn State was nevertheless required to include this arrest in its 2009 crime statistics. The University failed to include this arrest thereby causing its drug law arrest statistics to be under-reported.

Incident Number: PSU 200903814 was classified as “disorderly conduct, fight,” Report Date: 11/4/2009. An off-the-court fight at the University’s Intramural Building left the victim with two facial fractures and five stitches. The incident should have been considered an aggravated assault and included in the reported statistics for 2009; however, Penn State’s own supporting documentation indicates that this offense was not included in the University’s 2009 campus crime statistics.

Incident Number: PSU 200903853 was classified as an “assault,” Report Date: 10/21/2009. The assailant threatened a student with a knife thereby putting the victim in apprehension of an impending violent assault. This incident should have been classified as an aggravated assault due to the threat of serious bodily injury due to the assailant’s possession and brandishing of a deadly weapon and was required to be included in Penn State’s 2009 campus crime statistics.

2008:

Incident Number: 41-08-1188 was classified as “terroristic threats/simple assault/recklessly endangering another person/disorderly conduct/harassment,” Report Date: 4/7/2008. A former member of the football team was armed with a knife and threatened a current player in the football team’s dining hall. “The blade of the knife measured eight (8) inches in length, with an overall measurement of twelve (12) inches including the handle.” The intended victim stated that “he noticed (the assailant) coming into the dining hall” and the assailant made a threatening statement to the victim. At that point, the assailant “pulled out a knife from his sleeve and threatened to stab” the victim. Three coaches disarmed and subdued the assailant. When a victim is attacked or threatened by an armed assailant and is put in apprehension of an impending violent assault with a weapon, the proper UCR classification is aggravated assault, even if the victim is not wounded in any way. Based on our review of this incident report, this incident should have been coded as an “aggravated assault” and should have been included in Penn State’s 2008 campus crime statistics.

Incident Number: 41-08-3322 was classified as “loitering and prowling at nighttime/criminal mischief,” Report Date: 9/27/2008. The victims reported that the south window screen of their dorm room had been removed and placed on the ground next to the building. The victims reported that the window was then opened and one or more perpetrators attempted to enter the room. This incident should have been classified as an “attempted burglary” and included in the University’s 2008 campus crime statistics.

Incident Number: 41-08-2903 was classified as “harassment,” Report Date: 9/8/2008. Parents of the student victim reported that their daughter had tripped and fallen on her

way home, late at night. A man who had been following her started to help her up, but also reached his hand inside her shorts, forcibly fondling her. Based on a review of this report, this incident should have been classified as a "FSO - forcible fondling" and included in the University's 2008 campus crime statistics.

Incident Number: 41-08-1718 was classified as "simple assault," Report Date: 5/6/2008. The Victim was a bystander at a pick-up basketball game at the Intramural Center. The victim claimed responsibility for the altercation and stated that he did not wish to pursue charges; however, surveillance video showed that the reported perpetrator was in fact the aggressor. PSUPD officials identified the attacker as a Penn State football player and also identified other members of the football team that witnessed the attack. The team members refused to be interviewed by PSUPD officers who were conducting the investigation. The victim's injuries included a significant hematoma and six stitches above the eye. Based on a review of this report, this incident should have been classified as an aggravated assault and included in the University's 2008 campus crime statistics.

2007:

Incident Number: 41-07-1579 was classified as "aggravated assault/disorderly conduct/resisting arrest/escape/harassment," Report Date: 5/10/2007. Officers were investigating a criminal trespass in Beaver Hall. They had located the suspect of the criminal trespass when another person interrupted the investigation to speak with the alleged assailant. This person, after verbally harassing the officers, slammed the door into an officer's head. This offense was classified as aggravated assault but Penn State's own supporting documentation indicates that this offense was not included in the University's 2007 crime statistics disclosure in the ASR or in the electronic submission to the Department's online campus crime statistics database. This reporting violation is an example of a true "under-report" because it was classified correctly but was improperly omitted from Penn State's campus crime statistics.

Incident Number: 41-07-3281 was classified as "simple assault/harassment/disorderly conduct," Report Date: 10/07/2007. At the hospital, the victim was diagnosed as having a head injury and a broken nose. This assault, during which between three and five people attacked one man, should have been counted as an aggravated assault and included in the University's 2007 campus crime statistics.

Incident Number: 41-07-1800 was classified as "indecent assault, indecent exposure, sexual assault," Report Date: 6/9/2007. This incident was correctly classified as a sexual assault, but not included in the ASR crime statistics as a sexual assault in 2007. This is another example of an "under-report."

Incident Number: 41-07-2277 was classified as "simple assault, harassment, disorderly conduct," Report Date: 8/11/2007. The victim was struck in the head with a beer bottle. The victim was transported to a medical center where he received several stitches for a very large laceration. This incident should have been categorized as an aggravated assault because he was assaulted with a dangerous weapon, the broken beer bottle.

Since the crime was incorrectly categorized, it was not included in the campus crime statistics reported to the campus community, the public, and the Department.

Incident Number: 41-07-2255 was classified as "criminal attempt burglary, criminal mischief," Report Date: 8/9/2007. An attempt was made to enter a locked laboratory. The steel plate covering the lock mechanism was bent in an obvious attempt to gain entry. Pry marks were observed on the door and the plate was damaged and bent. Once again, this incident was properly classified as an attempted burglary but was not included in the University's 2007 campus crime statistics. This reporting violation represents another under-report and is based on Penn State's own documentation that was provided to the Department to substantiate the accuracy and completeness of its campus crime statistics.

2006:

Incident Number: 41-06-0743 was classified as "simple assault," Date Reported: 3/18/2005. The victim received 27 stitches on the chin as the result of a criminal attack upon his person. This offense should have been classified as an aggravated assault and included in the University's 2006 campus crime statistics.

Incident Number: 41-06-2233 was classified as "simple assault, harassment," Date Reported 9/15/2006. The victim was kicked in the head and rendered unconscious as a result of the attack. This crime should have been classified as an aggravated assault and included in the University's 2006 campus crime statistics.

Incident Number: 41-06-2914 was classified as "simple assault, disorderly conduct," Date Reported: 10/23/2006. The victim of this crime was head butted and received a wound to the eye that caused temporary vision loss and a broken nose. This crime should have been classified as an aggravated assault and included in the University's 2006 campus crime statistics.

2005:

Incident Number: 41-05-2355 was classified as "harassment/simple assault," Report date: 9/18/2005. Witnesses reported that a student was put in a headlock and punched several times in the head. He was then knocked to the ground and kicked in the face by five males. The victim suffered a fractured jaw and was rendered unconscious by the assault. This incident should have been categorized as an aggravated assault and included in the University's 2005 campus crime statistics.

Incident Number: 41-05-3020 was classified as "assault/trespass," Report Date: 10/27/2005. PSUPD officials were advised of this serious attack against a student by the hospital personnel who treated the victim. Even though the victim stated that he did not want to pursue any charges against the perpetrators, hospital officials thought the incident sufficiently serious to warrant police involvement. This violent criminal attack resulted in the victim sustaining a torn ear drum from several blows to the side of his face. The victim also sustained a broken nose as a result of the attack. This incident should have been classified as an aggravated assault and included in the University's 2005 campus crime statistics.

Incident Number: 41-05-1760 was classified as “simple assault/harassment/disorderly conduct,” Report Date: 7/24/2005. PSUPD officers were dispatched to Beaver Hall (a residence hall) to break up a fight. The police reported that one of the victims was slammed against a wall and knocked unconscious and was bleeding profusely from a gash on the back of his head. Six medical-grade staples were required to close the wound. This incident should have been classified as an aggravated assault and included in the University’s 2005 campus crime statistics.

Incident Number: 41-05-3466 was classified as “drug law violation,” Report Date: 11/21/2005. It appears that a court order was issued in this case and the incident report was ordered to be expunged. Nevertheless, Penn State was still required to include this drug law violation arrest in its 2005 campus crime statistics. The University failed to do so thereby causing its drug law arrest statistics to be under-reported.

Incident Number: 41-05-1274 was classified as “disorderly conduct/liquor law violation,” Report Date: 5/6/2005. Although this offense did result in one reported incident of robbery and one liquor law violation, Penn State failed to properly identify and classify an additional criminal offense that was documented in this incident report. If a person commits multiple offenses during a single operation of crime then the Hierarchy Rule dictates that only the most serious offense be classified and counted for Clery Act and UCR purposes. In this case, the assailant committed two distinct crimes that were separated by time and place. Specifically, the suspect attacked two different people at two different times. He violently assaulted both victims, both of whom were knocked unconscious; however, only one victim was robbed. The University correctly classified and disclosed the robbery but failed to classify the attack as an aggravated assault and failed to include it in the University’s 2005 campus crime statistics.

Incident Number: 41-05-0999 was classified as “administrative information/assault,” Report Date: 4/15/2005. University Health Services reported to a PSUPD officer that a student was hit by an unidentified male at an on-campus bus stop. The victim required five or six stitches above the eye. This incident should have been classified as an aggravated assault and included in the University’s 2005 campus crime statistics.

2004:

Incident Number: 41-04-0681 was classified as “simple assault/harassment/disorderly conduct,” 3/17/2004. This criminal attack occurred at an on-campus bus stop. The Nittany Medical Center provided information to the PSUPD about the victim’s injuries. Specifically, medical staff reported that the victim suffered a broken cheek bone, a concussion, and facial nerve damage as a result of the attack. This incident should have been classified as an aggravated assault and included in the University’s 2004 campus crime statistics.

2002:

Incident Number: 41-02-4388 was classified as “sexual assault,” Report Date: 11/17/2002. In this incident, officials at the Centre Community Hospital contacted the PSUPD to report that two student victims arrived at the hospital seeking post-sexual

assault examinations. The forensic examinations revealed bruises, lacerations, and other injury and trauma that is consistent with sexual assault. Hospital officials reported that both women were allegedly assaulted at the Nittany Apartments Complex on the University Park campus. Both victims reported that there were two assailants and each of them was raped by both assailants. The women and several witnesses were able to identify the alleged assailants. Penn State did include one of the reported forcible sex offenses in its 2002 campus crime statistics but did not include the second offense in its campus crime statistics. Under both the Clery Act and UCR guidelines, Penn State was required to classify and disclose both offenses even if the PSUPD chose to document both crimes in a single incident report.

Incident Number: 41-02-4655 was classified as “aggravated assault, simple assault, harassment, disorderly conduct, public drunkenness,” Report Date: 12/07/2002. The incident occurred during a sporting event where two groups of students that were cheering for opposing teams began to fight each other. During the fight at least two assailants assaulted a student. The victim was knocked unconscious and punched and kicked, receiving multiple contusions to his head, eyes, and nose. This offense was classified as aggravated assault but Penn State’s own supporting documentation indicates that this offense was not included in the University’s 2002 campus crime statistics disclosure in the ASR or in the electronic submission to the Department’s online campus crime statistics database. This is yet another example of a true “under-report” because it was classified correctly but was improperly omitted from Penn State’s official campus crime statistics.

Incident Number: 41-02-4651 was classified as “sexual assault,” Report Date: 12/6/2002. Two roommates reported to the PSUPD that they were both sexually assaulted in their residence hall. Both victims were interviewed by the Sexual Assault Response Team and submitted to a sexual assault forensic examination and evidence collection. Penn State did include one of the reported forcible sex offenses in its 2002 campus crime statistics but did not properly include the second offense in its campus crime statistics. Under both the Clery Act and UCR guidelines, Penn State was required to classify and disclose both offenses even if the PSUPD chose to document both crimes in a single incident report.

Incident Number: 41-02-2586 was classified as “harassment/simple assault,” Report Date: 7/5/2002. The victim was violently assaulted with a length of metal chain. Specifically, a white-haired man, who the victim did not know, pushed her to the ground and struck her multiple times on her arms and ankles. The victim was struck so hard that her thigh bore the imprint of the chain when PSUPD officers came to her aid. When a victim is attacked or threatened by an armed assailant and is put in apprehension of an impending violent assault with a weapon, the proper UCR classification is aggravated assault. Based on a review of the case file, this incident should have been classified as an aggravated assault and should have been included in Penn State’s 2002 campus crime statistics.

Incident Number: 41-02-1550 was classified as “assault, disorderly conduct, harassment,” Report Date: 4/7/2002. During an intramural football game, a male participant became angry after another player threw the ball at him. The assailant left the playing field and then returned approximately ten minutes later with a knife in his hands. The suspect threatened the male who had thrown the ball. Two other men restrained the assailant and disarmed him. This incident should have been classified as an aggravated assault due to communication of a targeted threat while armed with a dangerous weapon and included in the University’s 2002 campus crime statistics.

2001:

Incident Number: 41-01-1837 was classified as “burglary, indecent assault,” Date: 8/26/2001. During the night, an assailant entered the rooms of ten women in the Brumbaugh Hall (a residence hall). With felonious intent, the assailant attempted to inappropriately touch the women in each of these ten dorm rooms. These multiple incidents are required to be separately included in the statistics for 2001, yet only a single offense was included in the University’s 2001 campus crime statistics.

Incident Number: 41-01-2247 was classified as “drug law violation, unfounded,” Report Date: 9/26/2001. A PSUPD officer detected the odor of marijuana emanating from a car in the Eisenhower Parking Deck. Upon returning to his car, the owner was confronted by the officer and consented to a search of the vehicle. During the search, officers found multiple bags in the center console that officers believed to be crystal methamphetamines. Five “rocks” were tested by NIK narcotics identification kit and tested positive for amphetamine-type compounds. The evidence was sent to the Pennsylvania State Police laboratory for additional analysis. Although the case file did not indicate that an arrest was made, PSUPD officials claimed that an on-campus drug law violation of this type would always result in an arrest per PSUPD procedure and University policy. Moreover, nothing in the incident report or other case material indicates that the offender was not arrested. Although the incident report states that the incident was “unfounded,” no rationale for unfounding the incident is indicated. A reported incident can only be unfounded when the evidence clearly shows that an allegation is shown to be false or baseless. Given the Department’s serious concerns about the PSUPD’s inconsistent and unsupported application of the “unfounded” status, coupled with its systemically poor documentation, it must be noted that there is no paperwork indicating that any arrest or disciplinary referral was made. There is also no file information that indicates or supports a determination that the offense should have been unfounded. Based on this rationale, this incident should have been classified as a drug law violation arrest or disciplinary referral and included in the University’s 2001 campus crime statistics.

Incident Number: 41-01-3367 was classified as “sex offense, unfounded,” Report Date: 12/8/2001. The PSUPD was notified of an on-campus sexual assault by local hospital staff. Upon arrival at the hospital, a PSUPD officer met with the nurse who examined the victim and a representative from the Centre County Women’s Resource Center. The victim reported that she had consumed a significant amount of alcoholic beverages and passed out or fell asleep on the suspect’s bed. Upon awaking, she realized that she was

completely nude; although she had been fully dressed at the time she fell asleep. Although the victim was not able to definitively state that she had been sexually assaulted while she slept, the physical evidence strongly indicated that she had been; she noticed that a tampon that was left in place overnight was extremely difficult to remove because it had been pushed deeply, improperly and uncomfortably into her. The incident report indicated that the police record reports that friends of the victim confronted the suspect, who reportedly stated the victim had nothing to worry about because he had used a condom. The sexual assault forensic exam evidenced vaginal tearing and bruising. In addition to the forensic evidence, it must be emphasized that the assailant admitted to the completion of a sexual assault on an unconscious or sleeping victim. Under the Clery Act and Pennsylvania sexual assault laws, an intoxicated person cannot consent to a sexual act. The evidence clearly shows that the reported incident was neither false nor baseless. The PSUPD records do not explain or support the determination to characterize the reported sex offense as unfounded. For these reasons, this incident should have been classified as a forcible sex offense and included in the University's 2001 campus crime statistics.

Incident Number: 41-01-1563 was classified as "indecent assault/administrative information, unfounded," Report Date 7/6-7/2001. This sexual assault occurred at the Penn Stater Hotel. The victim, a student from another institution, reported that an instructor from her university may have raped her overnight while in his room. The alleged incident occurred after the conclusion of a conference that both had attended. The victim stated that she and the professor had been drinking. She stated that she had fallen asleep or had possibly passed out; upon waking up, she noticed that she was partially undressed. Although the district attorney declined to prosecute, there was no evidence that clearly indicated that the allegation was false or baseless. Indeed, the PSUPD's decision to present the case to the prosecutor indicates that the police officials felt that the case had some merit. In any event, crime classification and disclosure of reported incidents under the Clery Act is not affected by the unilateral acts of prosecutors regarding the decision to pursue a case or any other aspects of the charging process. It appears that this and many other cases may have been characterized as unfounded solely because local prosecutors declined to file charges or charged suspects with less serious offenses. This incident should have been classified as a forcible sex offense and included in the University's 2001 campus crime statistics.

2000:

Incident Number: 41-00-0896 was classified as "sex offense, unfounded," Report Date: 4/4/2000. After ingesting several alcoholic beverages, the victim reported that she fell asleep and awoke to find that she was naked. The suspect allegedly informed her that they had had sexual intercourse. She stated that she contacted the Rittenour Health Center and was directed to present at the Mount Nittany Medical Center, formerly the Centre Community Hospital, where a sexual assault forensic exam was conducted and forensic evidence was collected. Results of that report indicate some bruising on the victim's legs. The victim had no recollection of the sexual assault; however, as noted, the perpetrator admitted to the commission of the act and the victim could not consent. Once again, PSUPD officials investigated the incident and presented it to the prosecutor.

Ultimately, the district attorney chose not to pursue the case but as noted in the analysis of Incident Number: 41-01-1563 above, that is not permissible grounds to unfound a reported incident for Clery Act purposes. For these reasons, this incident should have been classified as a forcible sex offense and included in the University's 2000 campus crime statistics.

1999:

Incident Number: 41-99-2603 was classified as "simple assault," Report Date: 10/28/1999. On several occasions throughout 1998, the victim reported that the assailant assaulted and harassed him at work. In one case, the assailant held a claw-hammer to the victim's face and threatened serious bodily harm. On another occasion, the suspect held a letter opener to the victim's neck and drew blood and then intentionally and maliciously sprayed wasp killer into the victim's face and eyes. In the last attack detailed in the incident report, the victim stated that he suffered a dislocated knee. At a minimum, the first two incidents referenced above should have been classified as aggravated assaults and included in the University's 1999 campus crime statistics.

Incident Number: 41-99-3187 was classified as "theft, unfounded," Report Date: 12/16/1999. A student reported to the PSUPD that her purse might have been stolen from her unlocked dorm room or from Room 111 of Leete Hall, where she had left the purse unattended for a short time. The student's damaged purse was found later that day in a campus parking lot. Based on Department guidance in place at the time, this incident should have been classified as a burglary because the purse was stolen from personally-controlled space within a structure and, therefore, Penn State was required to include this incident in its 1999 campus crime statistics.

Incident Number: 41-99-1729 was classified as "indecent assault/harassment," Report Date: 8/2/1999. In this incident, the victim, who was employed as a resident assistant, reported that she was touched inappropriately by her supervisor on three separate occasions in 1998 and 1999. The victim reported that one of these incidents occurred on campus where the perpetrator touched her breast without her consent. Based on the reported facts, this incident should have been classified as a forcible sexual offense/forcible fondling and included in the University's 1999 campus crime statistics.

1998:

Incident Number: 41-98-0297 was classified as "criminal attempt/sexual assault," Report Date: February 4, 1998. A student victim reported that a known perpetrator attempted to rape her at an on-campus residence. The incident report stated that a PSUPD officer was supposed to conduct a follow-up investigation; however, there was no indication of any investigative activity. The minimal information provided to the review team by PSUPD indicated that the case file was ordered to be expunged even though the incident number does not appear on the list of court-ordered expungements provided by the University. State court-ordered expungements do not alter an institution's responsibility to maintain adequate documentation to substantiate its compliance with the Clery Act in general and to support its campus crime statistics in

particular. In any event, this incident should have been classified as a forcible sex offense and included in the University's 1998 campus crime statistics.

Incident Number: 41-98-2776 was classified as "administrative information," Report Date: October 26, 1998. A victim/survivor reported that she was sexually assaulted a year previously in her on-campus residence hall room. The victim told PSUPD officials that she did not wish to have an investigation conducted "at this time." This incident was not entered accurately in Penn State's crime log. Specifically, the crime log entry only stated that a PSUPD officer was assigned to conduct an investigation. For Clery Act purposes, an incident is considered to be reported when it is brought to the attention of campus police, campus security, and/ or a CSA. If a reported incident is Clery-reportable, it must be disclosed in an institution's crime statistics even if the victim specifically requests that no investigation be conducted or that no action be taken against the alleged perpetrator. Similarly, the requirement to include reported crimes in the campus crime statistics is not affected by court-ordered expungements or other factors such as a victim or witness' refusal to submit to questions or to cooperate with investigations by law enforcement. This reported crime should have been classified as a forcible sex offense, not administrative information, and included in the University's 1998 campus crime statistics.

Incident Number: 41-98-2721 was classified as "criminal attempt burglary/criminal trespass/criminal mischief," Report Date: October 22, 1998. A student reported that she was asleep in her residence hall room when she heard noise coming from the window. She ran to her roommate's room to find a male halfway inside the room behind the closed curtains. The suspect had forced the window open, pushed the screen aside, and had broken the window bracket. In the simplest terms, the Clery Act's definition of burglary includes the breaking and entering of a structure with the intent to commit a felony or theft. Although this suspect clearly used force to illegally access the resident's dwelling, it is not necessary that any use of force be evident to classify an incident as burglary. This incident should have been classified as a burglary and included in the University's 1998 campus crime statistics.

Incident Number: 41-98-2765 was classified as "aggravated assault/simple assault," Report Date: October, 25, 1998. A juvenile victim reported that he was savagely beaten by several juvenile assailants on the University's campus. During the attack, the victim's head was slammed against the concrete resulting in a perforated ear drum and multiple contusions on his head and face. This offense was classified properly as an aggravated assault but Penn State's own supporting documentation indicates that this offense was not included in the University's 1998 campus crime statistics.

Incident Number: 41-98-0852 was classified as "aggravated assault, simple assault, harassment, disorderly conduct," Report Date: 3/29/1998. The incident report documents two separate aggravated assaults committed by the same two suspects. In the first incident, the victim was savagely attacked in the early morning hours of March 2, 1998. The victim sustained serious facial injuries and was punched and bitten during the attack. Shortly thereafter, the second victim was punched in the chest several times and

then was bitten on the shoulder. When the victim fell to the ground, he was kicked until he lost consciousness. As noted in the analyses of incidents # 41-05-1274 and 41-02-4388 above, these offenses constitute two distinct operations of crimes. Accordingly Penn State was required to include both crimes in its campus crime statistics but failed to do so.

Incident Number: 41-98-2787 was classified as "simple assault," Reporting Date: 10/28/1998. The incident report indicates that the victim was injured and lost a tooth during a shoving incident that broke out during a pick-up basketball game in the institution's Intermural Building on October 26, 1998. As the victim attempted to leave the area, he was punched violently and with enough force that the student sustained a serious eye injury that required 22 stitches to close. This incident should have been classified as an aggravated assault and included in the University's 1998 campus crime statistics.

Incident Number: 41-98-2766 was classified as "simple assault/harassment," Reporting Date: 10/25/1998. The incident report states that two victims were attacked at an on-campus bus stop by an assailant who was exhibiting aggressive behavior and looking to start a fight. The assailant punched both victims in the mouth but only caused significant injuries to one victim. Specifically, the attack led to one of the victims getting a tooth knocked out and also resulted in severe pain and swelling of the victim's jaw. This incident should have been classified as an aggravated assault and included in the University's 1998 campus crime statistics.

Incident Number: 41-98-1817 was classified as "aggravated assault, simple assault, harassment," Reporting Date: 7/11/1998. In this incident report, victims reported that a small group of Penn State students were threatened and attacked by several juveniles. Two Penn State students suffered serious injuries that required medical attention. Both victims were punched, knocked to the ground, and kicked multiple times. As a result of this assault, both victims sustained broken noses and severe lacerations. One victim required seven stitches to close a wound while the other victim was left with a serious fracture to his/her orbital bone. This incident should have been classified as two aggravated assaults and included in the University's 1998 campus crime statistics.

Incident Number: 41-98-2071 was classified as "aggravated assault," Report Date: 4/13/1998. This incident was correctly categorized as an aggravated assault based on a very serious injury to the victim's jaw, which was broken in two places. This offense was classified properly as an aggravated assault but Penn State's own supporting documentation indicates that this offense was not included in the University's 1998 campus crime statistics disclosure in the ASR or in the electronic submission to the Department's online campus crime statistics database. Like Incidents # 41-07-2255 and 41-98-2765 analyzed above, this reporting violation represents another under-report and is based on Penn State's own documentation that was provided to the Department to substantiate the accuracy and completeness of its campus crime statistics during the period under review.

As noted earlier, these 51 incidents are a representative sample of the misclassified and under-reported incidents of crime that Penn State failed to disclose in the official campus crime statistical disclosure section of its ASRs during the 14-year review period. Penn State officials have conceded that the University's crime statistics and supporting data were seriously flawed in most of the calendar years in the review period. Several factors contributed to these violations, including a lack of staff training and poor supervisory controls, serious system errors, and poor custody and control of hardcopy and electronic records, including expunged files and juvenile records.

Additional classification and under-reporting exceptions may be brought to the University's attention in future supplements to this program review report, as previously explained.

Required Action:

Penn State is required to take all necessary corrective actions to rectify this violation and all others identified in this program review report. The University must address each of the classification and under-reporting exceptions noted above. In addition, as discussed below, the University must conduct a full file review of records relating to crime statistics for calendar years 2007 to the present. We note that our review demonstrated that there were serious flaws in the University's campus security statistics for the full review period. Therefore, we would normally require the University to conduct a full file review of records for the full review period. However, Penn State acknowledges these problems and has represented that it would not be possible to produce accurate and complete crime statistics for all years under review. The Department's examination has verified the University's claims in this regard and is therefore focusing on corrective actions that should move the University in the direction of full compliance. In that context, the University also must develop and implement a comprehensive system of policies and procedure improvements to ensure that this violation does not recur.

To address the deficiencies identified above, Penn State must:

- *Conduct a full file review to identify and correct all errors in its crime statistics for calendar years 2007 - present. This requirement applies to all of the violations identified above and all others identified by Penn State during the conduct of the institutional self-study and in the preparation of its response. Penn State must re-examine all PSUPD and other institutional records regarding incidents of crime reported to the PSUPD and other security-related officials and offices, any office that students and employees are directed to report matters of crime or conduct and disciplinary matters, such as the Office of Human Resources, as well as any CSAs. Similarly, the University must contact all local law enforcement agencies to request all necessary records to ensure that all incidents of Clery-reportable crimes were identified and classified correctly and that any and all reporting errors have been corrected. Penn State also must ensure that crimes evidencing that a victim was targeted for crime on the basis of actual or perceived membership in a covered class are disclosed as hate crimes. This requirement applies to all crime statistics as published in Penn State's ASRs and all submissions to the Department's online campus crime database that include statistical data for calendar years 2007 – present. As part of its response, Penn State must also*

verify that the crime statistics for all Clery-reportable incidents were categorized and disclosed in accordance with the geographical classifications defined in 34 C.F.R. § 668.46(c)(4).

- *Review and improve its policies, procedures, internal controls, and training programs to ensure that all incidents of crime reported to the PSUPD, security entities, 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.*
- *Develop appropriate policies and internal controls to ensure that the official charged with compiling the required crime statistics requests information from all CSAs and local law enforcement agencies and that the University provides and publishes complete and accurate crime statistics. In addition, the University must develop and implement procedures to ensure that CSAs receive appropriate regular training. Finally, the University must design and deploy an effective crime statistics data request and collection mechanism for CSAs to use.*
- *Review all of the University's real estate holdings and ensure that it has correctly applied the Clery Act's geographical definitions to all properties owned or controlled by Penn State, including all undeveloped property and lands that are used for any direct or indirect educational purpose. Similarly, the University must also review the status of all buildings and properties that are owned or controlled by recognized student organizations and apply the campus and non-campus property definitions of the Clery Act to each property. Based on the findings of its review, Penn State must re-evaluate the adjacent and accessible public property boundaries that apply for Clery Act reporting purposes. The University must revise its maps and patrol jurisdiction in accordance with its findings. These findings must also be used to determine if all campus, non-campus buildings and property, and all adjacent and accessible public property were properly defined during each of the calendar years in the review period and if all required crime statistics were compiled and disclosed as required. A copy of the property lists and any and all documents, reports, and other work papers created during the University's internal review and its application of the geographical definitions must accompany its official response to this program review report. These documents must identify any errors and omissions identified during the review as well as an explanation of all corrective measures that were or will be taken to address violations and weaknesses.*
- *Construct clear audit trails that substantiate the accuracy and completeness of its revised crime statistics for calendar years 2007 - present. The audit trails must support the corrected crime statistics for all Clery crime classifications including Part I Offenses, hate crimes, and drug law violation (DLV), liquor law violation (LLV), and weapons law violation (WLV) arrests and disciplinary referrals. The audit trail is being required to ensure that Penn State can support its revised statistics. We are not imposing strict requirements as to the exact form of the audit trail so long as it provides*

the incident report numbers associated with each crime classification broken down by the requisite geographical categories for each calendar year.

Institutional Response:

In its official response, Penn State disputed the Department's finding that University failed to compile and publish accurate and complete crime statistics for calendar years 1998 through and including 2011. The University asserted its confidence that at all times it had in place appropriate processes for the complete and accurate collection, classification, and disclosure of Clery-related statistics and other information. The University claimed that these processes evolved over time to comply with amendments to the *Clery Act* and Department guidelines, and were further enhanced to address what the University described as inadvertent errors discovered in the program review. The University attributed disclosure errors to unintentional bookkeeping errors and cited its deference to the judgment of the initial reporting CSAs as the explanation for misclassification or under-reporting discrepancies. Deficiencies, when acknowledged, purportedly resulted from "good-faith" efforts by knowledgeable and well-intended campus personnel. This argument was extended to the results of the University's full-file review, which uncovered similar classification and accounting inconsistencies.

The University made several specific claims about the representative sample of misclassified and/or undercounted criminal incidents included in the PRR, and, more generally, about the extent of the Department's inspection of its preserved records and subsequent determinations. They were as follows.

The University alleged that the misclassification of criminal incidents identified by the Department was "often a result of an on-the-ground interpretation of nuanced facts, circumstances, and crime definitions." The University claimed that classification of criminal incidents was "often inherently subjective, particularly when conducted years after the underlying incident." In the case of these misclassifications, the University admitted that reexamination of the provided examples allowed for a "different determination regarding intent than did the contemporaneous decision-maker for certain incidents." The University argued that the most contemporaneous analysis of an incident was likely the most sound. This argument was proffered to account for many of the classification and disclosure violations identified by the Department in the PRR and discovered during its Department-ordered full-file review of incidents occurring from 2007 through 2011.

In describing the results of its analysis of the non-compliant incident reports discussed in the PRR, the University asserted it was not responsible for failing to maintain adequate documentation of incidents occurring in any period before January 1, 2006, because of its interpretation of the relevant document retention requirement. The University explained that records from earlier periods were necessarily incomplete because specific information was purged or redacted pursuant to court ordered expungements. The University claimed that it made its best effort to reconstruct underlying data despite these obstacles.

Finally, the University asserted that its full-file review demonstrated it did not systemically fail to accurately capture and disclose crime statistics and did not demonstrate a historically flawed

system. To the contrary, the University stated that its comprehensive, retrospective review confirmed it utilized a functional and effective system to publish substantially accurate Clery-crime statistics.

Final Determination:

Finding #5 cited Penn State for its failure to compile and publish accurate and complete crime statistics for calendar years 1998 through and including 2011. The review team found that the University substantially failed to implement a minimally-adequate *Clery Act* compliance program and identified several contributing factors, including lack of staff training and poor supervisory controls, serious system errors, and improper records management. Specifically, the University's most frequent types of violations included: 1) errors in identifying and classifying reported crimes; 2) identification and disclosure errors commonly referred to as "under-reports"; 3) improper use of the claim that a crime has been "unfounded"; 4) persistent recordkeeping weaknesses; and, 5) systemic *Clery Act* and Federal Bureau of Investigation (FBI) Uniform Crime Reporting (UCR) Program compliance failures, such as the failure to accurately capture statistical information from police incident reports used to document multiple and distinct Clery-reportable offenses.

As a result of the initial review, the Department required the University to take all necessary corrective actions to rectify violations identified during the program review. The Department directed the University to conduct a full-file review of records relating to crime statistics for calendar years 2007 through and including 2011. This file reconstruction was not extended to the beginning of the review period (1998) based on Penn State's acknowledgement of its failings and its representation that it was not possible to produce accurate and complete crime statistics for all of the years scrutinized as part of the review. The review team's work to that point clearly indicated that it would not in fact be possible for the University to conduct a credible file review for the full 14-year review period. The objective of the file review was to further diagnose the scope and extent of the violation so that an effective remedial action strategy could be developed. As noted elsewhere in this FPRD, the Department could have required that the file review cover the entire review period. Under normal conditions, the University would have been required, at a minimum, to conduct a review of records covered by the record retention period, some even years back to 2004.³⁷ For that reason, the required action section of the report required a file review covering five calendar years and the production of a summary report and supporting documentation to include an appropriate audit trail, new and revised internal policies and procedures and evidence of enhanced systems controls, and new training materials to ensure proper report writing and crime classification practices. The University was also required to identify and train its CSAs and to develop and implement policies, procedures, and controls to

³⁷ By agreeing to a file review period limited to five years, the Department did so with full knowledge of the fact that calendar year 2007, the starting point of the assessment, marked the earliest point that Penn State had any semblance of a minimally-adequate *Clery Act* program in place. The agency agreed to these terms as an act of comity and in full expectation that the University would conduct a review in accordance with the Department's instructions. It did not. In reaching this conclusion, the Department notes the number of exceptions identified by the University relative to those found by the review team even though the University claims that it examined some 18,000 records and the Department looked at about 1,700.

ensure the disclosure of accurate and complete crime statistics in all future ASRs. Furthermore, Penn State was required to review its real estate holdings to identify its Clery geography and enhance its relationships with local law enforcement agencies with concurrent jurisdiction over Penn State's geography and community.

The Department's final determination for this finding is based on consideration of the institutional response, an analysis of documentation provided by the University during and after the initial review, and an assessment of the University's reported progress with corrective measures associated with Department-required actions.

Examination of Classification and Disclosure Violations

The Department based its initial determinations of noncompliance and directed corrective measures, in part, on its review of Penn State's ASRs and its submissions to the Department's online campus compliance database as well as an examination of a sample of nearly 1,700 PSUPD incident reports. This sample was expanded in the period following the initial review to include analysis of documentation provided by the University concomitant with its full-file reconstruction of Clery-related documentation. In regard to the representative sample of classification and disclosure violations identified in the PRR, the Department has considered the University's responses and examined all available information provided by Penn State officials. Except in certain cases discussed later, the University's responses to the enumerated incidents were generally categorized as follows: 1) incidents where the University contested the Department's initial determinations; 2) incidents where the University acknowledged the legitimacy of the Department's positions while proffering procedural and other blanket contestations; and, 3) incidents where the University agreed with the Department's initial findings regarding misclassification of criminal incidents and omissions from annual crime statistics. The Department's assessments of the University's responses are discussed in turn.³⁸

The first category of Penn State's responses is those incidents on which the University contested the Department's findings. As an initial matter, arguments as to the intent of the offender in rather obvious criminal incidents were considered and rejected in these instances, as was any deferral to the judgement of initial responding CSAs (in these cases officers from PSUPD) as explanation for misclassification discrepancies. The Department categorically rejects the University's notion that retrospective analysis is unreasonable for determining compliance with classification and disclosure requirements. Similarly, the Department does not accept the assertion that the most contemporaneous analysis of an incident is likely the most sound for the purposes of statistical reporting provisions of the *Clery Act* and rejects the suggestion that offense classifications are not reviewable by the Department using a reasonableness standard. These claims were apparently proffered without consideration of the findings of the University's own full-file review, which identified a number of similar discrepancies and rebutted a number of other discrepancies using the same after-the-fact analysis. In addition, concurrent with the Department's review, the University installed processes for ongoing retrospective examination of criminal incidents occurring on campus with the specific intent to verify incident classifications

³⁸ A synopsis of each incident is provided for reference, and, in some cases, to further communicate incident details. For a complete statement from the PRR, please refer to pages 2 - 12 of this Finding.

and accounting. While this quality control measure presented an opportunity for development and improvement, it will be almost entirely dependent on inspection of previously generated reports for compliance. Obviously, the University's adoption of a review process for quality control reasons contradicts the underlying basis of its defense that all deference should be paid to the initial classification of crimes by CSAs.

As previously discussed in Finding #2 of this FPRD, the Department carefully considered the University's response and did so in full recognition of and with respect for Penn State's due process rights; however, the agency must also note the overriding disputatious tenor of the response. The posture of the response was more analogous to an aggressive criminal defense than an answer to a regulatory review intended to identify and ultimately remediate serious violations. It is essential to keep in mind that this review was initiated primarily to investigate the scandalous conduct of Sandusky and Penn State's failure to adequately address it. The Department takes note of the aggressive positioning precisely because it speaks to the University's willingness to work collaboratively toward an adequate and sustainable set of remedial measures.

In regard to a number of the Department's initial findings, the University objected that the determinations were based on documents retained by the University for a period in excess of the requirements established by the *Clery Act*.³⁹ The Department's determinations for this finding are in fact supported by an examination of police incident reports preserved by the University and provided to the Department for evaluation. The University's claim that these records are necessarily incomplete and unreliable is contradicted by its citation to the very same records in an attempt to refute our findings of classification or disclosure violations as well in its response to aspects of initial determinations associated with other findings. The Department notes the considerable emphasis given to offense classifications and incident details documented in these reports in deference to the endorsements of sworn officials and reviewing supervisors. Moreover, the Department recognizes that a number of these incident reports were used in support of court proceedings.⁴⁰ Hence the importance of these documents was significant, particularly when statistics compiled and publicly disclosed by Penn State were compared with information contained in those records. The content and completeness of the University's records, specifically in the case of police incident reports, was entirely the responsibility of the University and its officials. For these reasons, Penn State's arguments for why the Department's findings should not be upheld are set aside. This rejection applies to police incident reports prepared and examined from any date during the 14-year review period – a period that was antedated by the standards applied to hold the University accountable for its noncompliance. Penn State also contended that the review of past records is affected by required expungement of criminal records of individuals in certain circumstances. The Department notes that under

³⁹ When this program review was initiated, an administrative hold was issued for preserved records. Penn State advised that it was in possession of police incident reports dated to the mid-1990s; this was confirmed during the Department's on-site inspection. The Department's selection of the extent of this review - 1998 - was based on the first known criminal offense committed by Sandusky at the time (November 2011). It is now known that Sandusky's criminal behavior began long before the 1998 incident.

⁴⁰ The Department was provided with only five reports of sexual assaults that were generated by CSAs not connected with PSUPD, and one of those incidents was not accounted for in the applicable statistical period. (OSC #82113, 2007).

Pennsylvania law, an order of expungement officially requires the removal of the petitioner's criminal history record information from the central repository and any records of the incident. *18 PA C.S. §9122*. In the event a criminal incident involved more than one accused offender, only the petitioner's information is expunged and redacted. Removal of this information does not inherently render the file incomplete for the purposes of determining the nature of the *charged* offense or conducting an analysis of the nature of offense for classification and disclosure compliance. Furthermore, many of the offenses listed as prohibitions to court-ordered expungements are reportable for purposes of the *Clery Act*. *18 PA C.S. §9122(b.1)*. Any protests by Penn State based on the lack of information pursuant to a notice of expungement are therefore rejected.

Finally, the Department emphasizes that the incidents identified as improperly classified (i.e., relegated to a lesser offense or designated as unfounded) resulted in under-reporting of crime statistics to the campus community. Furthermore, the failure to implement measures to accurately capture statistical information from incident reports used to document multiple and distinct Clery-reportable offenses resulted in the undercounting of crimes and distorted the University's crime statistics and required disclosures. Systemic misapplication of these requirements deprived the campus community, both current and prospective, of important safety information and in each instance was a violation of the *Clery Act*.

Below we address the University's responses to our determinations relating to specific incidents discussed in the PRR:

2008:

Incident Number: 41-08-3322

Synopsis of incident details: This incident from 2008 was originally classified as a loitering and prowling at nighttime and criminal mischief. The Department's initial determination was that the incident was improperly classified and under-reported. The Department concluded that the incident should have been classified as an attempted burglary and included in that category in the University's annual crime statistics. In summary, the offender removed a window screen and fully opened an exterior window of the victim's residence hall apartment. The affected area of the residence was described as a "computer room." The victim discovered the crime after investigating a loud noise. Nothing was reported missing. The window screen was found outside of the residence hall apartment; the offender placed it on the ground during the commission of the crime.

Institutional Response: The University contested the classification of this offense as an attempted burglary. The University relied upon its interpretation of the term burglary as defined by the FBI UCR Program. The University claimed the incident details provided insufficient evidence that anyone entered or attempted to enter the residence. Furthermore, it asserted that the offender's actions did not support any indication of felonious intent. In the absence of this evidence of intent, the University contended this matter was not a burglary and, therefore, should not have been included in the crime statistics.

Department's comments: The Department rejects the assertion that the offender's intent was unknown or required for the reasonable conclusion that this incident was an attempted burglary. The circumstances of this incident were quite clear in the police incident report, and the Department considered the elements of this incident from the perspective of a reasonable participant (i.e., the CSA and/or reporting party). The Department notes that the victim told the investigator that he confronted an individual in the moments after discovering the offense and told the individual "...someone just tried to break into..." his residence.⁴¹ The University's arguments ignore this evidence and the information in the records. Consequently, the Department has determined this incident was incorrectly classified and, as a result, was not included in the University's crime statistics. This incident was also discussed in Finding #4, Failure to Issue Timely Warnings in Accordance with Federal Regulations, as the University neglected to issue a timely warning to the campus community during its investigation of this incident.

Incident Number: 41-08-2903

Synopsis of incident details: This incident from 2008 was originally classified as harassment. The Department's initial determination was that the incident was improperly classified and, therefore, improperly omitted from the University's crime statistics. The Department held that the incident should have been classified as a forcible sex offense and included in that category in the University's annual crime statistics. In summary, the female victim was followed by a male offender on campus. It was late at night, and at some point the victim reportedly tripped and fell to the ground. Using goodwill as a ruse, the male offender forcibly fondled the victim by inserting his hand in the victim's clothing (shorts) as he feigned to provide aid.

Institutional Response: The University contested the Department's initial determination that this incident was misclassified as harassment rather than forcible sexual assault. Its argument was essentially based on two points: the offender's intent for sexual gratification was not known, and the actual attempt to fondle the victim was not completely successful. As a result, the University claimed this incident was not a forcible sexual offense.

Department's comments: The University's response is not consistent with the details of the incident in the police incident report. The elements of a forcible sex offense are evident in the police incident report. In reviewing these details from the perspective of a reasonable participant, the Department has determined this incident was incorrectly classified and, therefore, improperly omitted from the University's crime statistics.

2007:

Incident Number: 41-07-1579

Synopsis of incident details: This incident from 2007 was originally classified as an aggravated assault. The Department's initial determination was that the incident, although properly classified, was incorrectly omitted from the University's annual crime

⁴¹ For full context, see PSUPD Incident Report Supplement, page 2.

statistics for the applicable period. In summary, the victim of the assault was a police officer. According to the incident report, the belligerent male offender was ordered to return to his dormitory room after he interrupted an unrelated criminal trespass investigation. Another occupant of the dorm room attempted to calm the offender, who responded by directing epithets and foul language at the officers. When the offender entered his room he slammed the door, striking the victim officer in the back of the head. Officers engaged the offender in an attempt to take him into custody for assaulting and injuring the victim officer. The offender refused to comply, shoved an officer before fleeing on foot, and physically struggled with other officers who attempted to assist with the arrest. The investigating officer described the offender as combative and wrote that the offender struggled with enough intensity for the officer and offender to repeatedly hit a wall in a residence hall lobby. Chemical agents were eventually used to subdue the offender.

Institutional Response: The University properly classified this offense as an aggravated assault but did not include it in its annual crime statistics. In offering its argument for excluding this incident, the University asserted that the elements of the offense were inconsistent with the FBI UCR Program's definition of aggravated assault. Namely, the University argued the requisite intent to inflict serious bodily injury was not demonstrated by the offender or indicated in the police report. The University argued that the offense was classified as an aggravated assault according to local statute rather than Federal guidelines and, therefore, was appropriately not included in the crime statistics.

Department's Comments: The Department respectfully disagrees with the University's argument. The University's response failed to account for the offender's entire course of conduct. The fact is that the offender's conduct would make the incident an aggravated assault without regard to the victim's position as a police officer, and it should have been included in that category in the University's crime statistics.

2002:

Incident Number: 41-02-1550

Synopsis of incident details: This incident from 2002 was originally classified as an assault, disorderly conduct, and harassment. The Department's initial determination was that the incident was improperly classified and, therefore, improperly omitted from the University's crime statistics. The Department concluded that the incident should have been classified as an aggravated assault and included in the statistics for that category in the University's annual crime statistics. In summary, the offender threatened another student with a knife after a verbal dispute. The assailant was restrained and disarmed by other persons present at the scene.

Institutional Response: The University argued that the elements of the offense as detailed in the incident report did not support classification of the offender's actions as an aggravated assault. Penn State asserted that the offender neither used nor threatened to use a weapon as required by the FBI UCR Program definition of aggravated assault using a knife or cutting instrument. Additionally, the University claimed the examination of

this incident was inappropriate because they argued that it was outside the period covered by record retention requirements. As a result, the University contested any definitive assertion regarding classification or statistical reporting of the incident.

Department's comments: The FBI UCR Program standards for classification of an offense as an aggravated assault do not require victims to suffer an injury from the use of a knife or other enumerated weapon in the commission of the offense.⁴² In this incident, the actions of the offender reasonably constituted an attack and included the menacing use of a weapon. The Department has determined this offense was misclassified and thus resulted in an under-reporting in Penn State's crime statistics. The Department's response to the University's position regarding the relevance of the record retention rule was described earlier.

2001:

Incident Number: 41-01-1837

Synopsis of incident details: This incident from 2001 was originally classified as a burglary and indecent assault. The Department's initial determination was that the University undercounted the offenses occurring during this incident, resulting in inaccurate crime statistics for the applicable period. In summary, the male offender unlawfully entered eight dormitory rooms and had indecent contact with at least two female victims, and possibly a third, during the commission of the listed offenses.

Institutional Response: The University argued that offenses described in the incident report were not undercounted or under-reported. The University claimed the accounts of the victims and witnesses documented in the incident report were inconsistent and, in some cases, failed to evidence the felonious intent required for all purported unlawful entries to meet the standards for the classification of burglary as set forth by the FBI UCR Program. It further argued the incident report suggested that the offender only kissed one of the female victims and asserted that the offender's course of conduct in other instances did not support the determination that additional forcible sex offenses had occurred. The University denied any substantial misrepresentation of the incident details or the number of offenses in its classification and statistical reporting of this incident in its crime statistics. Furthermore, the University contested any definitive assertion regarding how the incident should be classified and reported in its annual crime statistics.

Department's Comments: The Department has determined the University's statistical accounting of this criminal course of conduct resulted in an undercount of the offenses (only one forcible sex offense⁴³ was counted in the crime statistics). This determination is in part supported by a review of written statements provided by the victims, which were included as part of the record provided by the University. Noteworthy information included:

⁴² Uniform Crime Reporting National Incident-Based Reporting System Volume 1: Data Collection Guidelines, August 2000, pages 22 – 23.

⁴³ Prior to the implementation of Section 304 of the Violence Against Women Reauthorization Act of 2013, Clery-reportable sex crimes were grouped into two categories: "Forcible Sex Offenses" and "Non-Forcible Sex Offenses."

- Room Number 803: The offender unlawfully entered the female victim's room. The victim described being awakened by the offender as he attempted to insert his fingers/hand inside of her boxer shorts in the area of her buttocks. The offender was kneeling on the floor next to victim's bed and all of the victim's bed clothing was removed.
- Room Number 811: The offender unlawfully entered the female victim's room. The victim described being awakened by the offender as he touched her with his hand "all over" her back. The offender was seated next to the victim's bed at the time of the incident.
- Room Number 812: The offender unlawfully entered the female victim's room. The victim described being awakened by a "tickling sensation" on the back of her upper thighs. The victim discovered the offender was kneeling on the floor next to her bed with his upper body and head positioned on the bed near her "legs and buttocks," which were exposed as her bed clothing was moved aside for unknown reasons. The victim attributed the startling sensation to either the offender "blowing" on her or touching her with his hands.
- Room Number 1008: The offender was observed leaning over a sleeping female after unlawfully entering the dormitory room. The female's bed clothing was removed for unknown reasons and her underwear was exposed.

1999:

Incident Number: 41-99-3187

Synopsis of incident details: This incident from 1999 was originally classified as a theft. The Department's initial determination was that the incident was improperly classified and, therefore, not correctly included in the crime statistics. The Department determined that the incident should have been classified as a burglary and included in that category in the University's applicable annual crime statistics. In summary, the victim student reported that her purse was stolen. Although unsure, the victim believed the purse was stolen from her dormitory room. The victim said the stolen property was left unattended and unsecured in her dormitory room for a short period on the date of the offense. The victim's roommate was not considered a suspect.

Institutional Response: The University rejected the Department's determination that this incident was misclassified and, therefore, incorrectly not included in the crime statistics as a burglary. Its response relied upon the victim's alleged uncertainty about the actual venue of the offense. Because a definitive structure was not identified, the University claimed the nature of offense did not meet the standards for burglary as set forth by the FBI UCR Program. In addition, the University suggested that the record of this incident provided to the Department may have originally included additional relevant information that was missing for some undetermined reason. Accordingly, the University contested any definitive assertion regarding its classification or disclosure.

Department's Comments: The police incident report detailed a telephone interview with the victim on the date of the offense. According to the statement documented in the report, the victim believed the purse was left unattended and unsecured in her room while she was in the bathroom. The victim provided an alibi for her roommate and added that

she did not know if there was a theft problem on the floor. This information was sufficient to presume venue. In the absence of a theft suspect, and with the presumption that the purse was stolen from a campus dormitory room, this incident should have been classified as a burglary and included in the campus crime statistics. The Department's response to the University's objections concerning the availability of preserved records was previously discussed and is rejected.

1998:

Incident Number: 41-98-2721

Synopsis of incident details: This incident from 1998 was originally classified as a criminal attempt burglary, criminal trespass, and criminal mischief. The Department's initial determination was that the incident, although properly classified on the police incident report, was incorrectly omitted from the University's annual crime statistics for the applicable period. In summary, the male offender in this incident forced open a window accessing a residence hall dormitory room occupied by two female students. The victims were awakened as the offender was climbing in the window. After the offender was confronted by the students, he quickly ceased his unlawful entry and fled the scene. The window and associated hardware were damaged by the offender.

Institutional Response: The University argued that the incident details provided insufficient evidence that the offender's attempt to enter the residence supported any indication of felonious intent. Accordingly, the University argued that the incident did not meet the definition of burglary specified by the FBI UCR Program and that the incident was, therefore, correctly not included in the crime statistics.

Department's Comments: The Department rejects the assertion that the offender's intent was unknown or required for the reasonable conclusion that this incident was an attempted burglary. The circumstances of this incident were quite clear in the police incident report, and the Department considered the elements of this incident from the perspective of a reasonable person. The Department also relied upon the original classification of the incident by the investigating officer as a criminal attempt burglary. The University's arguments and standards it attempted to apply to this incident fail the test of reason. Consequently, the Department has determined this incident was incorrectly classified and resulted in an under-reporting of the University's crime statistics. This incident was also discussed in Finding #4, Failure to Issue Timely Warnings in Accordance with Federal Regulations, as the University neglected to provide a timely warning to the campus community.

For the reasons stated, the violations associated with the seven incidents detailed in the initial finding summarized above are hereby sustained.

In its second general category of responses, the University acknowledged the legitimacy of the Department's positions while objecting to the retrospective subjective analysis of records prepared in good faith by its personnel. The University argued this process involved the examination of necessarily incomplete records and ultimately failed to demonstrate that any identified classification violations were intentional and substantial misrepresentations. In each

case, the University also included a blanket objection to any definitive assertions concerning the University’s representations of the incidents as originally classified. In all of these cases, the University asserted that none of its arguably good-faith classifications demonstrated a substantial misrepresentation of the incident details or a classification violation. The University’s protests with regard to the examination of its preserved documents are rejected as previously indicated. Determinations concerning the following incidents contained in Table 5.1 are hereby sustained.

Table 5.1
List of sustained incidents, second category of summarized institutional responses

Year	PSUPD Incident Number	Original Classification	Correct Classification or Disclosure Violation
2005:	41-05-2355	Harassment/Simple Assault	Aggravated Assault
	41-05-3020	Assault/Trespass	Aggravated Assault
	41-05-1760	Simple Assault/Harassment/Disorderly Conduct	Aggravated Assault
	41-05-1274	Disorderly Conduct/Liquor Law Violation	Robbery and Aggravated Assault – failed to disclose Aggravated Assault
	41-05-0999	Administrative Information/Assault	Aggravated Assault
2004:	41-04-0681	Simple Assault/Harassment/Disorderly Conduct	Aggravated Assault
2002:	41-02-4388	Sexual Assault	Failed to disclose a separate Forcible Sex Offense
	41-02-4655	Aggravated Assault/Simple Assault	Failed to disclose incident
	41-02-4651	Sexual Assault	Failed to disclose separate Forcible Sex Offense
	41-02-2586	Harassment/Simple Assault	Aggravated Assault
2001:	41-01-3367	Sex Offense - Unfounded	Forcible Sex Offense
	41-01-1563	Indecent Assault/Administrative Information – Unfounded	Forcible Sex Offense
2000:	41-00-0896	Sex Offense – Unfounded	Forcible Sex Offense
1999:	41-99-2603	Simple Assault	Aggravated Assault
1998:	41-98-0297	Criminal Attempt/Sexual Assault	Forcible Sex Offense
	41-98-2776	Administrative Information	Forcible Sex Offense
	41-98-2765	Aggravated Assault/Simple Assault	Failed to disclose incident

	41-98-0852	Aggravated Assault/Simple Assault/Harassment/Disorderly Conduct	Failed to disclose separate Aggravated Assault
	41-98-2787	Simple Assault	Aggravated Assault
	41-98-2766	Simple Assault/Harassment	Aggravated Assault
	41-98-1817	Aggravated Assault/Simple Assault/Harassment	Failed to disclose separate Aggravated Assault
	41-98-1071	Aggravated Assault	Failed to disclose incident

Source: PRR.

In regard to the third category of responses, the University was in agreement with the Department's initial determinations concerning classification violations. Its agreements were qualified as above with the assertion that none of the good-faith classifications demonstrated a substantial misrepresentation or a classification violation. Determinations for the list of incidents corresponding with this response category are hereby sustained (see Table 5.2).

Table 5.2

List of sustained incidents, third category of summarized institutional responses

Year	PSU PD Incident Number	Original Classification	Proper Classification or Disclosure Violation
2010:	Case ID: PSU 201004022	Simple Assault	Aggravated Assault
2009:	PSU 200903814	Disorderly Conduct: Fight	Aggravated Assault
2008:	41-08-1188	Terroristic Threats/Simple Assault/Recklessly Endangering Another Person/Disorderly Conduct/Harassment	Aggravated Assault
	41-08-1718	Simple Assault	Aggravated Assault
2007:	41-07-3281	Simple Assault/Harassment/Disorderly Conduct	Aggravated Assault
	41-07-1800	Sexual Assault	Failed to disclose incident
	41-07-2277	Simple Assault/Harassment/Disorderly Conduct	Aggravated Assault
	41-07-2255	Criminal Attempt Burglary/Criminal Mischief	Failed to disclose incident
2006:	41-06-0743	Simple Assault	Aggravated Assault
	41-06-2233	Simple Assault/Harassment	Aggravated Assault
	41-06-2914	Simple Assault/Disorderly Conduct	Aggravated Assault

Source: PRR.

With regard to the following incidents, the Department accepts the University's proffered explanations, and these incidents are excluded from the listing of incidents cited in support of the final determination for this finding:

2011: Case ID: PSU 201105158	2009: Incident Number: PSU 200903583
Case ID: PSU 201195047	Incident Number: PSU 200904159
2010: Case ID: PSU 201003774	Incident Number: PSU 200909018
Case ID: PSU 201003493	2005: Incident Number: 41-05-3466
Case ID: PSU 201002513	2001: Incident Number: 41-01-2247 ⁴⁴
	1999: Incident Number: 41-99-1729

Post-review Assessment of Progress

During the on-site visit, Penn State officials conceded that the University's crime statistics and supporting data were seriously flawed. Penn State's response, while noting the difficulties associated with reconstructing its records for an incident-by-incident file review, also recognized that their processes have "evolved over time." Penn State attributed any failures in its processes to good-faith efforts and denied these failures were indicative of any historical and systemic flaws. This assertion was contradicted by the University's failure to count and correctly classify dozens of criminal incidents, including forcible sexual assaults, while maintaining that its mistakes were made in good faith. This rationalization failed to address the serious flaws in the University's ability to classify, compile, and disclose accurate and complete crime statistics over a long period of time. The University as a whole failed to enact supervisory controls and provide adequate training that was necessary to accurately reflect the number of serious crimes occurring within its Clery geography in its campus crime statistics. Moreover, one under-reported incident of sexual assault is in violation of the *Clery Act*.

In addition, the Department was disturbed by the number of incidents reported that were determined to be unfounded by the University and therefore were not included in the applicable annual Clery-related crime statistics. Classification of incidents as unfounded is governed by the *Clery Act*, and the FBI UCR Program provides official guidelines for its application to reported criminal incidents. (See 34 C.F.R. §668.46(c)(2)(iii) and FBI UCR Handbook.) A determination that a reported crime was unfounded must be made by a law enforcement officer. This classification officially designates the original complaint of an incident as false or baseless, and incidents with this classification are excluded from crime statistics for reporting purposes. The Department notes that over the five-year period from 2007 – 2011, Penn State classified an unusually high number of criminal incidents (557) as unfounded (see Table 5.3) or an average of 111.4 per year. By 2014, the first year institutions were required to disclose the actual number of unfounded incidents, that number had dropped to 12.

⁴⁴ In agreeing with the University, the Department notes that documentation provided for this incident was lacking relevant information. The Incident Report indicated impending action, including follow-up investigation, an Incident Report Supplement from another officer, and results of laboratory analysis. None of these items were made available for consideration. Additional supporting information for similar incidents will be analyzed as part of the post-review monitoring program.

Table 5.3
Incidents classified as unfounded by PSUPD, 2007 – 2011

Year	Number of PSUPD Unfounded Incident Reports
2011	191
2010	186
2009	89
2008	47
2007	44

Source: PSUPD incident reports and statics provided by the University.

As required by the Department, the University conducted a full-file review to identify and correct all errors in its crime statistics for the years 2007 – 2011.⁴⁵ As a result of this review, the University identified numerous incidents that were improperly omitted from its campus crime statistics during this timeframe (see Table 5.4). A list of identified incidents can be found in Appendix A.

Table 5.4
Incidents omitted from the University’s campus crime statistics, 2007 – 2011

Year	Number of Incidents Omitted from Crime Statistics
2011	40 ⁴⁶
2010	53 ⁴⁷
2009	137 ⁴⁸
2008	101 ⁴⁹
2007	147 ⁵⁰

Source: University full-file review conducted as part of Required Action.

⁴⁵ Although it was not asked to do so, the University identified certain incidents in the primary and supplemental file reviews that it claimed were originally over-reported for various reasons, mostly related to an inability of the persons conducting the file review to ascertain the intent of an offender or due to a lack of documentation. In any event, these determinations do not in any way offset the classification and compilation errors that led to the myriad violations noted above and throughout this FPRD.

⁴⁶ This total is comprised of seven incidents that were misclassified and 33 that were not included in the University’s campus crime statistics.

⁴⁷ This total is comprised of 31 incidents that were misclassified and 22 that were not included in the University’s campus crime statistics.

⁴⁸ This total is comprised of nine incidents that were misclassified and 128 that were not included in the University’s campus crime statistics.

⁴⁹ This total is comprised of six incidents that were misclassified and 95 that were not included in the University’s campus crime statistics.

⁵⁰ This total is comprised of nine incidents that were misclassified and 138 that were not included in the University’s campus crime statistics.

In addition to the misclassified incidents, the subtotals for misclassified forcible sex offenses, robberies, and aggravated assault incidents are as follows:

- **2011:** One forcible sex offense; two aggravated assaults
- **2010:** Three forcible sex offenses; four aggravated assaults
- **2009:** One aggravated assault
- **2008:** One forcible sex offense; one robbery; four aggravated assaults
- **2007:** One forcible sex offense; three aggravated assaults

In addition to the primary file review, the University was directed to conduct and submit a supplemental sample review of incidents indexed in its CLIMATE and Judicial-Affairs Community Standards (JACS) records management systems. The purpose of this additional analysis was to test the University's representations made in its responses to Findings #5 and 6. The sample was to be represented by 20 incidents occurring in each of the years from 2007 through and including 2011. The outcome of the University's analysis of these incidents resulted in the following under-reported totals:

- **2011:** One under-reported incident in the CLIMATE system; one under-reported incident in JACS
- **2010:** Two under-reported incidents in the CLIMATE system; no under-reported incidents in JACS
- **2009:** No under-reported incidents in the CLIMATE and JACS systems
- **2008:** No under-reported incidents in the CLIMATE system; two under-reported incidents in JACS
- **2007:** Two under-reported incidents in the CLIMATE system; five under-reported incidents in JACS

The Department's analysis showed that the University's original file review procedures were flawed and did not include all Clery-reportable incidents, as indicated by the additional under-reported incidents discovered in the relatively limited CLIMATE⁵¹ and JACS samples. This analysis also shows that the University failed to obtain and identify all reportable incidents from the PSUPD and other local law enforcement agencies as well as other CSAs when it conducted the original full-file review. To illustrate this point, the review team compared an additional sample of 14 JACS records against the file review reports and audit trails. Two additional Clery-reportable crimes were identified that were not included in the University's campus crime statistics. These include: 1) OSC #75318, an aggravated assault that was classified as "simple assault/harassment/disorderly conduct-fighting" by the PSUPD and 2) OSC #87318, another aggravated assault resulting in a serious head. The victim also required surgery to correct damage to his lower jaw.

⁵¹ The CLIMATE system is administered by the Office of Housing and Residential Life was intended to serve as an internal tool to document issues and concerns noted in the housing program. Over time, it became a repository for a wider array of reports, criminal and otherwise. A significant amount of information is housed in the system. As of August 14, 2012, there were 21,521 entries, more than 12,000 of which were made during the file review period.

Perhaps, most importantly, the additional violations identified in the limited supplemental review of JACS and CLIMATE records shows that Penn State's claim that its CSA-related failures did not cause incidents to be excluded from the University's crime statistics was erroneous. It must be emphasized that the supplemental file review only covered 200 incidents of the many thousands that were reported to CSAs during the review period. Although the University was required to consider all incidents of crimes reported to its CSAs, it did not and essentially limited its assessment to a review of police records. The supplemental review was simply intended to document this condition.⁵² The full range of the problem will be explored further during post-review monitoring. In spite of these facts and our continuing concerns, the Department does recognize the University's efforts to address its deficiencies in the post-PRR period. Although these processes do not yet fully meet the requirements set forth in the PRR, its overall plan of action does demonstrate an effort to improve program compliance with classification and disclosure of crime statistics. Improved collaboration with partner law enforcement agencies is necessary to fully and accurately disclose these important statistics, as is a comprehensive review of criminal offenses reported to all previously unidentified and untrained CSAs.

Conclusion

The Department has carefully examined all available information, including the University's narrative responses, supporting documentation, and reported corrective measures. Based on this assessment, the violations are hereby sustained as explained in this final determination. For the purposes of this review, the Department has determined that the University's remedial plan for improved compliance with classification and disclosure requirements is minimally adequate, although these processes will be subject to additional monitoring. As such, the Department acknowledges the University's responses and considers this finding closed for the purposes of this program review. Nevertheless, the officials of Penn State are advised that they must take any additional necessary actions to address all deficiencies and program weaknesses identified by the Department and the University during its post-PRR remedial actions. These measures are necessary to ensure similar violations do not recur.

Proper classification and accurate and complete disclosure of criminal incidents is among the most basic and foundational requirements of the *Clery Act*. Standards applied for the evaluation of Penn State's compliance with these requirements were well established by 1998, and the Department held the University accountable for its violations in accordance with these standards. Identified violations were outlined in the PRR and supported by a representative sample of classification and disclosure discrepancies, and the Department initially concluded the University's processes for compliance with these requirements were seriously flawed.

The University's objections to the evaluation process were principally rejected and contradicted by the file review results. Indeed, these results supported the Department's position. While many of the PSUPD incident reports were deficient in several respects, most of these records, which comprised the majority of primary source evidence for this finding, were at least

⁵² Given the findings of the supplemental file review, Penn State is strongly advised to conduct additional analysis of the CLIMATE and JACS system to ensure that incidents documented in these systems are reflected properly in the crime statistics for calendar years 2013, 2014, and 2015 that were included in the 2016 ASR.

minimally adequate for our purposes and should have been for the University and its legal counsel as well. When it suited the University's purposes, the records were deemed adequate to support the types of determinations that this endeavor requires, but when faced with cases where no tenable rationalization was available, Penn State somehow divined that the record must be incomplete. The absence of additional materials for examination was in part the result of the breakdown in the University's system of capturing and reporting crime statistics from CSAs as documented throughout this report.

Access to accurate and complete crime statistics help campus community members to make informed decisions about their own safety. Penn State's violations deprived these individuals and a wider constituency of prospective students and employees, parents, and other stakeholders of important safety information to which they were entitled. It is in this context that the Department must emphasize again that the *Clery Act* is not simply a collection of regulatory hurdles for a school to negotiate. It represents a carefully-constructed system of campus safety and prevention approaches and precepts that, when properly implemented, make campuses safer and enhance transparency. The long and heinous pattern of violent criminality perpetrated by Jerry Sandusky might well have been cut short if essential structures had been in place and individuals would have taken the actions that the situation called for. The violations documented here show the damage that can be done when the proverbial ball is dropped. In this case, there can be no doubt of this essential and inescapable truth: the University Park campus was simply not as safe as its students, employees, and the people that cared about them were led to believe.

For these reasons, the University is advised that its remedial efforts, whether already completed or commenced pursuant to the order of this FPRD, cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective measures as a result.

Finding #6: Failure 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).

Noncompliance:

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

Since the inception of the Clery Act, the PSUPD has been charged by the University with compiling crime statistics and preparing the ASR. From 1992-2007, the day-to-day Clery Act compliance functions were assigned solely to the PSUPD's Crime Prevention Officer (CPO). The CPO was not provided any training on the Clery Act nor was he or she trained or experienced in setting up a compliance program.

During interviews with the review team, PSUPD officials reported that none of the employees charged with implementing the Clery Act were aware of the requirement to include statistics of crime reported to CSAs in the ASR until at least 2007. After a few PSUPD staff members attended a Clery Act training class in 2007, members of the PSUPD Command Staff realized that Penn State has substantially failed to implement the Clery Act in several material respects. In particular, it was at this time that PSUPD officials realized that the Clery Act required the inclusion of statistics for incidents of crime reported to CSAs. At that point, primary Clery Act responsibilities were turned over to a Detective/Sergeant who had attended the 2007 training class. However, during our interview with her, she told us that she was not able to devote very much time to the Clery responsibilities due to the volume of work in the investigations division in which she worked. She also stated that her superiors were aware of that fact.

Until 2007, Penn State's crime statistics, as published in its ASRs, only included Clery-reportable incidents reported directly to the PSUPD or certain local law enforcement agencies and some incidents reported to the University's Office of Judicial Affairs. Even after the University realized that it was not in compliance with the law, it appears that the PSUPD officials were ill-equipped to develop and implement a means to fix it. The PSUPD did not have the requisite expertise, inclination, or resources to identify all CSAs at Penn State's 20+ campuses. The PSUPD also lacked the authority to compel CSAs at the University Park or Commonwealth campuses to perform the basic crime reporting functions and other obligations conferred upon CSAs under the Clery Act. The PSUPD also did not have the technical expertise to develop and deliver training for CSAs, nor did it have sufficient influence to persuade CSAs to participate in training.

We believe that the PSUPD never had sufficient authority to require CSAs to attend training or to participate in a CSA crime-reporting system. At one time, PSUPD developed an online CSA incident reporting form. However, during the full period that system was available precisely one such report was completed and submitted to the PSUPD. The PSUPD also took no direct action to request crime statistics from CSAs even after some staff had attended training and were put on notice of the requirement to do so. Instead, the University continued to rely on the passive online form process for years even though Penn State officials knew that it was not generating any crime reports from CSAs.

Prior to the on-site review, the Department estimated that Penn State had approximately 4,000 CSAs across the University. At last count, University officials have already identified more than 3,000 individuals or positions that meet the definition of a CSA. Although the effect of Penn State's systemic failure to collect crime reports from CSAs cannot be reliably quantified, it is abundantly clear that it caused Penn State's crime statistics to be substantially and systemically under-reported. This failure resulted in an ongoing material misrepresentation of the occurrence of Clery-reportable crimes on all of Penn State's campuses during the entirety of the review period. Indeed, the Department's review clearly suggests that this condition existed since 1992, the first year that institutions were required to comply with the Clery Act.

The Department has also found that the coordination and communication between the PSUPD officials charged with preparing the ASR and nearly all CSAs outside of the Office of Student Conduct was wholly deficient and that the data collection processes were not reasonably constructed to permit the University to compile and publish accurate and correct crime statistics. There are several contributing factors to this failure; however, the following four areas of Penn State operations are of particular concern based on our analysis so far:

Center for Women Students

Penn State did not include incidents of crime reported to the Center for Woman Students (CWS) in its official campus crime statistics. At certain points during the review period, Penn State did include some CWS statistical data in a separate chart in its ASRs; however, those numbers were not part made part of the actual Clery Act statistical grids, as required. In 2007, Penn State decided to eliminate any mention of incidents reported to the CWS from the ASR. CWS officials reported to the Department that the change was made out of concern that statistical disclosures would violate the code of professional ethics of certain CWS staff, some of whom are professional counselors. During the review, University officials represented that the CWS now considered itself to be a counseling facility.

Under the Department's regulations, an institution is not required to report crime statistics for crimes reported to a pastoral or professional counselor at the institution. 34 C.F.R. § 668.46(a) "campus security authority" (4) and (c)(6). A "professional counselor" is defined as "a person whose official responsibilities include provide mental health counseling to members of the institution's community and who is functioning within the scope of his or her license or certification." 34 C.F.R. §668.46(a) ("professional counselor").

The determination of whether someone is a professional counselor for Clery Act purposes is based not only on the individual's professional licensing but also on the official's responsibilities. The regulations do not authorize an institution to designate an entire entity as a professional counselor, as Penn State did with CWS. Moreover, Penn State did not present any documentation showing that in 2007 (or at any other time during the review period) it evaluated or determined that specific CWS employees met the definition of a professional counselor for

Clery Act purposes. Therefore, there is no basis for Penn State's decision to exclude crimes reported to CWS from the Clery Act statistics.⁵³

All incidents of Clery-reportable crimes reported to the CWS were required to be included in Penn State's official crime statistics as published in its ASRs. This did not occur during the 14-year review period.

"Trauma Drops"

Penn State also did not include in its crime statistics incidents of crimes reported to various CSAs through the so-called "Trauma Drop" process. For the entirety of the review period and before, Penn State had a policy that permitted students who have been the victim of a crime or other serious emotional or physical trauma to seek academic and other accommodations. The name of the program and the process that students had to follow has changed over the years; however, the basic framework and the reasons for it have not substantively changed. As described in University publications, the point of the process is to ensure that persons negatively impacted by serious crime and other trauma will "not be academically penalized for being unable to successfully complete classes/assignments."⁵⁴ The trauma drop process is and was used frequently throughout the review period. For example, officials from the CWS estimated that their office initiates at least 35 trauma drops a year. University publications indicate that the CWS and Counseling and Psychological Services are the offices that can initiate a trauma drop; however, during the review, Department officials learned that several other officials and offices can initiate a trauma drop. In some cases, these officials, such as some personnel in University Health Services, may be exempted in some instances from disclosing incidents of crime that are reported to them in the course of their official duties. Others, like the Assistant V.P. for Student Affairs, who also can initiate trauma drops, would not.

To request a trauma drop, a student must provide adequate information and evidence of a trauma that interferes with the student's ability to complete classes or assignments to an official who is authorized to initiate a trauma drop. Many students base their request for a trauma drop on being a victim or witness of a serious crime. If the official finds the student's request to be persuasive, a letter is written and provided to a faculty member(s) or other institutional officials to request the accommodation.

Information developed during the program review indicates that trauma drops were initiated to address a variety of circumstances including cases of deteriorating mental and physical health of

⁵³ Even if there was a basis for considering an office as a "professional counselor" or as a professional counseling operation, the Department has determined that the CWS does not meet the definition of an exempt professional counseling operation. The CWS's own promotional materials clearly state that the objectives of the office as: 1) Advocacy; 2) Information; 3) Educational Programming; and, 4) Services and Referrals. The CWS also assists victims, with an emphasis on victims of sexual assault and domestic violence, to report crimes to law enforcement or to seek redress through the Office of Student Conduct. CWS created safety plans for victims, helped victims to acquire Protection from Abuse orders, and helped victims to relocate to safer living conditions. In every material respect then, the facts show the CWS to be an advocacy office and therefore its employees are CSAs for Clery Act purposes, the counseling credentials of some of its staff members notwithstanding.

⁵⁴ We have seen similar policies at other institutions; although, most are more structured and require more documentation than the policy in place at Penn State.

a student or family member. Similarly, trauma drops were used to assist students who were victimized at off-campus locations, while in their hometowns, or even before they came to Penn State. Nevertheless, it is also clear that the trauma drop process has been used frequently, including to assist victims/survivors of on-campus sexual assault or other violent crimes. Penn State is and was required to treat the information related by these victims or witnesses as reported crimes for purposes of reporting crime statistics in the ASR and to the Department. The only exceptions would be if the crime did not occur within the geographic area covered by the Clery Act or if the victim disclosed the crime only to a professional or pastoral counselor as provided by the Department's regulations. Due to Penn State's failure to ever actively request crime statistics from any CSAs other than the Office of Student Conduct, Penn State's serious and systemic under-reporting of crime statistics, especially sexual and other violent physical assaults, was made significantly worse as a result of the exclusion of information from trauma drop requests from the crime statistics compilation process.

As was and is the case with most aspects of the University's processes for identifying, classifying, documenting, and compiling crime statistics, no part of the trauma drop process focused on data collection about the crime or traumatic event. Neither was any significant attention paid to documenting other operative facts such as the location and timing of the crimes that lead students to seek a trauma drop in the first place. Nevertheless, the evidence that we reviewed indicated that many of the trauma drop requests were based on the effect of crimes or violations that are required to be included in the statistics reported under the Clery Act. It is equally evident that many of these offenses occurred on-campus or on other parts of Penn State's "Clery geography," such as fraternity houses owned or controlled by recognized student organizations. There is no indication, however, that reportable incidents that come to the knowledge of Penn State's CSAs via the trauma drop process are systematically communicated to the PSUPD for inclusion in the University's official campus crime statistics disclosure in the ASR and to the Department.

Office of Human Resources

Penn State failed to request statistics of Clery-reportable crimes that were brought to the attention of the institution's Office of Human Resources (OHR). The Clery Act requires institutions to disclose statistics of incidents that are reported to campus police or security, CSAs, and any other official or office that students and employees are directed to report such incidents. Penn State's policy on disciplinary actions taken against employees resulted in employees reporting crimes to OHR. However, OHR did not report those crimes to the PSUPD for inclusion in the campus crime statistics.

Penn State's policy, OHR Policy 78, prescribed ways for most employees to report workplace conduct and disciplinary concerns and violations ranging from unfair treatment by supervisors to sexual harassment to workplace violence. The policy also detailed the various channels for aggrieved parties to seek redress. This policy was supposed to be administered and monitored by the central OHR; however, the review team learned that most OHR services and processes are delivered via a decentralized and disjointed patchwork of OHR representatives who work in the various departments at University Park and the Commonwealth Campuses. The Department's review indicates that the disciplinary policy and the tracking of disciplinary

actions were similarly handled by these separate HR operations. These weaknesses create a serious compliance concern for the Department because OHR has no reliable mechanism for documenting reportable incidents and compiling crime statistics for inclusion in the ASR. Moreover, the decentralization of the HR function and the lack of an electronic records management system would have forced each human resources office to review hardcopy records in whatever format that individual office used and to do so in accordance with whatever policies and procedures were followed in that office. An OHR official interviewed by the review team captured part of this concern when he stated that, "we are only as good as what we hear." The Department has determined that OHR's statistical tracking process, which is completely reliant on what HR staffers, acting without OHR managerial oversight or adherence to any central OHR policy structure, maintain in their own files, can find in individual employee files, or can recall from specific incidents that come to their attention cannot be deemed as a trusted source for crime statistics.

The OHR representatives report directly to the head of the department, school, or campus where they are assigned, not to the head of the OHR. The salaries of HR representatives are also funded by the departments and campuses. A long-tenured member of the OHR staff reported that while there was supposed to be a "dotted-line" relationship back to central HR, that in practical effect the strength of that reporting relationship was largely dependent on the professionalism and independence of the person in the HR role and the support that the HR representative received from the senior official in the department or at the campus. The Department was not able to ascertain the exact number of these separate HR operations but the lowest estimate provided by Penn State officials was 35, but they acknowledge that the number could have been higher at various points during the review period.

It is clear that OHR was not institutionally strong enough to assert control over many HR functions and was not able to coordinate the disparate activities and ad hoc processes of HR operations in the departments and campuses. This was especially true in departments that were particularly powerful and/or insular, such as Intercollegiate Athletics. An OHR official stated that the human resources operation was generally treated as a "distant stepsister" by senior University officials and that it was not a priority in terms of financial commitment. For example, OHR was never provided adequate resources to procure and implement a comprehensive human resources information system to track employee data including disciplinary issues.

For Clery Act purposes, this lack of an effective centralized structure meant that there is no centralized record of any crimes that may have been reported to OHR as part of the employee disciplinary system. When the review team requested employee discipline records, Penn State officials stated that there was no central tracking of employee disciplinary cases and that the only way to retrieve data would be to manually search hardcopy files maintained in at least 35 separate HR offices. Penn State officials originally estimated that it would take 10,000 man-hours to retrieve these records. OHR officials told the review team that the search would not require that much time but the final estimate for record retrieval was still a minimum of 4,000 hours. As a practical matter, it would be difficult to determine the full effect of this violation; however, it is clear that this condition contributed to the University's systemic failure to include statistics of crimes reported to CSAs and other designated officials and will have to be explored further as part of the institutional self-study and the Department's monitoring plan.

Office of Fraternity and Sorority Life

Penn State did not include incidents of crime reported to the Office of Fraternity and Sorority Life (FSL) in its Clery Act crime statistics. Penn State has over 90 Greek Letter social organizations, making it one of the largest fraternity and sorority systems in the United States. Penn State's FSL approach to conduct monitoring is to generally defer to the decision-making of participating student groups and favors self-governance over institutional control. In essence, disciplinary enforcement is handled primarily by the four Greek governing bodies: The Interfraternity Council, The Multicultural Greek Council, The National Pan-Hellenic Council, and the PanHellenic Council. All Greek Letter organizations must be a member of one of the governing bodies and it is subject to the rules, regulations, and enforcement authority of its governing body; however, the FSL does not have the authority to compel a governing body to initiate disciplinary proceedings or "decolonize" a fraternity or sorority.

The Department has identified many crimes that occurred in on-campus and off-campus fraternity houses that were reported to PSUPD or the State College Borough Police that met the standards for inclusion in the Clery Act statistics. We have also identified additional incidents that occurred in fraternity houses that were eventually adjudicated through the Office of Student Conduct. Most of the Clery-reportable incidents in both of these categories of incidents should be reflected in the University's official crime statistics because law violations and policy infractions of this type would logically flow into the reporting structures that were in place for most of the review period. Disciplinary cases handled by the Office of Student Conduct against an identified individual seem to have been tracked reasonably well; however, no such assurances exist for disciplinary actions taken against groups or teams, etc. because of the larger systemic failure to identify and request crime statistics from CSAs. The Department is very concerned about the University's specific failure to collect crime statistics regarding incidents where the offender may have been a Greek Letter organization itself or a large number of its members.

The concern is amplified by the fact that the University did not establish clear policies for how it would differentiate between legal and policy infractions committed by an identified individual as opposed to those offenses where an individual or group was believed to be acting under the color of an organization. Reliable research in the field of campus crime indicates that the inherently residential orientation of Greek Letter organizations creates an environment where higher levels of crime are predictable.⁵⁵

⁵⁵Reliable research in the field of campus crime indicates that the inherently residential orientation of Greek Letter organizations creates an environment where higher levels of crime are predictable. At Penn State and many other institutions, the culture of binge drinking and substance abuse is superimposed on top of that environmental structure. The Department acquired the two most recent Fraternity and Sorority Assessment reports that were produced as part of the Penn State Greek Pride Initiative. The "alcohol consumption" section of those reports showed that in the two weeks before the survey was administered, "75% of fraternity and sorority members reported engaging in high-risk drinking behavior." The rate of high-risk drinking went down 1% when compared to the previous survey conducted two years earlier. The report also indicated that fraternity and sorority members were 20% more likely to engage in high-risk drinking behaviors than undergraduate students generally. The Department's Clery Division's own research shows that more than 90% of all serious campus crimes involve the use and abuse of alcohol and drugs. These conditions significantly increased the likelihood of high rates of crime in fraternity houses and the one sorority house as well as, to some extent, in the residence hall space allocated to sororities at Penn State. For example, see among others, Alcohol-Related Sexual Assault: A Common Problem among College Students by Antonia Abbey, Ph.D., Department of Community Medicine, Wayne State University.

For Clery Act purposes, the FSL and the four governing bodies are CSAs; however, the University never requested crime statistics from any of these organizations during the 14-year review period. This persistent failure likely caused the University's crime statistics to be significantly under-reported during the 14-year review period.

Additional CSA issues remain a topic of active investigation and may be outlined in a supplement to this program review report. Failure to coordinate information from all relevant sources and to compile, publish, and distribute accurate and complete crime data deprives the campus community of important security information.

Required Action:

Penn State 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, Penn State must develop and deliver an annual training program to educate CSAs about the Clery Act and inform them about the reporting obligations that are conferred upon them by the law. Based on the facts developed by the review team and admissions made by Penn State, the Department and the University agree that it would likely be extremely difficult for Penn State to take corrective action that would result in the development of accurate and complete crime statistics for University Park and the Commonwealth campuses for most prior calendar years, especially before 2007. Appropriate sanctions for compliance violations during the 1998 - 2006 time period will be imposed at the appropriate time.

The Department; however, will require Penn State to make a diligent search for relevant source documents and other information that are in the possession of certain current or former CSAs in an attempt to ascertain the impact of this serious and ongoing violation for calendar year 2007 to the present, in full acknowledgement that it will not be possible for Penn State to identify all or even most of the incidents that were reported to CSAs. The University should be able to provide documentation regarding many of the Clery-reportable crimes that were reported to the CWS and many of the trauma drops that were approved by various University officials. Additional information about this requirement will be provided in a supplement to this report. At this time, Penn State 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, corrective actions in this area will focus primarily on corrective 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 program review report.

Institutional Response:

In its response, Penn State asserted that, as an initial matter, the Department's determination that the University failed to establish an adequate system for collecting crime statistics from all required sources has no basis in law. The University asserted that neither the *Clery Act*, nor its implementing regulations, impose any legal obligation on an institution to identify or train CSAs nor do they prescribe the manner in which CSA training might be accomplished.

In regard to the Department's finding that there were several areas of particular concern; the University asserts that the "overwhelming majority" of the crimes that occurred on Clery geography and were reported to CWS, OHR and the FSL were also captured in the University's crime statistics.

The University further claimed that it made reasonable efforts to compile Clery-mandated crime statistics every year for inclusion in the ASR and its reports to the Department. These efforts involved the collection of data from other local police departments and from the Office of Student Conduct as well as from various other sources. The University contended that even if CSAs in particular areas of the school were not directly reporting relevant crime data, it was confident that these reported crimes would have likely come to the attention of PSUPD by other means. The University stated that it remained confident that its crime statistics were more or less correct.

Specifically, in regard to the CWS, the University asserted that counselors believed "in good faith" that they were professional counselors, exempt from the legal reporting requirements of CSAs. The University asserted that while its grant-funded Coalition to Address Relationship and Sexual Violence (CARSV) distributed a "Relationship/Domestic Violence and Sexual Assault Data Collection Form," the form was "never intended to serve as a Clery crime reporting form" and "any information extracted from the forms was included in certain ASRs for informational purposes only" until the grant ended in 2007. The University asked the CWS office for information on Clery-reportable crimes, but it reported that there "would be a very small number of incidents," which it asserted could not be reconstructed by the CWS or the University due to a lack of adequate recordkeeping.

The University claimed that CWS's staff assumed that "trauma drops" that they initiated did not need to be documented because of their assumed status as professional counselors. Furthermore, the University contended that the data shows that the vast majority of Clery-reportable crimes resulting in trauma drops would have been included in the University's crime statistics, as most crimes were also reported to the PSUPD. Although the University noted that 48 trauma drops were initiated by Counseling and Psychological Services (CAPS) and 93 were initiated by the CWS, it asserted that most trauma drops were referred to the CWS by other CSAs and therefore properly or otherwise reported.

The University claimed that their previous human resource organizational structure of 64 offices throughout the University had no impact on the reporting of incidents pursuant to the *Clery Act*. The University claimed that most disciplinary matters that culminated in terminations were included in the "pink sheet" file. The University reviewed this file, which contained 400

employee terminations that occurred from 2007 through 2011, and only found one Clery-reportable incident (a forcible sexual offense).

Similarly, the University maintained that there was not a Clery reporting issue in relation to the FSL office. Penn State asserted that there were seven employees of FSL (all CSAs) who served as advisors to the four independent Greek governing councils. The University maintained that the four Greek Governing Councils were not CSAs and, therefore, had no duty to take action on behalf of the University. Nonetheless, the University maintained that all criminal acts adjudicated by the Greek Governing Councils were reported to the PSUPD and the Office of Student Conduct.

Final Determination:

Finding #6 cited Penn State for multiple violations of the *Clery Act* and the Department's regulations, as outlined in the noncompliance section above. Specifically, the University failed to establish a systematic process for collection of Clery-reportable crime data from all required CSAs, which led to a failure to include all Clery-reportable crime data in the University's crime statistics for the period of 2007 to 2011. Due to the University administration's systemic failure to identify and train its CSAs regarding their Clery reporting obligations, and its failure to put into place an effective reporting mechanism, the full extent of this violation is unknowable and will never be known.

The program review process serves the dual purpose of affording an institution an opportunity to respond to findings of violation before a final determination is reached by the Department and to allow the institution to develop a substantive plan to bring operations into compliance and remain compliant going forward. To the latter point in particular, the University's primary proffered defense for its regulatory compliance failures is deeply troubling. Rather than giving the Department comfort that Penn State is headed in the right direction in regard to its Clery compliance, the University's response raises deep concerns. Specifically, the University recognized that the *Clery Act* requires institutions to include crimes reported to CSAs in the crime statistics reported annually to the Department and published in the ASR. However, the University claims that it is under no obligation to identify CSAs and to train or at least notify them about the reporting responsibilities conferred upon them. It therefore concludes that it should not be held accountable for its failure to do so. The University's position is not only inconsistent with the law; it makes no sense and is betrayed by its recent reforms.

While the *Clery Act* does not set out training as a separate requirement, identification and training of CSAs and implementing a simple and effective CSA reporting system are necessary conditions precedent for enabling CSAs to fulfill their responsibilities under the *Clery Act*. Second, like many regulatory regimes, the *Clery Act* tells institutions what they must do to be compliant, but it does not specify how they must do it; that is left up to the institution to decide. This flexibility does not mean, however, that the University can simply ignore their regulatory obligations and fail to create a functioning compliance system. The Department regulates over 6,500 institutions with incredibly diverse institutional structures and educational missions, ranging from major research universities to single class-room beauty schools. Accordingly, it would be impossible for the Department to articulate a single standard for a Clery compliance

program. Each institution must develop and implement a campus safety and crime prevention program that makes sense given the makeup of each school.

In making and sustaining this finding, the Department must reiterate that during the review period. Penn State had the largest fraternity and sorority program in the country and ran one of the largest student housing programs. Moreover, the University had one of the most high-profile and largest intercollegiate athletic programs. All institutions, regardless of their size, must put adequate controls in place to make sure that officials do not deviate from the policies that allow an institution to comply with the *Clery Act* and otherwise run an effective campus safety program. The Department's regulations provide flexibility, but not unfettered latitude, to develop a workable system that will facilitate compliance and meet the institution's needs. Unfortunately, Penn State substantially failed to establish such a system during most of the review period.

The CSA provision recognizes that not all crimes that occur at an institution will necessarily be reported to a police department in a timely manner, if at all. The CSA reporting requirement has two primary objectives: 1) obtaining accurate crime statistics and, 2) ensuring the timely reporting of crimes or other known dangers to campus police/security officials so that timely warnings and/or emergency notifications can be issued to the campus community when needed.

To put the situation in proper perspective, Penn State admitted that, prior to the Department's investigation, responsible officials had identified no more than a couple hundred individuals or positions that met the definition of a CSA.⁵⁶ The University's most recent reported CSA tally stood at 4,024. The purpose of this finding is to document the process failures in terms of identifying CSAs and putting them on notice about the reporting obligations that CSA status confers upon them. The *Clery Act* requires institutions to actively request reports from all CSAs. For the first nine years of the program review (1998 - 2007), PSUPD admitted that it had no knowledge of this requirement. After 2007, the PSUPD and the University failed to establish an adequate system to collect crime statistics from all CSAs. While the *Clery Act* does not specifically require institutions to provide CSA training, it is virtually impossible to achieve compliance without it. The Department's inquiry indicated that a lack of basic CSA training resulted in numerous CSAs across the campus not knowing that they were required to report crimes to PSUPD for inclusion in annual crime statistics.

In the PRR, the Department identified four areas of Penn State operations that were of special concern. As part of the required actions, the University was required to conduct a full-file review to determine the total number of Clery-reportable crimes that were reported to the PSUPD, other CSAs, and local law enforcement agencies. The initial program review period covered 14 years from 1998-2011; however, Penn State officials claimed that due to the myriad of problems documented throughout the PRR, that it would not be possible to conduct a credible file review covering the entire period. At that point, the Department proposed a file review that

⁵⁶ The Department requested a list of CSAs from Penn State when it first initiated this review in 2012. In response, the University provided a list of persons identified by title, but not by name, that were campus CSAs. The list appeared to have been copied in whole or in part from another local University, as evidenced by Penn State's failure to remove that University's name from the CSA list.

covered the period from 2004-2011. Once again, University officials claimed that it would not be possible to produce an accurate and complete file review due to the deficiencies of policy, practice, and recordkeeping throughout this period. At that point, the Department agreed to accept a file review covering the five-year period from 2007-2011.

Although the required action instructions directed the University to include documentation from all sources in the file review, it did not. In fact, it is now clear that reviewing documents for evidence of Clery-reportable crimes from many of the University's offices would have been impossibility because, in some cases, documents were never retained and documents were never produced. This was in no small part due to Penn State's long-standing failure to identify and train CSAs and to give them an easy mechanism to report basic facts to an appropriate official. The official should have requisite expertise to evaluate whether the reported facts indicated that a Clery-reportable crime occurred, and determine if additional actions were needed, such as the issuance of a timely warning.

The University claimed that it believed that most incidents of crime that occurred on its Clery geography were reported to the PSUPD. Given PSUPD's relatively small presence and the large scale of the operations in question, without documentation to support this conclusion, the claim is questionable at best. More than two decades ago, the drafters of the *Clery Act* correctly realized that students and others in a higher education environment do not always report crimes to the police, at least not initially. Students will often report crimes to residence life staff, coaches, or advocates; employees will often report to Human Resources or advocates that are likely to understand their plight. The University's failure to understand the role and importance of CSAs and to implement a proper reporting structure caused a systemic failure, the scope of which will never be definitively known.

Our investigation, like the Freeh Group inquiry, has determined that PSUPD officials were entirely unaware of the CSA requirement and several other requirements of the *Clery Act* until at least 2007 when the Crime Prevention Officer (CPO), who was tasked with leading the Clery effort starting in 1991, was finally provided some training. Office of Student Conduct officials, including the Associate Director, reported that they first received basic instruction about the *Clery Act* and their responsibilities in 2007, subsequent to PSUPD officials attending Clery training. As the CPO started to learn about the law, he made diligent attempts to make improvements, but few others were interested. As reported to the Freeh Group, the CPO told his superiors that, "we could get hurt really bad here." The CPO also reported to Department officials that he told his managers that, "this could come back to burn us someday." In response, one of his managers stated that, "we really do not have the money."

The Department must point out that Penn State has an operating budget that now exceeds \$4 billion dollars, and it has conducted fundraising campaigns that raised approximately \$100 million for a baseball stadium and a hockey arena. Even after management allowed a minimal *Clery Act* training program it was to very little effect. In 2007, an online form for CSAs to report crimes was developed and made available to staff; however, only one form was submitted between the time that the process was implemented and the start of the Department's review.

Although officials at the CWS told Department officials in 2012 that records were kept that documented information received from students, none reflected in the University's file review and none were ever made available to the Department's review team for inspection. During recent efforts to confirm our understanding of the CWS documentation, Penn State's counsel reported that the CWS staffers claimed that no records were developed or maintained during the review period and that the CWS staff never knew that they were CSAs. While the Department did finally secure copies of some of the trauma drop letters described in its initial report, it became quickly evident that these letters written for crime victims or those who were otherwise in crisis and were not composed in a manner that would be useful for crime statistic purposes.

This was either a purposeful choice on the part of the people that created the letters or a byproduct of ignorance about the requirements of Federal law. Similarly, few if any records regarding conduct enforcement within the Department of Intercollegiate Athletics from the review period have survived and therefore records from that office were not examined as part of the file review. Our investigation clearly shows that coaches, especially in the football program, were deeply involved in conduct matters concerning student-athletes. Prior to the hiring of Dr. Triponey as Vice President of Student Affairs, the review indicated that the Head Football Coach exercised primary authority over conduct matters involving members of his team for many years. (*See infra* the "Football Culture" section for more information).

Very few relevant documents from the football program or other sports teams were provided to the reviewers or examined by the University during the file review. Only one relevant report was identified from the University's Human Resources department. Based on the information set out above and below, it is now clear to the Department that Penn State failed in nearly every material respect to comply with the requirements of the *Clery Act* relating to CSAs and, in so doing, did not come close to compiling and accurately classifying incidents of crime reported to those individuals or offices. As a result, Penn State students, parents, employees, other stakeholders, and the general public were never given accurate and complete information about the occurrence of crime on the University Park campus. As noted, the Department identified four specific areas within the University that needed to be searched for data not reported in the University's prior ASRs: 1) the CWS; 2) trauma drops; 3) OHR; and, 4) FSL. The relevant review period was 1998 to 2011. The Department specifically requested that the University search for unreported incidents from offices other than OSC.

Center for Women Students

The CWS failed to include information on crimes reported to it for inclusion in the annual statistics. The Department requested a universe of reported Clery-related incidents and a concerted attempt to identify those reports that were not included in the Audit Trail for 1998 - 2012. Penn State failed to provide a list of Clery-reportable incidents from CWS. Instead, Penn State asserted that the staff of CWS believed that their role on campus was the same as professional counselors who are exempt from CSA reporting requirements.⁵⁷ The Department

⁵⁷ Once again, the Department points out that the beliefs of these individuals in the CWS is neither substantial evidence nor relevant. Penn State should have advised these officials that they were CSAs and taken steps to ensure that they acted accordingly. Moreover, it must be emphasized that although CWS staff were required to disclose

notes that the professional licensed counselors employed at the Counseling and Psychological Services (CAPS) office were exempt from CSA reporting requirements, but the staff of the CWS did not perform the role of a professional counselor as defined under the *Clery Act*.⁵⁸

The CWS played a critical role on campus - providing advocacy to women and advancing women's issues on campus, with a focus on sexual assault prevention and response advocacy services. Brochures and other promotional materials for the CWS confirmed the purpose of the group. Many victims of sexual assault chose to report these crimes to the CWS, which in turn advocated on their behalf and coordinated other essential services and protective measures. The CWS indicated in their own materials that it had seven main objectives, none of which included professional counseling. Thus, there was no basis for Penn State's assertion that the CWS staff had a good-faith belief that they fell under the licensed professional counseling exclusion of the *Clery Act*. The Department notes that this is one of many instances where an office in the University would have been well served to seek legal advice regarding regulatory compliance before deciding of their own volition that the laws did not apply to them. Further claims that the communications with advocates are protected under the *Clery Act* or that the myriad of protections that are typically afforded to professional or pastoral practitioners charged with providing counseling services would apply to the CWS is at best dubious.

If the CWS had believed that its communications were in fact covered, it would be reasonable to expect that staff would have retained basic records about services provided. In the view of the Department, it should have been apparent to the University that the CWS staff were and still are CSAs and, therefore, were not exempt from basic reporting requirements. CAPS did provide the type of professional counseling services that are exempted under the *Clery Act*; as such, most CAPS staffers are not CSAs. The CWS personnel, on the other hand, were engaged in a very different enterprise. The mission of the CWS was to act as advocates for women, including many victims of violent crime.

The failure of CWS management and staff to generate and retain documentation about incidents of crime reported or the failure to create records in the first place to substantiate its work triggers a special regulatory concern. The apparently mistaken belief possessed by CWS officials that they were not required to disclose information about incidents of crime that are reported to them is not relevant to the University's responsibility to ensure institution-wide compliance with the *Clery Act*. There is no evidence that the University ever actually considered the essential role of the CWS or numerous other CSAs play in implementing a compliant *Clery Act* program at any point prior to this review.

crime statistics, they were not required to divulge personally-identifiable information except under very limited circumstances where an incident may have posed a serious, ongoing threat to the health or safety of the campus community.

⁵⁸ The *Clery Act* specifically speaks to those professional and pastoral counselors who provide therapeutic services on campus – and it encourages those bona fide professional counselors to inform the persons they are counseling of procedures to report crimes on a voluntary, confidential basis.]

It is clear that the CWS staff members met the definition of a CSA. However, the University failed to identify the CWS and its staff as CSAs and failed to provide the CWS staff with formal training about the *Clery Act*. The CWS failed to employ any form or method for tracking reported incidents but the University nevertheless makes the unsupported claim that “it would be an extremely small number of cases” that reported to the CWS only.

The *Clery Act* requires the reporting of accurate crime statistics in the annual disclosure of crime statistics to the Department and the campus community. Penn State failed to meet its legal obligation to include all reports of sexual assault which were reported to the CSAs at the CWS, thereby failing to include all criminal offenses reported to the office for the entire period of the review.

Trauma Drops

Penn State processed trauma drops for students who were the victim of a crime or other serious emotional or physical trauma. The University was required to examine documentation in regard to the trauma drops that were initiated during the 2007 - 2012 review period. This goal of this reconstruction and review was to identify Clery-reportable crimes that had not been properly recorded in the University’s crime logs and not included in the annual crime statistics reported to the Department and published in the applicable ASR. After its review, the University indicated that 98 trauma drops had been authorized by the University during the review period and that ten could be identified as being conclusively related to Clery-reportable crimes. The University argued that 90 percent of crimes that were the basis for students initiating trauma drops would have been captured in the University’s crime reporting statistics. Specifically, the University asked the Department to accept its assertions that the crimes that were the basis for trauma-drops were mostly captured through other Clery-reporting avenues because the students could have been referred to CWS by the police or other CSAs. However, the University was unable to cite to any factual evidence to support this claim.

It should be noted that the vast majority of trauma-drop letters examined by the Department failed to include the basic information needed to establish if the underlying crimes causing the trauma were Clery-reportable, namely the location and the nature of the crime. Also, contrary to Penn State’s claim, many of the letters indicated that the victims were referred by academic advisors and teachers, not the police or campus CSAs. Because the CWS staffers tasked with client intake responsibilities did not know that they were CSAs, appropriate records were not generated and even if some were, they were not maintained. As a result, the true number of Clery-reportable offenses that occurred at Penn State through the trauma drop process were almost certainly under-reported for the review period, mostly likely substantially so. As a result, due to the failures of the University in training its CSAs, the trauma drop reporting avenue, through either benign negligence or purposeful design, allowed serious crimes to repeatedly not be counted in University crime statistics.

During the onsite review, Penn State administrators informed the review team that many University offices were authorized to initiate trauma drops, including the Assistant Vice President for Student Affairs. Based on the copies provided to the Department, the CWS initiated 21 petitions in 2007 - 2008, 15 in 2008 - 2009, 17 in 2009 - 2010, 21 in 2010 - 2011,

and 19 in 2011 - 2012. The University did not evaluate the trauma drops initiated by UHS staff during the file review either. The UHS status as a CSA raises additional concerns about the accuracy and completeness of the University's crime statistics. As noted previously, UHS never provided information for inclusion in the University's crime statistics because they were never asked to and, prior to this investigation, officials there were not aware that they were CSAs.

The review team also determined that when Penn State students reported traumatic incidents to non-CSAs, such as the Registrar or a faculty member, they were frequently referred to the CWS, not the PSUPD. The problem is that documentation was not always retained and the information gathered to justify the issuance of a trauma drop letter often did not include basic facts that are needed to determine if the incident needed to be included in the University's crime statistics. If an adequate data gathering procedure had been implemented, these deficiencies could have been avoided. Even with the numerous defects in the trauma drop documentation, at least ten of the trauma drop files issued by the CWS included some information about incidents that appear to be Clery-reportable offenses. Nothing in the documentation indicates that any of these offenses were reported to the PSUPD or were included in the University's crime statistics.

To further illustrate the concern, the Department notes that on Sunday, November 30, 2003, the Centre Daily Times ran a story entitled "Reports of Sexual Assault Up in State College, at Penn State." The statements of student leaders included in the article are striking, including one student who is quoted as saying, "our problem with sexual assault walks among us...there is nobody free from the responsibility of solving this problem." The article goes on to state that University officials reported that, "Penn State also keeps statistics from year-to-year of the number of sexual attacks, even those that are not reported to police. Although the statistics are not complete for the semester, University Health Services Director Dr. Peg Spear said that they seem comparable to what was reported last year - 100 assaults for the 2002-2003 academic year, up from 94 incidents the previous year." In contrast, in the official campus crime statistics included in the ASR, Penn State disclosed 18, 23, 29, and 15 forcible sex offenses (the classification in place at the time) in 2001, 2002, 2003, and 2004, respectively. This suggests that there may have been multiple systems for compiling crime statistics and that the official reports were not the most accurate.

In sustaining this finding, the Department fully recognizes that the trauma drop letters, as written, did not in some cases include enough information to determine if a Clery-reportable crime occurred. Of course, that is at least in part because no one ever instructed the officials that processed the requests to collect and document that information. Generally, an incident must be included in an institution's crime statistics if the information reported indicates that one of the reported crimes occurred, the incident is reported to a CSA, and the incident occurred within the institution's Clery geography. In some cases, it may not be possible for a complainant or witness to know where an incident occurred, such as when the reporting party was unconscious, severely intoxicated, blindfolded, or otherwise unable to ascertain their location. Where this is legitimately the case, an institution should attempt to elicit sufficient information to determine if a Clery-reportable incident has occurred.

In this case, there can be no doubt that many of the very serious and violent events documented in the trauma drop letters occurred on the campus but, without better controls in place, it is not

possible to quantify the specific number. While the preferred degree of certitude is not achievable, this much is clear: The Department will not countenance the claimed refuge of a de facto “safe harbor” based solely on an institution’s failure to create, utilize, and retain required documentation as a means to claim compliance or a defense to a finding of violation. While all aspects of Finding #6 are hereby sustained and the finding will be closed, the University is advised that additional examination of the trauma drop process will be part of the post-review monitoring plan. As part of this process, the University will be required to produce all documentation gathered and generated related to the issuance of certain trauma drops.

Office of Human Resources (OHR)

In the PRR, the Department directed Penn State initiate a complete file review of the 64 OHR representative offices at the University to determine how many employee disciplinary cases should have been included in the annual statistics. All conduct issues involving Penn State’s thousands of employees from any of the 64 OHR offices should have been provided. In its response, the University claimed that HR reports “routinely involved the PSUPD or other law enforcement personnel” and once again claimed “it does not appear that any such omission[s] arose from the decentralized organization of the University’s OHR or employee disciplinary system.”

The University claimed that records related to 400 employee terminations that occurred between 2007 and 2011 were reviewed and that conduct infractions that might constitute a Clery-reportable crime were identified. None of the documents covering some 292 separate incidents that were examined in reaching this conclusion were turned over to the Department. The only documentation provided to the Department consisted of 14 rows of HR data, which showed one Forcible Sexual Offense that was never included in the University’s campus crime statistics even though the incident was reported to PSUPD and documented in a police incident report.

The University conceded that they did not maintain any central tracking system for employee disciplinary cases, and the only way to retrieve data would be to manually search hardcopy files maintained in the 64 separate and independently operating human resources departments across the University. The Department specifically requested that the University make a diligent search for documents, but notes that Penn State responded only with rationales and reasons for providing meager documentation of the purported file review conducted at each office. Furthermore, the Department has no way of knowing which OHR offices were queried for that data. Given the many thousands of employees that were hired and the significant number of persons that were disciplined or terminated, Penn State’s representation that “it does not appear that any omissions arose” during the file review period is hard to reconcile with the known facts.

The Department hereby sustains all elements of this finding for the reasons detailed above. Furthermore, given the University’s OHR structure with 64 separate offices with non-uniform records keeping practices, the Department has little confidence that a complete analysis of relevant documents to locate Clery violations could ever be performed with a high level of reliability or confidence in the result. Clery-related statistics should have been compiled by these offices on at least an annual basis and records should have been maintained in some organized manner that would allow them to be produced for compliance purposes. The

Department notes that self-serving statements that the OHR offices were Clery-compliant are not adequate to substantiate actual compliance.

Fraternity and Sorority Life

With one of the largest Greek systems in the country, Penn State's Greek organizations and their members were charged with crimes ranging from drug sales and hazing to indecent assault. As with all institutions, the opportunity for underreporting of crimes at non-campus housing is great. The program review report noted that Penn State failed to include incidents of crime reported to the FSL in its Clery crime statistics. Furthermore, the PSUPD failed to request crime statistics from the staff of FSL.

The University explained that the staff members of the FSL office essentially outsourced the task of monitoring its Greek letter organizations and imposing disciplinary sanctions to the four Greek governing bodies, in essence, the student organizations themselves. In taking this tack, Penn State effectively allowed its 90+ Greek organizations to govern themselves through its four Greek governing bodies: the Interfraternity Council, the Multicultural Greek Council, the National Pan-Hellenic Council, and the PanHellenic Council. Furthermore, it appears that the staff of the FSL failed to ensure that all adjudicated incidents were accurately documented. As the FSL staff invested the leaders of those four governing bodies with the charge of decision-making and adjudicating, those students were CSAs and were required to report incidents of crime. The Department notes that investing students with the power to act as administrators forces students who have pledged their allegiances to their organizational brothers or sisters to attempt to remain unbiased about those same individuals and groups responsible for incidents of crime.

None of the four Greek governing bodies or their leadership was ever identified as CSAs by Penn State. In an effort to further evaluate the governing body's role in student and group disciplinary matters, the Department required Penn State to request and compile information from those four Greek governing bodies. Once again, the University made the unsupported claim that the "vast majority" of reported incidents were also reported to other CSAs, including the PSUPD and the OSC. The University has no way of proving that claim. In sustaining this finding, it is important to note that, at its crux, this is a finding that exposes a systemic failure of process more than it identifies tabulation errors. While the Department takes a very dim view of any misrepresentation of a school's crime statistics, broad-based breakdowns in key processes are, in some respects, much worse. Rather than deal with these problems directly, the FSL attempted to defend its processes, or lack thereof, and the utter absence of useful documentation. In the end, FSL was unable to provide any source documents that helped to substantiate its role in the student and organizational conduct processes during the 14-year review period or the five years covered by the file reconstruction. Only with proper administrative oversight of all reported incidents and sanctions could the University substantiate a full and accurate file reconciliation. The University has failed to provide any file reconstruction to substantiate their oft-repeated claim that "most" incidents were reported to other CSAs.

Penn State has substantially admitted in numerous ways that records needed to comply and document its compliance efforts simply were not retained and, in some cases, were never

created. The University has gone back to *current* employees in an attempt to recreate the data from 2007 - 2011. The University substantially failed to document incidents of crime that were reported to the majority of its CSAs for years, at least in part because no one understood the requirement. The University's overreliance on the PSUPD ignored the fact that compliance with the *Clery Act* requires an institution-wide undertaking that can only be accomplished with intentional information sharing, coordination and communication. FSL provided no information regarding incidents of crime reported to the PSUPD for possible inclusion in the annual crime statistics, which are then provided to the campus community and the Department. Furthermore, the University's response and file reviews do not evidence any attempt to ascertain the number of incidents that were not reflected in its statistical disclosures during the period covered by the file review. Nonetheless, Penn State claims that "most" incidents were reported to the Police. This excuse does not pass muster. CSA records from the FSL, CWS, UHS, the 64 OHR, and the Athletics Department and numerous other CSAs can never be recreated to correct the University's annual crime statistics for the entire period of this review. Those records are lost to history. For all of these reasons, the finding in its entirety is hereby sustained.

Although this finding is now closed, Penn State is reminded that the aforementioned violations represent serious violations of the *Clery Act*, which by their nature cannot be cured. There is no way to correct a violation of this type once it occurs. Penn State is advised that any remedial actions, whether already completed or taken pursuant to this FPRD cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action as a result.

The requirement to establish an adequate system for collecting crime statistics from all required sources is fundamental to the goals of the *Clery Act*. Access to this information permits campus community members and their families to make well-informed decisions about where to study and work and empowers individuals to play a more active role in their own safety and security. University officials must understand that the persistent compliance failures documented in this finding are part and parcel of the administrative capability finding, a University-wide failure to uphold the *Clery Act*.

Finding #7: Failure to Maintain an Accurate and Complete Daily Crime Log

Citation:

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

The 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 information to the campus police or the campus security department. The 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).

Noncompliance:

Penn State failed to maintain accurate and complete crime logs in accordance with the Department's regulations for the years under review. The Department's review team inspected Penn State's 1998 to November 2011 crime logs and determined that Penn State failed to accurately and consistently maintain the crime logs and did not include the information required by the regulations. Penn State failed to consistently document reported incidents as well as the nature, date, time, general location, and disposition of each incident. The University did not comply with the crime log reporting requirements until October 7, 2011, when the PSUPD brought the crime log feature of its new records management system online. A review of Penn State's crime log from November 6, 1998, through November 9, 1998, revealed a total of 31 missing incident reports. Specifically, entries for PSUPD incident report numbers 41-98-2920 through and including 41-98-2950 are missing from the crime log. In addition, Penn State failed to include any incidents of crime in the crime log for the month of January 2000.

We also found several instances where the description of a reported incident in the crime log differed significantly from the PSUPD's report for that incident. A few examples of this condition and other types of discrepancies that were identified by the review team are discussed below.

Incident report #41-98-1609 involved Sandusky in an alleged Sexual Assault involving a ten-year old boy in a shower at the Lasch Building. The incident occurred on May 3, 1998, and was reported to the University's police department on May 4, 1998. Penn State did not properly enter the reported crime in its crime log within two business days of it being reported to the University's police department. The crime log entry for this incident only revealed that on June 2, 1998, a PSUPD officer requested an incident report number for "an ongoing [sic] investigation"; however, the description for the nature of the crime was cited improperly as "Administrative Information."

An excerpt of the entry is provided below.

*"June 2, 1998 –[Recorded Date]
41-98-1609 – Administrative Information -- At 1840 Hours, PSO [name redacted]
requested an incident number for an ongoing investigation."*

Incident report #41-99-2043 was entered in the crime log on September 10, 1999. However, the nature of the crime was improperly recorded as "Administrative Information." The date and time of the criminal incident were also omitted.

A sworn Penn State police officer indicated in the incident report that a "Rape" had occurred in an on-campus student residential facility; however, the crime log initially described the nature of

the crime as “Administrative Information” and subsequently mentioned that a “Rape” occurred. The inconsistent description about the nature of the crime would confuse any user who reviewed the crime log for information about crime on Penn State’s campus.

Penn State’s crime log entry for this incident is:

*“September 10, 1999 –[Recorded Date]
41-99-2043 – Administrative Information -- At 1415 Hours, a female reported that she was raped by an unidentified man in a campus dormitory but wants no further action taken. Investigation by PSO [name redacted]”*

The nature of the crime should have been entered in the log as a “Rape” with the date and time for the occurrence of the crime recorded as September 2, 1999, at 2300 hours. Moreover, Penn State’s crime logs did not list all of the multiple offenses that occurred during specific criminal incidents. For example, in a case related to incident report #41-99-2043 [mentioned above], a complainant reported that she was raped and assaulted by an unknown assailant who had unauthorized access into her dormitory room at an on-campus student residential facility. A sworn Penn State police officer indicated in the incident report that the crime involved multiple offenses such as, “Burglary, Trespass, Simple Assault, and Indecent Assault” at 2330 hours. However, the University’s crime log entry did not include the complete description about the nature of the crime, the date and time for the occurrence of the crime, and the disposition.

An excerpt of Penn State’s crime log entry for this incident is below.

*“December 17, 1999 -- [Dated Recorded]
41-99-3199 -- Assault --At 0104 Hours, a staff at Centre Community Hospital advised University Police that a student had been assaulted in her room on campus and was now at the Emergency Room for treatment. Investigation by PSO [name redacted] continues.”*

The crime log entry should show “Burglary, Trespass, Simple Assault, and Indecent Assault” as a multiple description about the nature of the crime. Also, the date and time for the occurrence of the crime should have been entered as September 2, 1999, at 2300 hours in addition to the reported time of the crime. Subsequent information about the crime should have been entered in the crime log. Incidents were entered in the log without a record of the disposition. For example, on December 20, 1999, the complainant admitted to a sworn Penn State police officer that she fabricated both incidents of crime (#41-99-3199 and #41-99-2043). Therefore, the disposition should have been updated to read as “unfounded.”

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 nearby community. The crime log provides information to assist the community in making decisions regarding their own safety and security. The crime log is important because it provides a timely

information source, and supplements statistical disclosures in the ASR. Failure to comply with the daily crime log requirement deprives the campus community of vital security information.

Required Action:

As a result of this violation, Penn State is required to review and revise its policies and procedures to ensure compliance with crime log requirements going forward. The revisions must provide for the designation of at least one capable official and a competent back-up to ensure that the crime log is updated in an accurate and complete manner and that it is readily available to the campus community and the general public for review upon request.

A copy of the revised policies and procedures must be submitted with the University's response to this program review report. In addition, Penn State must review and assess the incidents identified in this finding. The University must also provide a response addressing the issues in this finding and those issues associated with the identified incidents and include them all in their response to this finding.

Institutional Response:

In its official response, Penn State disagreed with all of the violations that were cited in this finding. The University argued there was no evidence that it failed to accurately and consistently maintain a daily crime log and include in the log all of the required information outlined in the *Clery Act*. Penn State also contested the significance of the crime log violations that were identified by the Department. The University challenged the findings of violations prior to July 1, 2000, since the Department's regulations requiring a daily crime log were not effective until that date.

Penn State further asserted that the Department's finding only addressed "a handful of isolated issues" in its crime logs over a 14-year span of time, and also repeated its argument regarding the length of the record retention requirement in regard to the crime logs.

Below is a summary of the University's response to the specific violations that were referenced in the PRR:

- *Daily Crime Log entry numbers 41-98-2920 through 41-98-2950, and recorded entries for January 2000 – Missing Crime Log Entries* – In its response, Penn State provided an explanation for the missing crime log entries. The University explained that in November, 1998, and January, 2000, the PSUPD maintained its daily crime log as a paper record. In 2005 they began scanning their paper crime logs into an electronic system. The University said "the original paper records were scanned - in no particular order – and then destroyed." The University suggested that the missing crime log entries from November 6, 1998 – November 9, 1998, and the entire month of January 2000, were caused by technical or clerical issues with the scanner.
- *Daily Crime Log entry number 41-98-1609 – Inaccurate Nature of Crime; Inaccurate Description for the Reported Incident; Data Recorded in the Crime Log in Excess of Two*

Business Days – Date Occurred May 3, 1998; Date Reported May 4, 1998; Date Recorded July 2, 1998. Penn State argued that “the crime log correctly characterized this entry as “Administrative Information.” The University claimed that the relevant crime incident report revealed the reporting officer was provided “information about Sandusky in a shower”; however, the University disagreed with the Department’s conclusion that “the record [the PSUPD incident report], *at the time*, plainly included information about a forcible sex offense or criminal activity.” The University argued there was no violation for recording data in the crime log in excess of two business days for the reported 1998 incident, since Federal regulations did not require maintenance of a daily crime log until 2000.

- *Daily Crime Log entry number 41- 99-2043 – Nature of the Crime Inaccurate and Incomplete; Description of the Crime Inconsistent with Nature of the Crime; Omitted Date and Time Crime’s Occurrence; Omitted Disposition* -- Penn State agreed with the Department that the entry to the log for this incident showed the nature of the crime as “Administrative Information,” while the descriptive narrative revealed that a “rape” had occurred. Nevertheless, the University disagreed that the contrast between the description of the nature of the crime and the descriptive narrative would have confused readers of the crime log. Furthermore, the University contended that there was no intention to conceal that a rape was reported.
- *Daily Crime Log entry number 41-99-3199 – Nature of the Crime Incomplete; Omitted Date and Time Omitted for the Crime’s Occurrence; Omitted Disposition* -- Penn State concurred with the Department that the reported crime incident was described in the crime log only as an “Assault” but contended that the most important factor is that the complainant later admitted that the reported crime incident was fabricated. Penn State referred to the crime log violation as “minor alleged deficiencies,” and asserted that any inaccurate information concerning the nature of the incident would have possibly been negated by anyone viewing the crime log since the reported incident was fabricated.

Finally, Penn State responded to the “Required Action” in the PRR. The report directed the University to review and revise its policies and procedures to ensure future compliance and designate a capable official to ensure the accuracy and completeness of the daily crime log. Penn State claimed that responsible officials reviewed the long-standing PSUPD practices, which were intended to ensure full compliance with the *Clery Act*, and those practices were established as *Policy and Procedures for Maintaining a Daily Activity Log or Daily Activity and Fire Log*. In *Appendix A*, the policy and procedures stipulated that a Police Records Coordinator or a designee would be responsible for “preparing and updating” the daily crime log.

Final Determination:

Finding #7 cited Penn State for multiple violations of the *Clery Act* and the Department’s regulations governing the requirement for institutions to maintain an accurate and complete daily crime log. The Department reviewed a sample of the entries in Penn State’s crime logs from 1998 to 2011 and found the University failed to comply with the *Clery Act*. Specifically, the University failed to accurately and consistently record in its daily crime log all incidents of crime

reported to the PSUPD; in regard to the crime incidents that were listed, Penn State did not accurately and consistently record the nature of the offense, the date, time, description and general location of the crime, and the disposition. There were reported incidents of crime listed in the daily crime logs that did not match the descriptive narratives on the PSUPD officer's incident reports. Additionally, 31 reported crimes, evidenced by incident reports, were not included in the daily crime log from November 6, 1998, through November 9, 1998, and the entire month of January 2000. Penn State failed to comply with daily crime log recording requirements until October 7, 2011, when the PSUPD implemented an automated daily crime log that featured a new records management system online.

As a result of the aforementioned violations, Penn State was required to review and revise its policies and procedures for maintaining a daily crime log in accordance with Federal regulations. The University was also instructed to designate a capable primary official and a competent alternate to ensure that its daily crime logs are updated in an accurate and complete manner in accordance with Federal regulations and made accessible to both the campus community and the general public. Furthermore, the University was required to review and assess all other issues, deficiencies, or shortcomings identified in this finding.

The Department carefully reviewed all information, including Penn State's response and supporting documentation. Based on that review, each of the violations noted in the noncompliance section of the initial finding are hereby sustained.

Penn State was correct that the regulations requiring institutions to maintain a crime log did not become effective until July 1, 2000; however, the Department's finding was not grounded solely on that basis. In fact, the PSUPD did have a daily crime log that it referred as the Daily Activity Log before Federal regulations required an institution to maintain a daily crime log, and thereafter in 2012, the PSUPD referred to its daily crime log as the University Police Daily Activity and Fire Log. That log, or at least parts of it, was made available to the public. Moreover, the University included language in its ASRs prior to 2000 that specifically announced the crime log data was available for public inspection. Although this document was officially referred to as a press log, the disclosures in the ASRs made it clear that the document was available for inspection by members of its campus community and the local media sources in order to communicate essential safety information to the general public. The ASR disclosure read:

"University Police publishes a press log every day, which is available to members of the press and public. This log identifies the type, location, and time of each criminal incident reported to University Police. The Daily Collegian (the student newspaper), the Centre Daily Times (the local newspaper), and the local television and radio stations contact the office each day to acquire information from this log."

Policies, Safety & U, A Publication of Student Affairs, Business Services and Human Resources 1998 - 1999 [1998 ASR], and 1999 - 2000 [1999 ASR] pg. 3.

When an institution voluntarily assumes a standard that goes beyond a specific regulatory requirement and announces that standard to the public, the institution will be held responsible for meeting its public commitment, lest the consumer protection and transparency goals of the Department be undermined and the public misled.

In upholding this finding, the Department also calls special attention to the University's treatment of Incident #41-98-1609. This report documented one of the earliest-known crimes of Sandusky on the Penn State campus. The details of the case are disturbing and point to two separate occasions where Sandusky showered with and inappropriately touched young boys on University property. In the PRR, the Department determined that the University's decision to delay the entry of the incident on the crime log and to title the entry in a misleading manner that could not be easily-understood by the public violated the intent and requirements of the *Clergy Act*.

In the crime log, Penn State identified the incident in question as "Administrative Information," an innocuous and amorphous title that is most often used by campus police departments when, in the course of normal operations, a determination is made that some non-law enforcement, non-emergency follow-up is required such as a facilities repair, insurance claim, or communication with civilian authorities. In this instance, however, a distraught mother contacted authorities to report that Sandusky had "hugged" her naked son in a shower room and that PSUPD's "investigation determined that a 10 year old male was also hugged in the shower at a different time by the same staff member." Despite the University's claims to the contrary, this incident was investigated as a reported criminal incident. The investigator, a well-experienced and dedicated member of the PSUPD, committed significant time and attention to the case. The officer's report and other relevant documents clearly showed that the boy was shaken by the incident and was uncomfortable discussing it. His mother was understandably upset as well, as noted in the supplement to the initial incident report, which stated that "upon further questioning Mrs. [name redacted] was told by [name redacted] that Jerry put him in a bear hug in the shower while both were naked."

Moreover, the Department has developed additional information that supports its determination and calls the accuracy of the University's response into serious question. In March 2014, Department officials interviewed the officer who investigated the reported offense. This officer served the Penn State community for 33 years, 22 in the criminal investigations unit. Concerning the report prepared in this case, the officer stated that he classified the incident as "suspected child abuse." He stated that he did not learn that the report was reclassified as "administrative information" until several years later, well after his retirement in 2006. The officer also stated that he learned during a court hearing in late 2013 that the former PSUPD Director admitted to ordering the classification change. The former officer stated that he could not think of a legitimate reason for the change but believed that the former director was likely directed to alter the report by Gary Schultz, who was then Penn State's Senior Vice President of Business and Finance and the Director's boss. According to the former officer, Schultz required the Director to immediately notify him of incidents involving employees and that Wendell Courtney, who essentially acted as General Counsel, was consulted in nearly every case involving an employee. This former officer correctly pointed out that reports are to be classified

based on the allegations and information developed by responding officers and investigators rather than at the direction of administrators.

Under the procedure in place at the time, reports should have been reviewed and approved by a supervisor before going to the records department for additional processing and retention. The former officer also reported that his procedure was to consult with the Centre County District Attorney's Office on all "major investigations" so that "Old Main" (senior Penn State administrators) could not interfere and that this was the process that he followed with respect to the 1998 Sandusky investigation. Department officials also interviewed the PSUPD officer who was the supervisor of the records department at the time of the 1998 case involving Sandusky. This officer, who had nearly 37 years of service and who retired with the rank of Lieutenant, stated that the then Director or Assistant Director directed him to change the classification to "Administrative Information." Like the first former officer mentioned above, this retired officer did not agree that the report should have been altered and believed that it was an attempt to cover up the incident. He also reported that he believed that Shultz was the one who ultimately ordered the change. Although he disagreed with the order, he did what he was ordered to do by his superiors. Of special note, the retired officer also stated that incidents with this type of classification would not have been included in the reports that were reviewed for inclusion in the University's crime statistics included in the ASR and reported to the Department. While the prosecutor ultimately did not opt to bring charges against Sandusky at the time, there is no question that this matter was investigated as a crime. Police officers do not present cases to prosecutors as mere "Administrative Information."

The Department also dismisses Penn State's argument that claimed it was not obligated to preserve records in its daily crime log that existed before January 1, 2006. The Department emphasizes that the records retention provision at 34 § 668.24(e) effectively provides for the preservation of *Clery Act*-related records, including daily crime logs, for three years past the last time that those records are used in any way to substantiate an institution's efforts to comply. This means that the effective record-retention period for *Clery Act* purposes is nearly seven years. This is a well-understood standard among *Clery Act* professionals in the regulated community. Notwithstanding the record-retention requirement, the Department points out again that there is no statute of limitations regarding the Secretary's authority to make findings of violation, even where there may be limitations on the agency's authority to impose fines for such violations. This means that the Department can examine any documents that are in an institution's possession. This review was officially announced with the transmission of the Department's November 9, 2011, letter. Prior to the announcement and throughout the program review, the Department informed Penn State officials that the initial period under review would go back to 1998 and may be expanded as needed. The Department also consulted with Penn State about the availability of PSUPD records, including incident reports and daily crime logs, and was assured that records maintained by the police dated to the mid-1990's. At that time, and throughout the review, University officials were notified that all institutional records that were in any way relevant to campus safety operations or *Clery Act* compliance were under Federal review and that such records must be maintained in their current form throughout the process. So while it is arguable that the University was not required to retain certain records examined by the review team, there is no question that those records were in the custody of the University and were, therefore, available for examination. No concern about the agency's

authority to examine these records or to make findings concerning them was registered during the site visits.

With regard to the University's missing daily crime log entries for incident reports #41-98-2920 through 41-98-2950 for the dates of November 6-9, 1998, and the entire month of January 2000, the Department has determined that Penn State violated *34 C.F.R. §668.46(f)*, which requires a Title IV institution to maintain an up-to-date crime log. While the University claimed that the crime logs for these dates was originally on paper and then transferred to a computer system, the University did not produce any evidence to support its claimed sequence of events. Penn State speculated that the missing entries were due to a technical issue with a scanner or perhaps a clerical error but did not provide any evidence to support this speculation. Furthermore, under Penn State's established policy at the time, as reflected in its *Policy and Procedures for Maintaining a Daily Activity Log or Daily Activity and Fire Log "Appendix A,"* a Police Records Coordinator or a designee was delegated the duty to ensure the University's crime logs were maintained and updated accurately; however, PSUPD's practices for maintaining the crime logs never identified that numerous sequential entries were missing for three days in November 1998 and again for the entire month of January 2000. Because the issue was not immediately rectified, it solidifies the Department's finding that the daily crime log was not consistently maintained by the University.

The Department also determined that Penn State violated the *Clery Act* requirement that the daily crime log be maintained. Penn State's entry to the crime log for incident report #41-99-2043 incorrectly showed "Administrative Information" as the nature of the crime; whereas, the narrative description of the crime identified it as a "forcible sexual assault." The University failed to comply with the requirement to disclose in the crime log all of the reported offenses, the occurrence date and time of the incident, as well as the disposition.

With regard to crime log entry #41-99-3199, the Department has determined that Penn State failed to properly enter this incident in the log. Initially, on December 17, 1999, the University recorded in the crime log an incomplete description about the nature of the crime, the date, and time for the occurrence of the crime. Based on the PSUPD's incident report, the nature of the crime should have been recorded in the crime log as, "Burglary, Simple Assault, and Indecent Assault," rather than simply "Assault." On December 20, 1999, within 60 days of the initial crime log entry, the complainant admitted to fabricating reports concerning alleged rapes and assaults. A PSUPD supplemental incident report dated January 3, 2000, revealed the reporting police officer and a supervisor determined that incident #41-99-3199 was "unfounded." The University was obligated under the *Clery Act* to update the disposition as such in the crime log.

Penn State's administrative failures in regard to the overall records management of previous daily crime logs was and continued to be a concern. The problems took many forms. The University attributed some of its deficiencies to scanning errors dating to approximately 2005. During this time, the University allegedly scanned, in no particular order, multiple years' worth of criminal offenses and documents of record. Penn State failed to ensure the records were filed in an organized manner, which led to missing daily crime logs for November 6 - 9, 1998, and the entire month of January 2000. The Department does not accept Penn State's excuse of clerical and/or technical issues concerning this matter.

In arriving at the determination to sustain this finding and to not accept narrow explanations for certain pieces of the larger violation, the Department notes that the review team continued to identify problems with the University’s crime logs into the latter years of the review period. As noted in Finding #5, the Department has found numerous errors in the classification of crimes, which also has the effect of causing the crime logs to be inaccurate. In numerous other cases, Penn State failed to include all of the crimes that were documented in a single reported crime or in any single incident report. In addition, dispositions were routinely not updated as information became available. Moreover, the *Clery Act* requires that the log include information about incidents of crime reported to the campus police that can be easily understood by the public. In a sampling of just nine months over a three-year period, the Department identified the following instances where log entries did not identify a crime and instead used amorphous descriptors such “Administrative Information” in a similar manner to the cases described above.

Daily Crime Log April			
Category	2008	2009	2010
Department Information	16	58	16
Rules & Regulations	7	6	12
Health & Safety	147	128	62
Call for Service	11	22	7
Blank Reports	2	4	1

Daily Crime Log September			
Category	2008	2009	2010
Department Information	38	42	25
Rules & Regulations	7	17	26
Health & Safety	165	97	82
Call for Service	16	40	7
Blank Reports	0	1	0

Daily Crime Log October			
Category	2008	2009	2010
Department Information	41	45	27
Rules & Regulations	8	12	20
Health & Safety	193	103	123
Call for Service	27	35	11
Blank Reports	2	1	4

The crime log is to be precisely that: an easy-to-understand listing of criminal activity. If the incidents tallied above were not crimes, there was no reason to enter them on the log. If they were criminal offenses, they should have been labeled as such. Given the gravity of this violation, the officials and directors of Penn State are advised that they must take all actions that may be necessary to address the deficiencies and weaknesses identified by the Department as

well as those that were detected during the preparation of the University's response and/or as may otherwise be needed to ensure that these violations do not recur.

Penn State is once again reminded that the exceptions identified above constitute serious violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" violation of this type once they occur. Penn State asserted that no remedial action was necessary and claimed that it was in compliance with the crime log requirement throughout the program review period as required by its PPA. For the reasons cited, the Department plainly disagrees. Penn State officials must understand that the failure to maintain a daily crime log deprives students, employees, parents, the media, and other stakeholders of access to important campus crime information to which they are entitled. Like timely warnings and emergency notifications, the information in the log provides up-to-date current data about the status of criminal incidents on the campus and in the near-campus community. In this way, the crime log and safety alerts supplement the longitudinal statistical data that is included in the ASR and the Department's online campus crime statistics database. For these reasons, the University is advised that any remedial action that it may take in the future cannot and will not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding #8: Reporting Discrepancies in Crime Statistics Published in the Annual Security Report and those Reported to the Department's Campus Crime Statistics Database

Citation:

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

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

Additionally, the Clery Act requires that all Part I offenses and all other offenses resulting in bodily harm that manifest evidence that a victim was intentionally targeted due in some part to a perpetrator's bias against members in certain suspect classifications must be classified as a hate crime. The six covered categories of bias are: race, gender, religion, sexual orientation, ethnicity or National origin, and disability. The victim's membership in the covered category may be actual or perceived as the key is the perpetrator's bias against the identity group. 34 C.F.R. § 668.46(c)(3).

Noncompliance:

Penn State failed to submit accurate and complete crime statistics to the Department's online campus crime statistics database (also known as the "Campus Safety and Security Data Analysis Cutting Tool"). The crime statistics that the University submitted to the Department did not match those that were published in the ASRs the University distributed to students and staff for calendar years 2002 to 2011. An institution must report the same crime data to the Department as it reports in the ASR. Moreover, while the annual ASR includes crime statistics for the last 3 years, the statistics disclosed for any given offense classification and geographic location for a particular year should not change when the next year's three year data is submitted online and published in the ASR. If a change is required, an institution must provide a caveat to explain those changes to users of the ASR and the Department's online database.

During the review, the University was unable to present documentation and evidence to substantiate the accuracy and completeness of its crime data. At the Department's request, Penn State attempted to provide documentation to support the statistical data that was provided to the campus community and the Department; however, these reports, commonly referred to as "audit trails" contained so many errors and omissions so as to render them unreliable for compliance monitoring purposes. The Department requested that the University reconstruct the audit trails and the University made multiple attempts to provide sufficient support for the University's crime statistics. However, serious problems persisted and the institution was unable to document the accuracy of the data. In the last set of audit trails that were provided, Penn State conceded that its crime statistics, and by logical extension its back-up information, contained numerous inaccuracies, omissions, and anomalies.

The University described some of these discrepancies in caveats on the "Face Sheet" of its audit trails for each calendar year. According to Penn State, some of the discrepancies between the crime statistics included in the ASRs and those reported to the Department for calendar years 2004 to 2007 were attributed to: 1) data conversion from an old DOS system to a modern law enforcement records management system; 2) expunged records; 3) clerical and documentation errors, and, 4) the unavailability and/or incompleteness of records from state and local law enforcement agencies. As noted throughout this report, the Department has determined that Penn State's campus crime statistics were inaccurate, incomplete, and significantly flawed throughout the review period. The University has conceded that it is not possible to substantiate the validity of any of its statistical data sets. Nevertheless, these factors do not adequately explain why the campus crime statistics included in Penn State's ASRs do not match the statistics submitted to the Department for the same crime and geographical categories and the same time period.

The following charts and discussion illustrate a representative sample of the types of errors that were identified in a comparison of Penn State's ASRs, submissions to the online database, and the University's own supporting documents (audit trails). These discrepancies in ASR data from year-to-year highlight the overall inaccuracy and unreliability of statistical disclosures in the ASRs and OPE submissions as well as the University's own source documents and supporting documentation.

1. Forcible Sex Offenses - On-Campus for Calendar Year 2002

The University’s statistical data for calendar year 2002 that was submitted to OPE in 2003 reported zero forcible sex offenses (FSOs) in the on-campus category; however as part of the 2004 crime statistics reported to the Department and in the ASR the University reported 12 forcible sex offenses in that category for that same calendar year.

Penn State’s audit trails were recreated in August 2012. According to the University’s caveat in the “Face Page” of that year’s audit trail, “audit information no longer exists for 2002 data reported on the 2003 ASR.” As noted above, the University’s caveat also attributed some discrepancies to “issues with data conversion” and/or “expungements,” among other possible causes.

Penn State has proffered several explanations regarding the reasons for the incorrect reporting of forcible sex offenses for calendar year 2002; however, the University summarized its version of the essential facts in a document prepared during the Department’s program review entitled, “Explanation of correction of University Park Annual Security Report for 2003 & 2007 & 2011.” In the document, Penn State stated that former Assistant Director Bruce Kline was contacted by a senior officer from Security on Campus, Inc. (now called the Clery Center for Security on Campus), who questioned the accuracy of the University’s FSO statistics as published in the 2003 ASR. The University reported zero FSO offenses for calendar year 2002 in the 2003 ASR. Pursuant to that inquiry, police records and systems were checked and it was determined that 12 offenses were omitted due to various errors and oversights. Penn State then issued a supplement to the ASR containing corrected crime statistics.

Forcible Sex Offenses On-Campus Calendar Year (CY) 2002	<i>CY 2002 Data Reported on 2003 ASR</i>	<i>CY 2002 Data Reported to OPE in 2004</i>	<i>CY 2002 Data Reported on 2004 ASR</i>
	0	12	12

2. Non-Forcible Sex Offenses on Public Property for Calendar Year 2004

Penn State’s online submissions to OPE in 2005 and 2006 reported 0 non-forcible sex offenses on public property during calendar year 2004. However, the ASRs for 2005 and 2006 indicate that one non-forcible sex offense occurred on public property during calendar year 2004.

A review of Penn State’s audit trail, which was initially cobbled together by the University in November 2011 and recreated in August 2012, indicates “audit information was incomplete for 2004 data reported on the 2005 ASR.” Once again, the University’s caveat on the face sheet of its audit trail attributes some discrepancies “to issues with data conversion,” etc.

Non-Forcible Sex Offenses Public Property Calendar Year (CY) 2004	<i>CY 2004 Data Reported to OPE in 2005</i>	<i>CY 2004 Data Reported on 2005 ASR</i>	<i>CY 2004 Data Reported to OPE in 2006</i>	<i>CY 2004 Data Reported on 2006 ASR</i>
	0	1	0	1

3. Arrests for Drug Law Violations on Public Property for Calendar Year 2005

Penn State’s 2006 ASR and its OPE submission for calendar year 2005 disclosed 40 DLV arrests on public property. In its 2007 ASR and submission, however, the University reported only 24 DLV arrests on public property for 2005.

In 2007, Penn State’s OPE data contained a caveat that explained the reduction in the number of reported arrests (from 40 to 24 DLVs) resulted from a “review of arrest reports.” However, Penn State’s ASR did not explain the change. The University’s 2006 audit trail still indicates the original total of 40 such arrests but only specifically references 11 of them. Once again, the caveat blames “outside agency [local law enforcement agencies] information” for the discrepancy.

Arrests for Drug Law Violations Public Property Calendar Year (CY) 2005	<i>CY 2005 Data Reported to OPE in 2006</i>	<i>CY 2005 Data Reported in 2006 ASR</i>	<i>CY 2005 Data Reported to OPE in 2007</i>	<i>CY 2005 Data Reported on 2007 ASR</i>
	40	40	24	24

4. Arrests for Liquor Law Violations on Non-Campus Property for Calendar Year 2005

The University’s online submission to OPE during 2006 listed zero arrests for LLVs on non-campus property during calendar year 2005. The 2006 ASR, on the other hand, indicated 107 LLV arrests on non-campus property for the same calendar year. Penn State’s 2007 ASR and its data submission to OPE for that year listed 82 LLV arrests were made on non-campus property during calendar year 2005. Once again, Penn State claimed that the implementation of a new record management system, myriad recordkeeping problems, and the failures of outside law enforcement agencies were to blame for these discrepancies.

Arrests for Liquor Law Violations Non-Campus Calendar Year (CY) 2005	<i>CY 2005 Data Reported to OPE in 2006</i>	<i>CY 2005 Data Reported in 2006 ASR</i>	<i>CY 2005 Data Reported to OPE in 2007</i>	<i>CY 2005 Data Reported in 2007 ASR</i>
	0	107	82	82

5. Arrests for Liquor Law Violations on Public Property for Calendar Year 2005

Penn State’s LLV arrest statistics for 2005 as disclosed in the 2006 and 2007 ASRs and OPE submissions diverged from each other, reporting 100 for 2005 in 2006 and 96 for that same year in 2007. The University’s caveat claims that the reporting error was identified during a “review of arrest reports.” However, the ASR contained no such caveat.

Arrests for Liquor Law Violations Public Property Calendar Year 2005	<i>CY 2005 Data Reported to OPE in 2006</i>	<i>CY 2005 Data Reported in 2006 ASR</i>	<i>CY 2005 Data Reported to OPE in 2007</i>	<i>CY 2005 Data Reported in 2007 ASR</i>
	100	100	96	96

6. Arrests for Drug Law Violations on Public Property for Calendar Year 2006

The University reported conflicting crime data to the Department and the campus community for calendar year 2006. In 2007 and 2008, Penn State’s online submission to OPE listed 54 DLV arrests on public property during calendar year 2006. Penn State’s 2007 and 2008 ASRs listed 40 DLV arrests on public property for the same year.

Again, the face sheet for the revised audit trails stated that “audit information was incomplete for 2006 data reported on the 2007 ASR”. The caveats again state that discrepancies “may be attributed to issues with data conversion or expungements.”

Arrests for Drug Law Violations Public Property Calendar Year (CY) 2006	<i>CY 2006 Data Reported to OPE in 2007</i>	<i>CY 2006 Data Reported in 2007 ASR</i>	<i>CY 2006 Data Reported to OPE in 2008</i>	<i>CY 2006 Data Reported in 2008 ASR</i>
	54	40	54	40

7. Arrests for Liquor Law Violations on Public Property for Calendar Year 2006

Penn State’s online submissions for 2007 and 2008 listed 130 LLV arrests on public property for calendar year 2006. The statistics disclosed in the 2007 ASR also indicate 130 LLV arrests on public property during that year. However, the University’s 2008 ASR reported only 118 LLV arrests in 2006. Penn State attributed the errors to the same factors outlined above.

Arrests for Liquor Law Violations Public Property Calendar Year 2006	<i>CY 2006 Data Reported to OPE in 2007</i>	<i>CY 2006 Data Reported in 2007 ASR</i>	<i>CY 2006 Data Reported to OPE in 2008</i>	<i>CY 2006 Data Reported to 2008 ASR</i>
	130	130	130	118

8. No Statistics Reported in 2009 for Non-Campus Property Category for Calendar Year 2007

Based on records maintained by the Department and on representations by University officials, Penn State did not submit any statistics for incidents of crime reported as occurring on non-campus buildings or property for calendar year 2007 to the OPE database in 2009; however, crime statistics were published for that year in the 2008 and 2009 ASRs for the same crime categories and geographic location.

Failure to submit and disclose reported incidents of crime accurately violates the Clery Act and the Department's regulations. The inconsistent and inaccurate reporting of crime statistics confuses users of the ASR and the Department's online campus crime statistics database and deprives the campus community and the public of important campus crime information.

Required Action:

As a result of this violation, Penn State must conduct a review of all discrepancies in the statistical disclosures in its ASRs, OPE submissions, and its audit trails. In its response, Penn State must submit a report that identifies all discrepancies, determines their cause, and for exceptions noted in the calendar year 2007 data - forward, details the specific actions taken to correct the discrepancies and ensure that it does not recur. The University is permitted to integrate this part of the required action into the full file review detailed in Finding #3.

Furthermore, Penn State must take all necessary corrective action to ensure that all of its campus crime statistics are properly identified, classified, compiled, and disclosed in accordance with all Clery Act requirements going forward. To accomplish this requirement, Penn State must also ensure that all offenses are organized by Clery geographical category and calendar year before any data is published in the ASR or is submitted to the Department. The University must also ensure that any changes to its crime statistics are fully explained so that users of the data are not misled. Furthermore, the University must, to the extent possible, ensure that all revised statistical data sets include incidents of crime reported to CSAs but that were not included in the data published in the ASRs and in the statistics submitted to the Department's online campus crime statistics database.

Penn State is required to review and improve its policies, procedures, internal controls, and training programs to ensure that all crime statistics are disclosed properly as published in the ASR and as submitted to the Department. As a result of the large number of data discrepancies noted over several years, Penn State also must develop and implement policies and procedures to address the weaknesses documented above as well as those gleaned from the internal review and response preparation process. These new policies and procedures must provide for adequate custody, control, and integrity of all Clery-reportable data and supporting documentation. A copy of these additional policies and procedures for maintaining and archiving data must accompany the University's response to this program review report.

Institutional Response:

In its response, Penn State concurred with part of the finding and challenged other parts. Penn State claimed that the annual crime statistics submitted online to the Department's campus crime statistics database were not made available to them "to access, revise, or correct," once the submission period was closed for the reporting year. In addition, Penn State claimed that it was hampered in its ability to respond to the finding, because the University had not retained records relating to the data it had submitted and was, therefore, dependent on the Department to give officials the details about its own data. The University stated that the alleged discrepancies in the crime statistics were analyzed by reviewing the ASRs it issued during calendar years 1999 to 2011. Penn State said the Department should have taken into account the results of the University's "2012 Data Reconstruction" that analyzed crime statistics for calendar years 2009, 2010, and 2011, because a "Preliminary Report" from the Department showed a request for the data. Further in the response, Penn State revealed that complete historical data was unavailable for the University during the "2012 Data Reconstruction" and stated it was not possible to reconstruct the causes of some historical differences with any degree of certainty. However, the University claimed some causes were: 1) lawful expungements; 2) incomplete information from outside law enforcement agencies; and, 3) data losses during the University's 2009 software upgrade.

Penn State responded to the specific violations cited in the PRR as follows:

- *C1. Forcible Sex Offenses – On-Campus for Calendar Year 2002.*
The University's report of zero on-campus forcible sex offenses for calendar year 2002 in its 2003 ASR was inadvertently incorrect; it should have been reported as 12 offenses. As recognized by the Department in its PRR, Penn State corrected the statistic in a December 2003 revision of its 2003 ASR as soon as the University recognized the issue. The University would not have been able to correct this statistic in the Department's database at that time because the window for submissions to the database had closed. Thereafter, the University correctly reported the statistic of 12 on-campus forcible sex offenses in calendar year 2002 in both its 2004 and 2005 ASRs as well as its 2004 and 2005 submissions to the OPE database.
- *C2. Non-Forcible Sex Offenses on Public Property for Calendar Year 2004.*
The University reported zero non-forcible sex offenses on public property for calendar year 2004 in the database in 2005 and 2006. However, Penn State's ASRs for 2005 through 2007 reported one non-forcible sex-offense on public property in calendar year 2004. Penn State said it could not identify the cause of this difference. Given the consistency in the statistics correctly reported in the University's ASRs for 2005, 2006, and 2007, however, it would appear that the issue noted by the Department most likely arose from an inadvertent data-entry error in the University's submission to the database in 2005, which was replicated from the 2005 submission into the 2006 submission. Thus, while the University's OPE database submission contained this inadvertent error, the University's 2005, 2006, and 2007 ASRs consistently and correctly reported this statistic to the University's students and employees.

- C3. Arrests for Drug Law Violations on Public Property for Calendar Year 2005.
The University reported 40 arrests in calendar year 2005 for drug law violations (DLV) on public property in the statistics submitted to the database in 2006 and in the University's 2006 ASR. However, the 2007 ASR dropped the reported number of arrests in this category for 2005 to 24, while still reporting 40 arrests in the database. As the Department noted in its PRR, the University alerted the Department of this change in its database submission in 2007. The University told the Department that it had conducted a review of historical arrest reports, necessitating a correction of the previously-reported statistic from 40 to 24. The University was not able to provide any further detail at this time. However, the University argued that there is no requirement under the *Clery Act* that it explain the change in any additional detail. Moreover, the University argued that self-correction of a previously over-reported statistic is conduct that the Department would presumably wish to encourage, and not discourage, in reviewing and evaluating the University's *Clery Act* compliance efforts.

- C4. Arrests for Liquor Law Violations on Non-Campus Property for Calendar Year 2005.

The University reported zero arrests for liquor law violations (LLV) on non-campus property in calendar year 2005 in the statistics submitted to the database in 2006, while the University's 2006 ASR reported 107 arrests in 2005. Penn State claims that this difference is the result of an inadvertent data entry error, in which the numbers of LLV arrests and weapons arrests in the 2006 ASR were correct, but were accidentally transposed when included in the University's submission to the Database. The University contends that this conclusion is evident from the fact that the 2006 ASR reported 107 LLV arrests and zero weapons arrests during calendar year 2005, while the University's 2006 database submission showed the exact opposite -- zero LLV arrests and 107 weapons arrests.

As for the difference between the 2005 LLV arrest statistic of 107 in the 2006 ASR and the 82 arrests in the same category for 2005 in the University's 2007 ASR and database submission, the University notes that it alerted the Department to the reason for this difference in its OPE database submission in 2007. Specifically, the University notified the Department that it had conducted a review of arrest reports necessitating a reduction of the previously reported statistic. The University was not able to provide any further explanation at this time. As noted above, however, this self-correction by the University of a previously over-reported statistic in its ASR is conduct that the University would expect to be encouraged by the Department in furtherance of the University's *Clery Act* compliance efforts.

- C5. Arrests for Liquor Law Violations on Public Property for Calendar Year 2005.
The University's statistics for LLV arrests on public property for calendar year 2005 that were submitted to the database in 2006 and reported in the 2006 ASR showed 100 arrests, which differed from the statistics for the same year in the University's 2007 ASR and submission to the database, both of which showed 96 arrests. Once again, the University alerted the Department to the reason for this difference in its database submission in 2007, when it notified the Department that it had conducted a review of historical arrest

reports requiring certain corrections to previously submitted statistics. The University was not able to provide any additional explanation at this time.

- C6. Arrests for Drug Law Violations on Public Property for Calendar Year 2006.
The University's statistics for DLV arrests on public property for calendar year 2006 that were submitted to the database in 2007 and 2008 reported 54 arrests, which differed from the statistics for 2006 in the University's ASRs in 2007 and 2008, which reported 40 arrests. This discrepancy was corrected by the University in a revised 2007 ASR in which the University revised the statistic for public property DLV arrests to 54, consistent with the statistic reported in the University's database submission. The University was not able to reconstruct the cause of this error.
- C7. Arrests for Liquor Law Violations on Public Property for Calendar Year 2006.
The University reported 130 LLV arrests on public property in calendar year 2006 to the database in 2007 and 2008 and in the University's 2007 ASR but reported 118 arrests for the same year in the University's 2008 and 2009 ASRs. The University could not explain the cause of this difference.
- C8. No Statistics Reported in 2009 for Non-Campus Property Category for Calendar Year 2007.
After reviewing the 2009 and 2010 OPE database information, as provided by the Department, the University conceded that it did not submit statistics for crimes occurring on non-campus property in calendar year 2007. The University was not able to identify the cause of this failure.

Finally, Penn State noted that it has recently developed a *Policy and Procedures for Collecting, Classifying, and Publishing Annual Security Report and Annual Fire Safety Report Data*, which is intended to ensure the University's statistics for Clery-reportable crimes are "properly collected, classified and distributed." The policy includes procedures for ensuring that: 1) annual crime statistics are submitted online to the Campus Safety and Security Data Analysis Cutting Tool (CSSDACT) and, 2) one or more quality-assurance reviews will be conducted to reconcile the data submitted to the CSSDACT to the crime statistics included in the ASR. In addition a full-time Compliance Manager and Clery Compliance Coordinator is in place to help ensure adherence to internal policies and procedures and to facilitate *Clery Act* compliance going forward.

Final Determination:

Finding #8 cited Penn State for multiple violations of the *Clery Act* and the Department's regulations, as outlined in the noncompliance section above. Specifically, the University failed to submit accurate and complete data to the Department's campus crime statistics database, known as the CSSDACT, that matched the crime data included in its ASRs during the review period.

As a result of the violations, the University was required to conduct a review of all discrepancies in the statistical disclosures in its ASRs, the online submissions to the Department, and its audit

trials. Furthermore, Penn State was required to take all necessary corrective action to ensure that all campus crime statistics are properly identified, classified, compiled, and disclosed in accordance with all *Clery Act* requirements going forward. Additionally, the University was required, to the extent possible, to ensure that all revised statistical data sets include incidents of crimes reported to CSAs, which in the past were not included in statistics published in the ASRs and submitted to the Department's online campus crime statistics database. Penn State was also required to review and improve its policies, procedures, internal controls, and training programs to ensure that all crime statistics are disclosed properly as published in the ASR and as submitted to the Department. The new policies and procedures were to provide adequate custody, control, and integrity of all Clery-reportable data and supporting documentation. A copy of the additional policies and procedures for maintaining and archiving data were to accompany the University's response to this PRR.

In its response, Penn State substantively concurred with the finding but raised various explanations and excuses for the reporting discrepancies. While it is not at all clear that the University conducted additional analysis to identify other reporting errors as directed, Penn State did provide some background on the causes of the of the violation and did summarize actions that would be taken to prevent recurrence.

The Department carefully examined all available information including Penn State's narrative response and supporting documentation. The Department's conclusions on each of the cited discrepancies follow:

C1. Forcible Sex Offenses – On-Campus for Calendar Year 2002.

The Department determined that Penn State reported incorrect statistics for forcible sex offenses on on-campus property for calendar year 2002 during reporting year 2003. The Department's decision is based on Penn State's document titled "*Explanation of correction of University Park Annual Security Report for 2003 & 2007 & 2011.*" The University had previously provided the document to show an audit trail was recreated to reconcile its crime statistics and to comply with a "Required Action" in the PRR. In the *Explanation*, Penn State explained that an outside group questioned a former senior director at the University about the accuracy of the 2002 statistic for forcible sex offenses that was reported during the 2003 reporting year. In response to those questions, Penn State checked its police records and systems and concluded that 12 offenses had been improperly omitted from the statistics for 2002 due to various errors and oversights. The Department notes that the University's established policies and procedures did not detect the incorrect crime statistics, and it was only after the outside group raised questions that Penn State took any action to check or confirm the statistics it provided to the campus community and the Department. This violation is hereby sustained.

C2. Non-Forcible Sex Offenses on Public Property for Calendar Year 2004.

The Department determined that Penn State reported its statistics incorrectly concerning non-forcible sex offenses on public property for calendar year 2004. The determination was based on the fact that during reporting years 2005 and 2006, the University reported zero offenses in this category to the CSSDACT and reported one in the ASR for calendar year 2004. Penn State's claim that it was not required to retain records supporting the crime statistics that were reported before January 1, 2006, is incorrect. Each year, an institution is required to report crime statistics

for the three most recent years to OPE and in its ASRs. As such, Penn State's 2004 crime statistics were reported in years 2005, 2006, and 2007; therefore, the University's records retention obligation included all of the statistics reported in those years, which would include the statistics for 2004. Furthermore, Penn State had the opportunity to provide an explanation for the revised crime statistic in the caveat section of OPE's database once the reporting period had ended in 2006. The annual survey process requires institutions to provide an explanation for revised crime statistics in the caveats. Penn State did not do so. This violation is hereby sustained.

C3. Arrests for Drug Law Violations on Public Property for Calendar Year 2005.

Penn State acknowledged that it reported 40 DLVs on public property for calendar year 2005 in the statistics submitted to the Department in 2006 and in the 2006 ASR, but the 2007 ASR reported 24 violations in that category for that same calendar year. Penn State did not explain the revision in the caveat section on the CSSDACT or on the ASR during the 2006 reporting year. The discrepancies identified are indicative of the University's inability to ensure that it was accurately reporting crimes to the Department and the campus community in accordance with the *Clery Act*. This violation is hereby sustained.

C4. Arrests for Liquor Law Violations on Non-Campus Property for Calendar Year 2005.

The University's submission to the Department's database in 2006 showed zero arrests for LLVs on non-campus property during calendar year 2005, while the University's 2006 ASR reported 107 arrests for LLVs on non-campus property for the same year. The Department based its determination on the following factors: 1) a subsequent inspection of the University's submission to the database during 2006 showed that arrest statistics concerning LLVs on non-campus property for calendar year 2005 were reported differently than the statistics it published in the 2006 ASR for the same offenses, geographic location, and calendar years; 2) Penn State's response revealed that the statistics were accidentally transposed or possibly caused by its own data entry error; and, 3) the University's preexisting procedures for ensuring statistical accuracy in OPE's campus crime statistics database were not properly performed. This violation is hereby sustained.

C5. Arrests for Liquor Law Violations on Public Property for Calendar Year 2005.

The Department has determined that the University violated crime reporting requirements when it submitted to the CSSDACT and included in its ASR during reporting year 2006 that 100 LLVs occurred on public property during calendar year 2005 and reported 96 offenses in this category for the same year in its report to the database and in the ASR for reporting year 2007. The Department notes that Penn State did not include any explanation about this error/correction as a caveat in the 2007 ASR to notify the campus community of the change. This violation is hereby sustained.

C6. Arrests for Drug Law Violations on Public Property for Calendar Year 2006.

The Department determined that Penn State violated reporting requirements of the *Clery Act* when it reported conflicting crime data to the Department and to the campus community for calendar year 2006. Penn State's 2007 and 2008 submissions to the CSSDACT listed 54 DLV arrests on public property during calendar year 2006, whereas Penn State's 2008 ASR listed 40 DLV arrests on public property for the same year. Penn State did not provide an explanation

about the error/correction in the caveat of OPE's database in 2007 for calendar year 2006. This violation is hereby sustained.

C7. Arrests for Liquor Law Violations on Public Property for Calendar Year 2006.

The Department determined that crime reporting requirements were violated when Penn State's 2007 and 2008 submissions to the CSSDACT and the University's 2007 ASR showed 130 LLVs on public property in calendar year 2006, while the 2008 and 2009 ASRs showed the statistic as 118 for same offense, geographic location, and calendar year. Penn State did not contest this finding. This violation is hereby sustained.

C8. No Statistics Reported in 2009 for Non-Campus Property Category for Calendar Year 2007.

The Department determined that the University did not submit crime statistics to the Department's database for non-campus property for calendar year 2007. The Department conducted an additional review of the University's 2009 and 2010 crime statistics that were submitted to the CSSDACT. Penn State also did not contest this finding. This violation is hereby sustained.

In sustaining these findings, we start with the obvious point that the crime statistics included in the ASR and submitted to the Department for a particular year need to be identical, and that Penn State's statistics frequently were not. While changes to past data may sometimes be needed, those changes have to be explained. Penn State changed data without any explanation and it cannot explain those changes now.

Moreover, the Department notes that the violations documented by the review team are actually more severe than could be ascertained at the time that the initial report was issued. The Department had already established that Penn State had not reported one forcible sex offense in its statistics for calendar year 2002 in its 2003 ASR and misclassified and under-reported numerous other crimes; however, the Department now has the University's own file review that, while not nearly as comprehensive as it was required to be, identified hundreds of other errors and anomalies. In discussions with University officials after the issuance of the report, Department officials stated that one of the objectives of the required actions for this finding was to finally ascertain if the errors and omissions were in the ASR data, the CSSDACT data, or both. The answer to that question is now clear. Neither data set was accurate or complete nor was either ever of any real value to users of the ASR or the CSSDACT, including the Department and Penn State's own students and employees. Moreover, the Department's review evidenced a systemic breakdown of what little procedure and validation mechanisms were in place and, in any regard, has determined that the University's procedures regarding the compilation and disclosure of crime statistics were woefully inadequate. It is for these reasons that the finding in its entirety is hereby sustained.

Notwithstanding these failures, the review team's analysis of the remedial actions described in Penn State's response, for the most part, satisfactorily addressed the violation. As such, the review team has determined that Penn State's remedial action plan meets minimum requirements, although it will be subject to additional testing as part of the Department's post-review monitoring program. For these reasons, the Department has accepted Penn State's response and considers this finding to be closed for program review purposes. Nevertheless,

Penn State is put on notice that the University must take all additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the institution's response and as may otherwise be needed to ensure that these violations do not recur. In this regard, the Department must point out that the new CSSDACT allows users to view up to ten years of data and, as such, it is imperative that this information be of the highest possible quality.

Furthermore, Penn State argued that it should not be cited for crime statistics that were previously over-reported, and its conduct of correcting over-reported statistics is not a violation of the *Clery Act* or a regulatory requirement. Penn State cautioned the Department that citing institutions for such a violation may discourage other institutions from correcting its statistical data in the future. Appropriately, the Department reminds Penn State that institutions have a legal obligation to publish accurate data. Penn State published significantly incorrect crime statistics on a regular basis and did not provide an explanation for the statistics that it corrected.

Penn State is once again reminded that the exceptions identified above constitute serious and persistent violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. The disclosure of accurate, complete, and fully reconciled campus crime statistics in the ASR and in its reporting to the CSSDACT is fundamental to the goals of the *Clery Act*. Access to this information permits campus community members and their families to make well-informed decisions about where to study and work and empowers individuals to play a more active role in their own safety and security. Reporting discrepancies of this type create confusion for all stakeholders, including researchers and the media, and call the University's ability and willingness to properly administer the Title IV, FSA program into serious question. Penn State asserted that it has taken adequate remedial actions and, that by doing so, that it has brought its overall campus safety program into compliance with the *Clery Act* as required by its PPA. Penn State is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

**Finding #9: Failure to Publish and Distribute an 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 listed 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 provide the ASR to all current students and employees through appropriate publications and mailing. 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).

Noncompliance:

Penn State consistently failed to demonstrate that its ASRs were distributed to all its current students and employees by the regulatory deadline. No documents produced by the University proved that Penn State distributed the ASR by October 1st of each year.

In the early years of the review period, Penn State asserted that the ASRs were published as hardcopy reports that were made available to students and employees. During this period, the University asserted that it used postcards to provide notification to current students and employees regarding the report's availability. Although these assertions were made, no information provided to the Department proved that the ASRs or the postcards were actually sent or received by all members of the campus community. Furthermore, the Department's review of information provided by the University failed to substantiate claims that any of the ASRs were in fact delivered to current students and employees by the October 1 due date established in the Department's regulations.

In addition, the University conceded that the postcard notification method resulted in numerous cards being returned due to bad addresses and other problems and that there was no back-up plan for ensuring that the ASR or other forms of notification actually reached each student and employee. Moreover, documents from its own printing department indicate that the ASRs and/or postcards were often not even printed for distribution until after the October 1st deadline during several years of the review period.

In more recent years, the University opted to distribute the ASR by posting it to the University's internet site. When an institution chooses to distribute the ASR in this manner it must, by October 1 of each year, distribute a notice to the campus community that includes a statement about the ASR's availability, its exact electronic address, a description of its contents, and an advisement that a paper copy will be provided upon request. However, the University was unable to provide any documentation showing that it actually distributed the required notice about the availability of these reports to the campus community for several years.

This finding is supported by records collected by the review team, including invoices for the printing of ASRs, sample postcards, and internal e-mail messages as well as an e-mail message that Penn State did in fact send to students and employees in 2011. With the possible exception

of the 2011 e-mail message, none of these records provide any assurance that these communications actually reached all or even most enrolled students and/or persons employed by the University at that time. Moreover, the sample postcard provided to the Department did not identify what year's ASR the card was intended to notify recipients of it, nor did it summarize the report's contents or identify the exact electronic location of the report, as required. As importantly, the sample postcard provides no assurances to the Department that the ASR was actually distributed or that the postcards actually reached their intended target by the due date. In fact, the weight of the evidence indicates that they did not.

Furthermore, the Penn State Auxiliary & Business Services invoices provided as evidence of ASR distribution do not prove timely production or distribution of the ASR to students and employees. There is no proof on any invoice that those materials reached the campus community by the October 1 deadline. The "invoice dates" are clearly not dispositive of anything and in some cases, conflict with other information provided by the University. And, the "delivery dates" appear to merely indicate bulk deliveries of ASRs to various campuses and locations, none of which provides actual proof of distribution.

The following information was excerpted from records provided by Penn State to substantiate that various ASRs were in fact published:

- **2001 ASR:** *Invoice Number 14030 was dated January 1, 2002. This invoice suggests that the 2001 ASR was printed 3 months after the October 1, 2001, deadline. Penn State did not produce any records of an earlier publication, nor were any records submitted that indicate an earlier date of distribution.*
- **2002 ASR:** *According to Invoice Number 20290, 108,300 copies of the ASR were printed and sent through the United Parcel Service mail. The invoice date was October 21, 2002, and the "Job Description" indicates that there were "22 PIECES MAILED UNITED PARCEL SERVICE 10/10/2002." No records submitted by Penn State indicate that the 2002 ASR was in fact distributed by October 1, 2002.*
- **2003 ASR:** *Invoice Number 28170 was dated October 23, 2003. Although the invoice's Job Description indicates that the "23 Different Campus Brochures 410 mailed nonprofit 9/22," the email excerpt provided to the Department contradicts the date provided on the invoice:*

*"Sent: Tuesday, September 30, 2003 10:07 AM
Subject: Re: Police Stats Files [the message reads]
The last batch was out last night, so we are finished."*

If the above email message is the University's submission of proof for the "Policies, Security and U" delivery, it falls short of what is required to substantiate distribution to current Penn State students and employees.

- **2004 ASR:** *Invoice Number 3527, dated October 18, 2004, indicates in the Job Description that "23 Different Campus Brochures Mail Qty: 9-20-04, 16,239 pieces sent*

campus mail 10-7-04.” If the Department is to surmise that both of these dates are correct, then only some members of the campus community on certain Penn State campuses actually received their reports by the deadline. Some members of the community received the ASR at least full seven days after the October 1, 2004, deadline for distributing the report. The email information contradicts the invoice information by asserting:

*“Sent: Saturday, September 25, 2004, 10:45 AM
Subject: Safety Newsletter
[the message reads] Finished the last UP batch last night.
We’re done”*

If the invoice information is Penn State’s assertion of the distribution date, then the email information is contradictory. The email information, however, is also vague and provides no proof of actual distribution. There is no proof of what information was emailed to the campus community, nor does the email alone substantiate that “the last batch” refers to Penn State’s ASR entitled “Policies, Safety and U, to say nothing of the versions of the ASR intended for students and employees at the Commonwealth Campuses.

- **2007 ASR:** *The December 10, 2007, date on Invoice Number 46309 is more than two months after the October 1, 2006, deadline for distributing the 2007 ASR to the campus community. The email (sent Sunday, September 30, 2007) contradicts the invoice information while providing no proof that the note: “Just finished up the last batch,” refers to their ASR.*
- **2008 ASR:** *The invoice (Number 56804) for production of the 2008 ASR is dated November 4, 2008, which is more than one month after the October 1, 2008, deadline for distributing the 2008 ASR.*
- **2009 ASR:** *The email for this year was sent on October 19, 2009, 18 days after the October 1, 2009, date. The Invoice Number: 62606 contain no information about a delivery date.*

While these records do indicate that ASRs were eventually published each year, these records, like those addressed above, do not substantiate compliance with the distribution requirement. Indeed, for the 14 years in question, Penn State has provided the Department with no proof that ASRs (or an appropriate notice of an ASR’s availability) were distributed on time to all current students and employees at the University Park and Commonwealth Campuses. To be clear, the Department does not question that ASRs were prepared and published or that some reports were distributed. The problem is that the records submitted to demonstrate compliance with the ASR distribution requirement simply do not provide such assurances and contain within them conflicting information.

We also note that the University did provide a copy of a mass email dated October 3, 2011, that appears to have been distributed to the L-Mass-Test@LISTS.PSU.EDU, which Penn State I.T. officials were able to identify as a list that includes at least all students and employees at the

University Park campus who have e-mail addresses on-file. Although this email message contained accurate information about the reports and could be considered sufficient proof of distribution for the University Park campus, the email was not generated and distributed until after the October 1 deadline. In addition, the University was not able to show that the ASRs for the Commonwealth Campuses and other locations were distributed in a similar manner, regardless of the date of distribution.

Finally, as noted in the citation section above, the ASR must be distributed as a comprehensive document that contains all of the statistical and policy disclosures required by 34 C.F.R. § 668.46(b). As noted throughout this report, Penn State substantially and persistently failed to publish an ASR that was accurate and complete. On that basis, this finding is further supported by the Department's determination that even the ASRs that were eventually disseminated by Penn State to some students and employees were so lacking in accuracy and required content that the University ultimately failed to ever fulfill its obligation to distribute a comprehensive ASR to all current students and employees in the manner prescribed by Federal regulations, notwithstanding the apparent attempts to distribute ASRs as referenced in the documents identified above.

Failure to publish a materially-complete ASR and to actively distribute it in accordance with Federal regulations deprives the campus community of important security information that can empower its members to make informed decisions and play a more active role in their own safety and security.

Required Action:

As a result of the violations identified in this finding, Penn State must review and revise its policies and procedures for distributing its ASR and take all necessary steps to ensure that the ASR is distributed by October 1 of each year and that this finding does not recur. As part of its corrective action plan, Penn State must ensure that all published materials that are intended to aid the University in accomplishing its responsibilities to distribute the ASR and AFSR and to provide notice about the availability of these reports include all of the required information and reach all current and prospective students and employees, as required.

A copy of the University's new and revised policies and procedures must accompany its response to this program review report. Additional corrective actions may be required to address this violation. If such actions are deemed necessary, instructions will be included in a supplement to this program review report or in other correspondence.

If Penn State wishes to challenge any part of this finding, it must provide adequate supporting documentation to substantiate its claims of timely distribution of the ASR to all students and employees at all campuses and locations of the University for one or more years during the review period.

Institutional Response:

In its response, Penn State essentially conceded that in many years it did not distribute the ASR until after the statutory deadline of October 1 but challenged certain details of the Department's finding. The University also argued that the Department should not base its determination of the ASR publication and distribution dates on the information from the University's Multimedia & Print Center (MPC)⁵⁹ invoice but should use the MPC job tickets. The MPC job tickets provided to the Department were essentially receipts. The MPC ticket provided a job number, due date, customer account, customer name, contact information, and a brief job description. As discussed below in the determination section, however, the job tickets cited by Penn State also demonstrate that the University consistently missed the statutory deadline of October 1 for distributing the ASR.

In its response, Penn State made the following claims regarding the distribution of the ASRs:

- 2001: The University points out that the job ticket for the 2001 ASR and its Job Cost Detail Report show that MPC's production of the ASR began in mid-August 2001 and concluded by October 8, 2001, when the ASR was "READY FOR DELIVERY." The Job Cost Detail Report provided to the Department was a breakdown of quantity, hours, and costs associated with the initial MPC job ticket.
- 2002: The job ticket for the 2002 ASR demonstrates that MPC's production of the 2002 ASR began on or about August 23, 2002, and was completed by October 9, 2002.
- 2003: The job ticket for the 2003 ASR shows that hardcopies of the ASR were mailed to employees of the University on September 26, 2003. Unfortunately, the documents submitted to the Department as University's Exhibit 9.7 fail to meet the minimum requirements of an ASR. Furthermore, the University stated that they do not have complete records evidencing distribution of the ASR during this time period.
- 2004: The University references an email sent September 25, 2004, at 10:45 PM as evidence of an electronic distribution of a PDF version of the ASR to students. In addition, the University states that the ticket for the 2004 ASR appears to confirm the Department's findings with respect to the hardcopy mailing of 16,239 copies of the ASR on September 20, 2004, and another batch of 4,735 ASR sent out on October 7, 2004.
- 2007: The University's response cited an email from Mr. Bill Verity to L-SAFETY-TEST@LISTS.PSU.EDU (University's Exhibit 9.17) dated September 30, 2007 that stated "Safety mailing finished." Penn State contends that the reference to the "safety mailings" refers to the ASR.
- 2008: The University states that they sent out most of the emails prior to October 1 and sent out the remaining two production lists to individuals at University Park on October 2, 2008.
- 2009: The University states that they completed distribution of the ASR to individuals on the first distribution list by September 30, 2009, and began the University Park email list on October 1, 2009. However they noted an error in the crime stats in the University

⁵⁹ According to Penn State "MPC has undergone several name changes over the years, having previously been known at various times, as Document Services and Mailing Services."

Park ASR and they had to reissue all 60,000 ASRs for that location, which were completed by October 17, 2009.

- 2010: The University states that the distribution for the Commonwealth Campuses began on October 6, 2010, (after the statutory deadline) and was completed by October 15, 2010. The ASR distribution to the University Park campus began on October 16, 2010, and was finished on October 28, 2010. According to Penn State the ASR and AFSR were published as a “consolidated document” starting in 2010 and distributed together. Penn State even stated “While the cover page of its 2010 and 2011 ASRs did not conspicuously indicate that the ASR and the AFSR were published as a consolidated document, the University believes that this was clear from the document as a whole.”
- 2011: The University reports that the distribution of the 2011 ASR began on October 3, 2011, by electronic mailing. Distribution to the individuals on the e-mail lists was completed no later than October 7, 2011. The e-mail lists submitted to the Department were titled L-MASS-01@LISTS.PSU.EDU (University’s Exhibit 9.123), L-MASS-02@LISTS.PSU.EDU (University’s Exhibit 9.124), L-MASS-03@LISTS.PSU.EDU (University’s Exhibit 9.125) and L-MASS-04@LISTS.PSU.EDU (University’s Exhibit 9.126).

Despite acknowledging that many of the ASRs were distributed after the October 1 deadline, the University claims that it did not consistently and substantially fail to comply with the regulations because it did deliver some of the ASRs to some of its population before the October 1 deadline.

Final Determination:

Finding #9 cited Penn State for multiple violations of the *Clery Act* and the Department’s regulations, as outlined in the noncompliance section above. Specifically, the University repeatedly and consistently failed to actively distribute its ASRs to **all** enrolled students and current employees by October 1 of each year of the review period. As a result of this violation, Penn State was required to review and revise its policies and procedures for distributing its ASR and take all necessary steps to ensure that the ASR is distributed by October 1 of each year and ensure that this violation does not recur. In its response, Penn State disagreed with the finding on several grounds, including an assertion that some students may have received the ASR in certain years by the regulatory deadline.

The Department carefully examined Penn State’s narrative response and supporting documentation. Based on that review and the University’s admission that many of the ASRs were distributed after the statutory deadline, each of the violations identified in the noncompliance section of the initial finding are hereby sustained. Additional information regarding these violations is below.

As noted in the PRR, the University was unable to produce documentation or provide credible assurances that ASRs were actively distributed to all enrolled students and current employees in a timely manner. The Department examined all of the documentation submitted by the University but concluded that the new evidence did not contradict our earlier findings. For example, Penn State provided invoices from the printer of the ASR, known as MPC, to demonstrate that they had, in fact, published an ASR. To be clear, the Department does not

assert that Penn State did not produce an ASR, although several were found to be woefully inadequate. Instead, the Department's finding is that Penn State regularly and consistently distributed the ASR after the statutory deadline; in many cases, distribution was not even begun until significantly after the deadline. The review team could not find any information in the additional documents provided by Penn State that supports a change to the initial finding of violation; instead, those documents merely provided some support for the undisputed claim that hardcopy reports were printed. None of this information provided by Penn State demonstrated that it distributed the ASRs on time. The University in its response stated that the Department should use the tickets from MPC rather than the invoices, which the Department requested, to support that the institution had complied with the regulation. However, the use of tickets in lieu of the invoice provided further evidence to demonstrate Penn State's consistent failure to meet the statutory deadline for distributing the ASR:

- 2001: The MPC job ticket provided by Penn State states that the ASR printing "Concluded by October 8, 2001, when the ASR was READY FOR DELIVERY." This statement verifies that the ASR could not have been delivered prior to the deadline date of October 1, 2001.
- 2002: The MPC job ticket states Production "was completed by October 9, 2002." Again, this is past the statutory distribution deadline date of October 1.
- 2003: The job ticket for the 2003 ASR shows that a hard copy of the ASR was mailed on September 26, 2003, to employees of the University. While this shows that the ASR was mailed to employees, the University did not provide any evidence of a copy of an email or any other communication to the thousands of students who should have received the ASR by electronic or other means.
- 2004 : The job ticket shows that 4,735 pieces were sent via campus mail on October 7, 2004, which is again past the deadline date of October 1, and does not clarify what the pieces sent via email represent.
- 2005: The job tickets show that 1,705 copies of the ASR were sent by mailed permit postage, 1,126 mailed first class, and 15,995 via campus mail in September 2005.⁶⁰ While this demonstrates that some ASRs were mailed, it does not speak of those that were sent electronically, which should have been the majority of the ASRs that year.
- 2006: Total quantity for printing of all 105,950. Done 9-29-06. This again may demonstrate that the printing was completed but does not speak of the electronically delivered ASRs. The University stated in its response that in 2006, the University, through Systems Engineering, expanded the electronic distribution of PDF versions of its ASRs to include both enrolled students and current employees with University-sponsored e-mail accounts and campus identifying information ("Electronically Registered Employees"). These individuals comprised the vast majority of University employees and included every category of employee at the University: technical service employees, hourly employees, faculty, executive level employees, and staff members. Electronically Registered Employees participated in the University's Access Account system. System Engineering ran a query of the University's Access Account system to generate lists of

⁶⁰ According to historical documents the total amount of ASRs needed for 2005 would be close to 80,124.
<http://budget.psu.edu/factbook/StudentDynamic/HistoricalComparisonOfEnrollment.aspx>

Electronically Registered Employees by campus. The ASR was sent, in PDF format, to the e-mail accounts on each list of Electronically Registered Employees. Although, Penn State alleges that they reached the “vast majority” of University employees, it does not provide proof of such a claim nor does it explain how students and employees who were not Electronically Registered were notified.

- 2007: The University cited to an email dated September 30, 2007, that stated “Safety mailing finished” and claimed that this indicated completed distribution of the ASR prior to October 1. However, the MPC job ticket shows that production work on the ASR continued on October 3 and on October 5. Penn State does not address this evidence. If final production the ASR was not completed until after the October 1 deadline, the document clearly could not be delivered before the deadline.
- 2008: The last two batches of ASRs (referred to as UP4 and UP9) were delivered on October 2, 2008. This is the first year that Penn State retained copies of the emails sent to the individual groups of students and employees.
- 2009: Several batches of ASRs were completed and distributed on October 2 through October 7. The University discovered that it had included incorrect crime stats in the ASR. According to an e-mail dated 10/7/2009, between Mr. Bill Verity and a massmail@PSU.EDU account, a mistake in the UP brochure (ASR) was found so the brochure (ASR) needed to be sent out again. Penn State completed a mass mailing of 60,000 brochures (ASRs) between October 12 and October 17, 2009. However, even without considering the second mailing, the initial distribution was still beyond the October 1 deadline.
- 2010: Again, based on the job tickets from MPC, the University sent out several emails including the ASR to students and employees on October 3 through October 27. As a result of Penn State consolidating the ASR and the AFSR in 2010 it is evident that information important to students and employees that should have been contained in either the ASR or AFSR, as separate documents, was not available to students and employees by the October 1 deadline as required. Furthermore, notification of the AFSR must be clear and conspicuous and cannot be dependent on the efforts of the individual to search for it as in the 2010 and 2011 consolidated documents.
- 2011 ASR: The job tickets indicated that the final production date of the ASR was just after the October 1 deadline for distribution. Once again in this instance, the job tickets proved inadequate to confirm active distribution. In 2011, at least three versions of the ASR were produced. Each document was submitted to the Department during the course of the review. In the first revision, significant changes were made to the statistical disclosure section of the report. In what the University characterized as the third and final version, former President Graham Spanier’s name was removed. University officials confirmed that the revised versions of the 2011 report were posted to the University website but were not distributed to required recipients. Department officials inquired about why the revised reports were not distributed and were advised that the responsible officials stated that they “do not know” why the reports were not distributed. Spanier was removed as President on November 9, 2011. Based on the available facts, the review team believes that the second version of the 2011 report was produced either around the time that the program review was formally announced (November 9, 2011) or later in the month during preparation for the Department’s site visit, which began on November 28, 2011. In preparation for the Department’s site visit, Penn State retained

the services of a well-known *Clery Act* consulting firm to help the University to prepare for the investigation. Penn State officials confirmed that the final version of the 2011 ASR was posted on the University’s website on November 23, 2011, although it was never distributed. This version of the 2011 report remained on Penn State’s website until it was replaced by the 2012 ASR nearly a year later. These facts were confirmed by Penn State, through counsel, on October 13, 2016. Per Penn State’s response, the initial 2011 ASR was produced and posted on September 28, 2011 and was then distributed on October 3, 2011; the first revised version of the 2011 ASR, which corrected certain UCR statistics, was produced and posted at some point at some later date; and, a final 2011 ASR was posted on November 23, 2011. Based upon the institution’s information, the Department determined that Penn State published its final 2011 ASR on November 23, 2011. The Department concluded that Penn State’s earlier versions of the 2011 ASR were no longer expected to be relied upon after it published and posted its November 23, 2011 ASR.

In any case, the job ticket submitted as proof of proper distribution is not suitable evidence for the reasons explained above. The following chart illustrates some of the differences between the versions of the 2011 ASR:

	2008			2009			2010		
Prior to Graham Spanier’s name removed from ASR.	Actual Offenses	Crime Rate	Arrest Data	Actual Offenses	Crime Rate	Arrest Data	Actual Offenses	Crime Rate	Arrest Data
Total Part 1 & Part 2 Offenses	2268	4140	1403	3978	7102	2628	2458 (14)	4404	1387
After Graham Spanier’s name removed from ASR.	Actual Offenses	Crime Rate	Arrest Data	Actual Offenses	Crime Rate	Arrest Data	Actual Offenses	Crime Rate	Arrest Data
Total Part 1 & Part 2 Offenses	2267	4138	1403	2252	4020	1361	2458 (14)	4406	1387

In sustaining this finding, we note that Penn State was directed to produce credible records to substantiate its claims that its ASRs were actively distributed to required recipients. The Department did so with the understanding that the University was acting in good faith when it provided the records that were used to make this finding. Now, the institution claims that the documents provided cannot be used to reach such a conclusion and has provided additional records that, as discussed above, actually further support the Department’s earlier conclusions. The University’s own records demonstrate that it did not distribute its ASRs to all required recipients by the deadline during the majority of the review period and was unable to substantiate its claims or otherwise provide credible assurances to the contrary. The operative regulation *34 C.F.R. § 668.41(e)* makes clear that the standard is not met unless all enrolled students and current employees receive the report in a timely manner.

The University’s response suggests that it does not view this finding as significant because it generally distributed the ASRs during October, even if it was after the statutory deadline of October 1. However, Penn State does not get to choose how or when to comply with the deadline. The evidence demonstrates that Penn State did not have adequate procedures or structure in place to comply with statutory requirements. More so, the ASRs and ASR/AFSRs that were produced during the review period were often deficient in multiple respects, as substantiated in Findings # 3, 5 and 6. The Department’s culminating investigation indicates that

Penn State did not provide enough evidence to demonstrate that all employees and students were provided the ASR or AFSR for the years reviewed. Also the ASR and/or AFSR were often not distributed by the required October 1 deadline, and the documents lacked many required elements necessary to meet statutory requirements.

Notwithstanding these persistent failures, the review team's examination of the response also showed that the identified violations were, for the most part, satisfactorily addressed by the University's revised internal policies and procedures for distributing its ASRs and AFSRs by electronic means. As such, the Department has determined that Penn State's remedial action plan meets minimum requirements, although it will be subject to additional testing as part of the Department's post-review monitoring program. For these reasons, the Department has acknowledged Penn State's response and considers this finding to be closed for program review purposes. Nevertheless, the officials and directors of Penn State are advised that they must take any additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the University's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

Penn State is once again reminded that the exceptions identified above constitute serious violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. Penn State asserted that it has taken adequate remedial actions and, that by doing so, is now in compliance with the *Clery Act* as required by its PPA. The production and timely distribution of an accurate and complete ASR are among the most basic requirements of the *Clery Act* and are fundamental to its campus safety goals. As such, Penn State officials must understand that any failure to publish and distribute an accurate and complete ASR deprives students and employees of important campus safety information to which they are entitled. For these reasons, the University is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding #10: Failure to Notify Prospective Students and Employees of the Availability of the Annual Security Report and Annual Fire Safety Report

Citation:

The Clery Act and the Department's regulations require institutions to notify all prospective students and employees of the availability of the ASR and the Annual Fire Safety report (AFSR), a description of its contents, and an opportunity to request a copy. The institution must provide copies of the reports upon request. If the institution chooses to provide these reports to prospective students and prospective employees by posting disclosures on an internet web site, the notice must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R § 668.41(e)(4).

Noncompliance:

Penn State failed to adequately provide a clear and conspicuous notice to prospective students and employees about the availability of the ASR and the AFSR. It is clear that no such notices were actively distributed to prospective students and employees during the review period. Another common method of issuing notifications of this type is to include them in materials that are normally provided to or accessed by prospective students and employees. Department officials requested copies of all such materials covering multiple years, campuses, locations, and programs, including Penn State's graduate and professional schools. These documents were examined for adequate notices that clearly and conspicuously announced the availability of the ASR and as of October 1, 2010, the AFSR as well.

The review team was unable to identify any dispositive documentation showing that Penn State had actively provided clear and conspicuous notice to adequately inform prospective students and employees about the availability of the ASR and/or the AFSR. The review team requested and reviewed numerous Penn State catalogs, student handbooks, applications, viewbooks, and other materials published during the review period. The Department noted that the student and employment internet portals do contain some information about the Clery Act, but this information source was not available for most of the review period and, until recently, did not in any respect constitute an active, clear, and conspicuous notification, as required. On this basis, the Department finds that Penn State failed to notify all prospective students and prospective employees of the availability of the ASR for all years under review and for 2010 and 2011 in terms of the AFSR. Although the University claims to have met this requirement, the exact means and manner of those disclosures remains unclear.

Failure to properly notify all prospective students and employees of the availability of the ASR and the AFSR deprives the campus community and prospective community members of important safety and security information.

Required Action:

As a result of this violation, Penn State is required to actively distribute clear and conspicuous notices about the ASR and AFSR to prospective students and employees and/or add such notification statements to its admissions and employment materials that are normally provided to prospective students and employees. This statement must give clear notice of what the Clery Act requires in the content of the report and the means by which the report can be accessed or a copy requested. Penn State must take all necessary action to ensure that all future publications, regardless of the media and format used, contain the required notification and must also review and revise its policies and procedures to ensure that this finding does not recur. A copy of all revised policies and procedures must accompany the University's response. In addition, a copy of all revised publications and/or forms containing the required notification language must be submitted with the University's response. Additional corrective actions may be required. Information on any additional requirements may be detailed in the forthcoming supplement(s) to this program review report.

Institutional Response:

In its response, Penn State challenged the finding and claimed that the University complied with the regulations and notified prospective students and employees of the availability of the ASR for the years covered by the Department's review. The response stated that "the University had robust processes and procedures in place for notifying most prospective students and employees of the availability of the ASRs. Furthermore, the University has implemented additional notification processes supplementing these existing processes and procedures, and has fully addressed any notification gaps identified." It should be noted that the University's response indicated only that the University reached "most" prospective students and prospective employees.

The response claimed "that the University has been providing clear and conspicuous notification of the availability of its ASRs to the vast majority of prospective students and prospective employees for years." In support of these claims, Penn State submitted copies of employment applications from various years, including forms from 2001, 2003, 2009, 2012, 2013 and 2014 and an undergraduate admissions application from 2014. In reference to the 2007 ASR the University provided a webpage, which stated that they published a report that "includes statistics for the previous three years concerning crimes reported to the local police agencies or to campus security authorities that occurred at the following locations:

1. On campus
2. In certain campus buildings, owned or controlled by Penn State
3. Public property within or immediately adjacent to and accessible from the campus."

Furthermore, Penn State's response noted, "In 2007, the University provided the following notification to prospective undergraduate students on its undergraduate admissions website, <http://admissions.psu.edu/life/safety>. Penn State also posits that every year up until 2013 undergraduate applicants were notified of the availability of the ASR, and in 2013, the University specifically stated that "the University provided prospective undergraduate students with notice of the availability of the ASRs through the application for admission, the undergraduate admissions website, the MyPennState Portal, and, for prospective undergraduate students who applied online -- which now constitutes approximately 97% of applicants -- by e-mail"

With respect to graduate students, the University stated that "Beginning in 2008 and continuing to the present, the University mandated that all prospective graduate students apply for admission online. The online application process continued to require prospective graduate students to review a webpage containing information about the University's ASRs."

Finally in regard to law school students, the University indicated that "From 2007 to 2010, the University informed prospective law students for either campus of the availability of the ASR by including within the materials sent to those receiving offers of admission a notification provided by University Police." Next the University stated, "In approximately 2010 or 2011, the University began to include in the materials sent to those prospective law students receiving offers of admission a postcard notifying them of the availability of the ASRs." Also the

University stated that “In 2012 and 2013, prospective students who were admitted to the law school received an admissions packet containing a letter notifying them of the availability of the ASRs.”

Accompanying Penn State’s response regarding notification of prospective students is their response regarding notifying prospective employees. Penn State declared, “Historically, prospective hourly employees were hired directly through various business units within the University. Those hired through the Auxiliary and Business Services Unit applied for positions online. As part of the application process, they were required to review and acknowledge a notice regarding availability of the ASR.” The University also reported that, historically, prospective faculty and prospective executive level employees “could learn of the availability of the ASRs through the University’s main website, and in particular through information available on the University Police & Public Safety website.”

The University’s response indicated that they implemented enhancements to its ASR availability notification to prospective faculty supplementing historical access via the University’s websites. Additionally, the response stated that “the University had practices and procedures in place both during the review and beyond, for providing notifications to “most” prospective employees of the availability of its ASRs.”

Final Determination:

Finding #10 cited Penn State for multiple violations of the *Clery Act* and the Department’s regulations, as outlined in the noncompliance section above. Specifically, the University failed to actively notify all prospective students and employees about the availability of the ASR for all years under review and about the availability of the AFSR in 2010 and 2011. The notification is required to be clear and conspicuous and cannot be dependent on the efforts of the applicant to search or simply stumble across information about these reports. An institution can meet this requirement in a variety of ways, with the most common method being the issuance of a notice to prospective students and employees or the inclusion of a notice in the materials that a person would need to apply for admission or employment.

Prior to making this finding, Department officials requested and carefully examined materials and information that Penn State’s prospective students and employees would use in the application process. The documents covered several campuses, locations, and programs, including Penn State’s graduate and professional schools, across several years. This finding was based on the results of that review, which showed that Penn State generally failed to actively notify prospective students and employees of the availability of this information. As a result of this finding, Penn State was required to actively provide clear and conspicuous notice about the ASR and AFSR to all prospective students and employees and/or include such notification in the admissions and employment materials that are used by such applicants. The University was also instructed to ensure that all notices addressed the information included in each report as well as the means by which the report can be accessed or a copy requested. This finding is closely associated with Finding #9, and, as such, the University’s response proceeded along similar lines to its answer to the distribution violation. As noted above, Penn State disagreed with the finding

on several grounds, including its contention that “most” prospective students and employees received adequate notice.

The Department carefully examined Penn State’s narrative response and supporting documentation. Based on that review and the University’s partial admissions, each of the violations identified in the noncompliance section of the initial finding are hereby sustained. It is also worth noting that under the terms of the PPA, an institution under review has the burden to demonstrate it is in compliance and is also required to be forthcoming about its infractions. The approach employed by Penn State in its response is replete with broad-based denials of noncompliance that are secondarily interspersed with various and qualified admissions. This approach complicates one of the primary objectives of the review, which is to diagnose and document noncompliance in furtherance of the development and implementation of an adequate corrective action plan. Given the range of violations documented by this and other related investigations, it is not possible for Penn State to claim that comprehensive remediation is not called for.

In any respect, with regard to this finding, it is clear that the University failed to actively provide the required notifications to many prospective campus community members over many years. Although as a threshold matter, while Penn State stated that it did not concur with the finding, some of the responsive text contradicts that claim. In its response, Penn State stated that the previously-referenced “robust processes and procedures” resulted in some type of notice to “most” prospective community members. The University also claimed that it had “practices and procedures in place” to provide notice to “most prospective employees” and “to the vast majority of prospective students and prospective employees for years.” All of these statements are concessions that the University did not fully comply with the distribution requirements for ASRs and AFSRs. The Department also notes that the University has been unable to quantify in any meaningful way what it means by “most” or “the vast majority.” With exception of 2013 where Penn State did quantify a number of undergraduate students that they reached stating “approximately 97% of applicants -- by e-mail” were notified. Unfortunately this “robust process” did not apply until 2013 and did not cover notification to graduate students or law school students. According to Penn State, law school students from 2007 until 2011 only received notification about the ASR if they received an offer, and 2012-2013 law school students received notification if they received an admission packet.

Penn State has reported that it consistently receives over 110,000 applications for enrollment each year. Specifically, for the 2011 year: 122,691 applications; 2012 year: 123,826 applications; and for the 2013 year: 114,453 applications. The Department remains concerned that even a small percentage of prospective students omitted from the University’s distribution policies would yield a significant number.

A parallel failure occurred concerning the notification of prospective employees. Penn State asserted that prospective faculty and prospective executive level employees “could learn of the availability of the ASRs through the University’s main website, and in particular through information available on the University Police & Public Safety website”; but it did not state that they were notified of the availability of the ASR only that they could learn of it. Penn State also posits that “Historically, prospective hourly employees were hired directly through various

business units within the University. Those hired through the Auxiliary and Business Services unit applied for positions online. As part of the application process, they were required to review and acknowledge a notice regarding availability of the ASR.” However, this fails to explain how other hires outside of Auxiliary and Business Services or others who applied for employment via the paper process were notified. Penn State also had multiple issues in terms of distributing compliant ASRs to current students and employees. As noted in Finding #9; Penn State persistently failed to actively distribute its ASRs on-time to current students and employees as well. That deficiency persisted throughout the review period. Moreover, as documented most notably in Findings #3 and 5, even the final version of the 2011 ASR was deficient in multiple and material respects. Although that version of the report was not actively distributed, it was posted on the University’s website, meaning that prospective students and employees were directed to a deficient report until it was replaced by the 2012 ASR. These factors serve to further substantiate this finding because the notices that did reach various prospective applicants often led them to reports that, even once they became available, were so lacking in accurate and complete required content that the campus safety, crime prevention, and consumer protection objectives of the *Clery Act* could not be achieved.

Notwithstanding these failures and the Department’s ongoing concerns, the review team’s examination of the response showed that the identified violations were, for the most part, satisfactorily addressed by the University’s revised internal policies and procedures for notifying prospective students and employees about its ASRs and AFSRs by electronic means. The continued use of the applicant portals should also facilitate improved compliance going forward. As such, the Department has determined that Penn State’s remedial action plan meets minimum requirements, although it will be subject to additional testing as part of the Department’s post-review monitoring program. For these reasons, the Department considers this finding to be closed for program review purposes. Nevertheless, Penn State is advised that it must take any additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the University’s response to the Department’s report and/or as may otherwise be needed to ensure that these violations do not recur.

Penn State is reminded that the exceptions identified above constitute serious violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly “correct” violations of this type once they occur. Penn State asserted that it has taken adequate remedial actions and, that by doing so, is now in compliance with the *Clery Act* as required by its PPA. The timely notification of prospective students and employees about the availability of the ASR and AFSR is one of the most basic requirements of the *Clery Act* and is fundamental to its campus safety goals. Access to this information allows prospective campus community members and their families to make informed decisions about where to study, work, and live. As such, Penn State officials must understand that any failure to comply with this requirement deprives access to important campus safety information to which such persons are entitled. For these reasons, the University is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding #11: Failure to Comply with the Drug-Free Schools and Communities Act/Part 86 Requirements

Citation:

The DFSCA and 34 C.F.R. Part 86 requires each participating institution of higher education (IHE) that receives Federal education funding (including Penn State) to certify that it has developed and implemented a drug and alcohol abuse education and prevention program. The program must be designed to prevent the unlawful possession, use, and distribution of drugs and alcohol on campus and at recognized events and activities.

On an annual basis, the IHE must distribute written information about its drug and alcohol abuse prevention program (DAAPP) to all students, faculty, and staff. The distribution plan must make provisions for providing the material to students who enroll at a date after the initial distribution and for employees who are hired at different times throughout the year. The information must include:

- *A written statement about the IHE's standards of conduct that prohibits the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees;*
- *A written description of legal sanctions imposed under Federal, state, and local laws for unlawful possession or distribution of illicit drugs and alcohol;*
- *A description of the health risks associated with the use of illicit drugs and alcohol abuse;*
- *A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to students and employees; and,*
- *A statement that the IHE will impose disciplinary sanctions on students and employees for violations of the institution's codes of conduct and a description of such sanctions.*

In addition, each IHE must conduct a biennial review in order to measure the effectiveness of its drug prevention program and to ensure consistent treatment in its enforcement of its disciplinary sanctions. The IHE must prepare a report of findings and maintain its biennial review report and supporting materials and make them available to the Department upon request. 34 C.F.R. §§ 86.3 and 86.100

Noncompliance:

Penn State failed to comply with the requirements of the DFSCA and the Department's regulations. Prior to the onsite phase of the review, Penn State was asked to provide the copies of the University's DAAPP program materials as well as copies of its two most recent biennial review reports as required by §120(a)(2) of the HEA. This request was made in the Department's letter to Penn State announcing the review dated November 9, 2011. In response to the request, Penn State provided the Department with copies of a publication entitled, "Policies, and Safety & U" for the 2008/2009, 2010/2011, and 2011/2012 years as well as a document that stated:

“In order to comply with the Jeanne Clery Act and the Higher Education Act, The Pennsylvania State University includes the Drug and Alcohol Abuse Prevention program materials in the Annual Security Report. The ASR is the sole annual document issued to comply with §120(a) (2) of the Higher Education Act.”

The Department reviewed the responsive documents and found that none of them fully met the applicable statutory and regulatory requirements. Therefore, the Department made subsequent information requests to the University and in response, received a flash drive on September 19, 2012 which contained the following documentation:

2004:

- *“Policies, Safety and U” publication, revised August 2004*
- *Penn State Pulse, Division of Student Affairs publication “Student Drinking,” dated February 2004*
- *The Partnership Annual Assessment Report*
- *Environmental Management Strategy document*
- *2 Page Drug Free School and Campuses Regulations Compliance Checklist for 2004/2005-labeled as the 2004 Biennial Report.*

2006:

- *“Policies, Safety and U” publication, revised August 2006*
- *7 Page Drug Free School and Campuses Checklist University Park Campus-labeled as the 2006 Biennial Report.*
- *16 page Penn State Pulse Survey #140 Student Drinking, dated March 2006*
- *6 page Penn State Pulse Division of Student Affairs Student Drinking, dated March 2006 – graphical presentation*
- *The Partnership Annual Assessment Report*
- *Environmental Management Strategy document, updated May 2006*

2008:

- *“Policies, Safety and U” publication for 2008/2009*
- *14 page Checklist document entitled “University Park Biennial Review 2008”*
- *The Partnership Annual Assessment 2008/2009*
- *Environmental Management Strategy, updated August 2008*
- *University Park Student Health Survey Data for Fall Semester 2007*
- *1 Page document entitled, “UPCCP Strategic Plan 2007-2010”*
- *John S. and James L. Knight Foundation Penn State Progress Report, dated October 22, 2008*
- *5 Page document, Alcohol.Edu for College, Executive Summary*
- *Penn State Pulse Survey #153 Student Drinking, dated January 2008*
- *8 page Penn State Pulse Division of Student Affairs Student Drinking, dated January/February 2008 – graphical presentation*
- *Penn State Pulse Survey #153 Student Drinking Significant Differences*
- *Penn State Pulse Division of Student Affairs Student Smoking, Spring 2007*

2010:

- *“Policies, Safety and U” publication for 2010/2011*
- *18 page Checklist document entitled, “ University Park Biennial Review 2010”*
- *Alcohol Initiatives, Board of Trustees Presentation, dated September 17, 2010*
- *The Partnership Annual Assessment Report 2009/2010*
- *Environmental Management Strategy, updated June 25, 2010*
- *John S. and James L. Knight Foundation Penn State Progress Report, dated November 1, 2009*
- *24 Page document, Alcohol.Edu for College, 2009-2010 Executive Summary*
- *Penn State Pulse Survey #158 Student Drinking: Frequencies, dated Spring 2010*
- *Penn State Pulse Survey #158 Student Drinking Significant Differences, Spring 2010*
- *8 page Penn State Pulse Division of Student Affairs Student Drinking, dated January/February 2010 – graphical presentation*

2011:

- *“Policies, Safety and U” publication for 2011/2012*
- *Environmental Management Strategy, updated June 25, 2010, (also provided as responsive to 2010)*
- *The Partnership Annual Assessment Report 2010/2011*
- *Alcohol and Drug Education Initiatives University Park, Student Health Services, Fall 2011*
- *Procedural Guidelines for the University Disciplinary Process, Office of Student Conduct, revised September 2011*
- *8 page Penn State Pulse Division of Student Affairs Student Drinking, dated Spring 2011 – graphical presentation*
- *4 Page Code of Conduct document*
- *John S. and James L. Knight Foundation Penn State Progress Report, dated November 1, 2010*
- *John S. and James L. Knight Foundation Penn State Progress Report, dated November 30, 2011*
- *22 Page document, Alcohol.Edu for College, 2010/2011 Executive Summary*
- *University Health Services BASICS Satisfaction Survey, 2010/2011*
- *Executive Summary of the First Year Evaluation of BASICS*
- *9 page document entitled Pennsylvania Liquor Control Board Bureau of Alcohol Education Cumulative Grant Evaluation Report*
- *Sample First Year Student Letter, dated July 20, 2011*
- *1 page PSU Safe Student Alcohol Feedback and Education Completion Rates*
- *PSU AWARE Sexual Assault Awareness online educational program for first year students Completion Numbers Fall 2011*
- *PSU SAFE Student Alcohol Feedback and Education Online Alcohol Education Module*
- *Fall 2011 PSU SAFE Satisfaction Survey by Campus*

While some of the documents and records provided by Penn State did contain information related to alcohol, it was unclear to reviewers how some of the provided documentation was supposed to document compliance with the specific DFSCA and regulatory requirements.

Regardless, our thorough review of the documents provided on September 19, 2012, revealed that Penn State violated multiple requirements of the DFSCA. Specifically, Penn State failed to:

- ***Make any provision for providing a copy of the Drug and Alcohol Abuse Prevention Program (DAAPP) information to students who enroll at some date after the initial distribution and also for employees who are hired at different times throughout the year.***

According to the University's response to the initial information request, which was independently confirmed by a Human Resources official at the institution, Penn State relied on the distribution requirements that pertained to the ASR, rather than undertaking a distribution program consistent with the regulatory requirements for distributing the DAAPP. The distribution requirements under the DAAPP are different from those for the ASR distribution since, under the DAAPP, every student who is enrolled for at least one credit must be notified of the available programs and resources. By only providing the information on the same schedule as the ASR (which the University distributed annually), the University did not ensure that the required information was disseminated to the entire population of students and employees who are supposed to receive this information under the regulations. For example, a student who registered for only a summer semester would never receive a copy of these materials if they were only distributed via the ASR since that distribution is customarily undertaken in the fall to meet the October 1 regulatory deadline of the ASR.

Subsequent interviews with University officials revealed that Penn State believed that it had met the distribution requirement since the University customarily provided the drug and alcohol abuse prevention program materials during new student orientation sessions and during the new employee onboarding process. However, the University was unable to document that all new and/or intermittently-enrolled students, including those who register for one or more credits during terms other than the fall semester receive the DAAPP disclosure on an annual basis. In addition, Penn State was similarly unable to explain how the DAAPP disclosure is actively distributed on an annual basis to employees, including new hires and those that are employed on a part-time or intermittent basis, such as adjunct faculty members.

The annual distribution requirement under the DFSCA is stricter than the ASR distribution requirement under the Clery Act. Since Penn State has relied on its ASR as a means of distributing the annual DAAPP disclosure and has not been able to provide any further documentation regarding its distribution program, the Department finds that the University has not demonstrated that it has met the annual distribution requirements required by the DFSCA and the Department's regulations.

Penn State did not provide the required information in 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, and 2011.

In addition, Penn State's DAAPP information did not include:

- ***An accurate and complete written description of legal sanctions imposed under local, state, or Federal law for unlawful possession or distribution of illicit drug and alcohol.*** 34

C.F.R. § 86.100(a)(2). The University did not provide a description of legal sanctions imposed under local, state or Federal law for unlawful possession or distribution of alcohol by students or employees in the following years: 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2010. Penn State started to include alcohol sanctions in the 2011 DAAPP.

- ***A description of health risks associated with the use of illicit drugs and the abuse of alcohol.*** 34 C.F.R. § 86.100(a)(3). *The University did not provide a description of the health risks associated with the abuse of alcohol in 2010.*

- ***Penn State also failed to conduct a substantive biennial review of its DAAPP program as required.*** 34 C.F.R. § 86.100(b). *Penn State did not conduct a single biennial review that meets the requirements of the regulations nor did it publish an accurate and complete report of findings for each review. The Department requested copies of the University's biennial reviews of its DAAPP dating back to 1998. None of the purported biennial reviews have a title which indicate that it is a biennial review (the 2008 & 2010 documents each have a footer that refers it as a biennial review) and none of the reports have any dates as to when the review was conducted or the report issued. The following is a summary of the reports the Department received:*
 - ***1998:*** *No report provided.*

 - ***2000:*** *No report provided.*

 - ***2002:*** *No report provided*

 - ***2004:*** *A page and a half compliance checklist for 2004-2005. The report was late and misclassified as a 2004 report when it clearly was not completed until sometime in 2005. Moreover, nothing in this compliance checklist, which Penn State described as a biennial report, provides any information regarding the effectiveness of the institution's drug and alcohol programs nor does it demonstrate that Penn State ensured that the disciplinary sanctions were consistently enforced.*

 - ***2006:*** *Another checklist that does not address how the University ensures that its disciplinary sanctions are consistently enforced.*

 - ***2008:*** *Another compliance checklist that does not address how the University ensures that its disciplinary sanctions are consistently enforced.*

 - ***2010:*** *Another compliance checklist that does not address how the University ensures that its disciplinary sanctions are consistently enforced. The document does report on a survey on alcohol abuse but does not explain how this survey has had an impact on alcohol abuse on the Penn State campus.*

The Department could not verify if any of the remaining reports were issued on time since none of the reports had dates on them.

Failure to comply with the DFSCA's DAAPP requirements deprives students and employees of important information regarding the educational, disciplinary, health, and legal consequences of illegal drug use and alcohol abuse. Failure to comply with the biennial review requirements also deprives the institution of important information about the effectiveness of its own drug and alcohol programs. Such failures may contribute to increased drug and alcohol abuse as well as an increase in drug and alcohol-related violent crime.

Required Action:

Penn State is required to take all necessary corrective actions to rectify these violations. To address the specific deficiencies identified in this finding, Penn State must:

- Develop and implement procedures for ensuring that the required DFSCA materials are distributed to every current student who is enrolled for academic credit as well as every employee of Penn State. Penn State must make provisions for providing a copy of the drug and alcohol prevention program to students who enroll after the initial distribution and for employees who are hired at different times throughout the year. Penn State must provide documentation evidencing the distribution as well as a statement of certification attesting to the fact that the materials were distributed in accordance with the DFSCA. Additionally, if Penn State believes that it has met the distribution requirement sufficient to negate any of the violations noted in this finding it should submit this documentation in response to this finding. The documentation should contain proof that the materials were distributed along with a narrative as to how it believes it has met the applicable statutory and regulatory requirements;*
- Include a written description of legal sanctions imposed under local, state, or Federal law for unlawful possession or distribution of illicit drug and alcohol in all future drug and alcohol prevention program materials;*
- Describe the health risks associated with the use of illicit drugs and the abuse of alcohol; and,*
- Conduct a biennial review to measure the effectiveness of its drug and alcohol prevention programs. Penn State must describe the research methods and data analysis tools that will be used to determine the effectiveness of the program as well as the responsible official or office that will conduct the review. The biennial report must address how Penn State University will ensure consistency of its enforcement of its disciplinary sanctions and be available to the public on request. The new biennial review and report must be completed by July 1, 2013 and be submitted to the Department by July 15, 2013.*

Our objective in conducting this and all campus crime program reviews is to improve the safety of America's college campuses. The development and implementation of a substantive corrective action plan is the first step to moving Penn State toward full compliance with the Clery Act and the DFSCA as soon as possible.

Questions and requests for technical assistance should be directed to the review team. Penn State officials may wish to review the important sub-regulatory guidance contained in the Department's *Handbook for Campus Safety and Security Reporting* (2011 Edition) in the development of its response to this program review report. The Handbook is available online at: <http://www2.ed.gov/admins/lead/safety/handbook-2.pdf>

Institutional Response:

In its response, Penn State disagreed that it failed to comply with the Drug-Free Schools and Communities Act (*DFSCA*). The University claimed that neither the *DFSCA* statute nor the Department's implementing regulations required the University to distribute its DAAPP information more than once per year and that it was under no obligation to inform students and employees who started during the year of its policies. The University argued that it was not necessary to provide DAAPP information to new employees and students in addition to its annual distribution method, regardless of when they joined the University community. The University also argued that it met the requirement for distributing its policies by including program policy statements in its *Clery Act*-required annual security reports (ASRs).

The University also insisted that its DAAPP met the substantive statutory requirements and supported that assertion with descriptions of its long-standing initiatives and programs aimed at drug and alcohol abuse prevention. Specifically, the University believed that the many educational programs (including "The Partnership," Alcohol EDU, PSUSafe, and many workshops, presentations, and speakers), in conjunction with the "Normative Environments," PSUPD, OSC enforcement, and outreach to the University community squarely met the primary requirement of the *DFSCA* and evidenced substantial compliance.

In regard to the requirement that the policy include specific language concerning legal sanctions imposed under the law for unlawful possession or distribution of illicit drugs and alcohol, Penn State argued that the *DFSCA* regulations failed to define the word "description" for the purposes of the DAAPP. Furthermore, it asserted that provisions of the *DFSCA* that require descriptions of sanctions associated with illegal drug and alcohol activities (i.e., an accurate and complete written description of legal sanctions imposed under local, state, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol as well as a description of health risks associated with the use of illicit drugs and the abuse of alcohol) were met by University rules and procedures included in the ASR.

The University provided a considerable amount of documentation it represented as evidence of its dedication to the goal of decreasing alcohol and drug abuse on campus, and it asserted that its drug and alcohol abuse program was substantially in compliance with the *DFSCA*. Penn State argued that the discrepancies identified by the Department amounted to alleged technical noncompliance with the *DFSCA* and its implementing regulations, rather than any substantive violations of its core DAAPP.

Although the University agreed with the Department's finding that its 2010 ASR lacked a full statement about the risks associated with alcohol abuse, it objected to any broader assertions that its overall drug and alcohol abuse prevention policy statements did not comply with the *DFSCA*.

Consistent with this argument, Penn State disagreed with the Department's findings that its biennial reviews failed to assess program effectiveness and ensure the consistent enforcement of sanctions included therein. Rather, Penn State argued that because it was not obligated to retain *DFSCA*-related records beyond three years after the fiscal year they were created, and it claimed the Department had no authority to hold the University accountable for any DAAPP-related materials preceding the 2008 and 2010 biennial reviews.

Final Determination:

The Department's PRR required Penn State to review its existing DAAPP policies and annual disclosures to ensure that all *DFSCA* program requirements were fully addressed. If omissions or other deficiencies were later identified, the University was required to develop additional content and incorporate the information into the program materials. Rather than identify omissions or deficiencies to develop additional content and incorporate that information into program materials, Penn State asserted that the scope of the Department's review of its DAAPP and overall *DFSCA* compliance exceeded the required period for records preservation established by the *DFSCA* and its implementing regulations. Penn State's assertion that it was only responsible for records from 2008 to 2010 was incorrect. The mandatory retention period is three years from the fiscal year in which the record was created. Furthermore, at the beginning of the program review, the Department requested that Penn State retain all records of compliance to support the review process. The Department notes that *DFSCA* regulations state, "If any litigation, claim, negotiation, audit, review, or other action involving the records has been started... [institutions of higher education] shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three year period, whichever is later." (*34 C.F.R. Part 86 §103(b)(2)*.) Finally, the University failed to recognize that there is no statute of limitations for the authority of the Secretary to order a Department examination to determine an institution's compliance with the *DFSCA*. Furthermore, the University informed the Department in 2011 that it possessed records from the early 1990's and provided some data back to the 1980's.

Finding #11 of the program review report cited Penn State for multiple violations of the *DFSCA* and *34 C.F.R. Part 86* Regulations. Specifically, the Department noted that the University has a history of failing to meet many of the requirements of the *DFSCA* governing the production and distribution of the DAAPP and the conduct of the required biennial reviews. The *DFSCA* amendments require that, as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher education must certify that it has adopted and implemented a DAAPP as described in the Act and its implementing regulations. The DAAPP must, at minimum, include: 1) a written statement of the standard of conduct that clearly prohibits the unlawful possession, use or distribution of illicit drugs and alcohol by students and employees on its property or as part of any activities; 2) a written description of the applicable legal sanctions under local, state, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol; 3) a description of the health risks associated with the use of illicit drugs and the abuse of alcohol; 4) a description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and, 5) a clear statement that the University will impose disciplinary sanctions on students and employees (consistent with local, state, and Federal law) and a description of those sanctions.

During the period from 1998 to 2010, the University failed to develop, publish, and actively distribute a comprehensive DAAPP that addressed all five required subject areas. Penn State incorrectly included its DAAPP information in ASRs produced during the referenced period, rather than in a separate disclosure. The ASR contained: 1) the standards of conduct (for employees and students); 2) a description of the health risks associated with the use of illicit drugs and abuse of alcohol; 3) disciplinary sanctions for violations of relevant drug statutes; and, 4) resources for counseling, intervention, and treatment programs. However, the University consistently failed to provide the statutorily required accurate and complete written description of the legal sanctions imposed under local, state, or Federal law for unlawful possession or distribution of illicit drugs and alcohol in ASRs produced from 1998 through and including 2010, and the University omitted a description of the health risks associated with the use of illicit drugs and the abuse of alcohol in ASRs produced in 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2010.

Although some of the ASRs in question had sections about the penalties for violation of relevant drug and alcohol statutes for controlled and dangerous substances, the University consistently failed to provide adequate descriptions of penalties for alcohol violations; specifically, it failed to include the legal sanctions for underage drinking and providing alcohol to a minor in all DAAPP disclosures preceding 2011. While the Department notes the University's claim that it was confused by the term "description," the Department notes that Penn State did not provide any contemporaneous documentation showing that it consulted the Department for information to address its "confusion." Accordingly, the Department has determined that the University failed to provide a full description of legal sanctions for all alcohol-related offenses. As such, Penn State's DAAPP failed to meet the minimum requirements of the *DFSCA* for the entire period of this review.

The University improperly included its partial DAAPP disclosure information in its ASRs, and it failed to actively distribute DAAPP information to all students and employees during the period from 1998 to 2010. In arriving at this determination, the Department must point out that the *Clery Act* was passed in 1990 and requires institutions to include basic information about any drug and alcohol abuse education programs that it provides. The provision that requires disclosure of any such programs in the ASR is the only *Clery Act* provision that can be met by cross-referencing other materials or another publication, most often the annual DAAPP disclosure. The *DFSCA*, passed in 1989, pre-dates the *Clery Act* and does not permit compliance by cross-reference or by including the material in the ASR. If Penn State had published a complete annual disclosure along with its ASR and distributed that document in accordance with the *DFSCA*'s more stringent distribution requirement, the standard could have been met, but it was not. So while a reference to an institutional website, publication, or other resource is adequate to meet the *Clery Act* requirement in this area, this approach will not work in reverse.

Moreover, the *DFSCA* requires active distribution to all students who enroll for any type of academic credit and to each employee on an annual basis. Penn State failed to develop an appropriate method of distribution that included all students who enrolled or employees who were hired after the annual disclosure of the DAAPP in its ASRs. The Department's regulations (*34 C.F.R. 86.100(a)*) specifically require that the DAAPP must be distributed annually to "each employee" and "to each student" taking classes for academic credit. The regulations do not

support the University's claim that it is only required to distribute the information to students and employees one time and to ignore students and employees who are at the school at other times of the year. The University's response acknowledged "there was a very small subset of employees who may not have received the DAAPP." This acknowledgement demonstrated the University's policy gap and was, in each occurrence, a violation of the *DFSCA*. In addition, the regulatory noncompliance issues noted in Findings #3, #9 and #10 of the PRR compound Penn State's compliance with the distribution requirements of the DAAPP.

The Department's *DFSCA* distribution requirement is worded to ensure that all employees and all students, regardless of their dates of enrollment or employment, must receive notice of the University's DAAPP. This includes students enrolled for a summer term as well as adjunct or visiting faculty members. In many respects, these are the types of individuals that are likely to be unfamiliar with the institution's codes of conduct, policies, and procedures and, therefore, have a "need to know" lest they commit infractions that might affect their status. While institutions must ensure that their policies conform to applicable laws and ordinances, the *DFSCA* allows for significant latitude to institutions to set out expectations and standards that work for them, ranging from "dry campus" and "zero-tolerance" policies on alcohol consumption to schools that operate on-campus bars or permit students to possess and consume alcohol in residence halls. Whatever the standard, campus community members deserve to know the standard to which they will be held. Penn State was required to actively distribute the annual disclosure to all required recipients and to document its compliance. The Department has determined the University was not in compliance during the period of 1998 through and including 2011, and the finding in the PRR that Penn State violated the statutory and regulatory requirements by failing to properly and inclusively distribute its DAAPP during this period are hereby sustained.

In regard to the *DFSCA*'s requirement that institutions conduct biennial reviews of their policies, we conclude that Penn State failed to conduct and properly document biennial reviews to assess the effectiveness of its DAAPP. The requirements of biennial review are twofold: 1) to determine the effectiveness of the program and implement changes to the program, if needed, and, 2) to ensure that the disciplinary sanctions were consistently enforced. The University failed to conduct biennial reviews that met these two requirements and, as a result, failed to produce the required reports of its findings, recommendations, and supporting documentation. The biennial review violation is separate and distinct from the DAAPP violation but is also a result of the incomplete DAAPP, as the biennial review is primarily a study of the effectiveness of the overall DAAPP. In its response, Penn State provided considerable information about the multitude of educational programs, workshops, and presentations that were offered to the campus community throughout the review period. That material, while substantial and well-intentioned, did not meet the requirements of the *DFSCA* for a properly implemented and documented DAAPP. Penn State also failed to meet the requirements of the biennial review by failing to substantiate any assessments of DAAPP effectiveness and consistency of sanctions enforcement. Therefore, the Department has determined that the violations cited in the PRR concerning the institution's failure to conduct substantive biennial reviews are hereby sustained. As a result of these violations, the University was required to develop and implement a comprehensive DAAPP and produce and distribute an annual disclosure. In conjunction with more completely developing and implementing its program, Penn State was required to conduct

a substantive biennial review as soon as initial program data was available. In its response, University management stated that it was committed to fostering a healthy community and promoting the physical and emotional wellness of students, faculty, and staff. Penn State did not concur with the Department's finding, arguing that the DAAPP distribution requirements were not different from the ASR distribution and that the *DFSCA* did not require the University to provide the DAAPP to every new student enrolled for at least one credit hour. Likewise, the University argued that the *DFSCA* did not require the University to provide the DAAPP to new employees.

The University acknowledged that the 2010 version of its ASR did not include required information about the health risks associated with alcohol abuse. Penn State did not, however, agree with the Department's finding that it did not conduct compliant biennial reviews to measure the effectiveness of its DAAPP and to ensure that its sanctions were consistently enforced. The Department examined the University's biennial reviews and found no mention or discussion of the effectiveness of the DAAPP. Furthermore, the University failed to substantiate any review of its sanctions enforcement. The University conducted some analysis of its program, but its biennial reviews did not document any assessment of the overall effectiveness of its drug and alcohol abuse prevention programs. Furthermore, none of the documentation provided by the University detailed an analysis of drug and alcohol referrals and arrests for statistical trends or consistency of enforcement. The University provided checklists that it claimed were demonstrative of biennial reviews it conducted during the review period; however, the checklist used by Penn State simply sets out the steps that would be part of an adequate review process. Mere completion of this checklist does nothing to accomplish the required self-assessment and documentation requirements of the *DFSCA*. Furthermore, documentation provided by Penn State failed to demonstrate the use of any sound method to measure the consistency of enforcement sanctions. The University's statement that it provided uniform sanction guidelines for its officers fails to address whether sanctioning was actually applied and enforced in a consistent manner.

The Department carefully examined all available information including the University's narrative response and supporting documentation. Based on the Department's review, each of the violations identified in the noncompliance section of the initial finding are hereby sustained.⁶¹ In upholding these findings, the Department emphasizes the importance of intentional and sustained efforts to limit the illegal use and abuse of alcohol and other drugs on campus. This is especially important given the high correlation between substance use and abuse and violent crime.⁶² The Department points to the findings of the University's own Fraternity/Sorority Assessment conducted at the midpoint of the review period that showed that 76% of students active in Greek life engaged in high-risk drinking behaviors, and 67% of these students did so two or three times a week. The concern extends to the current national focus on

⁶¹ The Department acknowledges that Penn State did engage in various efforts and provide assorted programming on the issue of alcohol and other drugs.

⁶² See among others, *College Drinking: Reframing a Social Problem* by George W. Dowdall, Ph.D., ABC-CLIO, Publishers, Inc. 2008; *Unsafe in the Ivory Tower: The Sexual Victimization of College Women* by Bonnie S. Fisher, Ph.D. Leah E. Daigle, Ph.D. and Francis T. Cullen, Ph.D. SAGE Publications, Inc. 2009; *Party School: Crime, Campus, and Community* by Karen G. Weis, Ph.D. Northeastern University Press 2013.

campus sexual assault as well. Penn State's climate survey showed that among undergraduates who reported being victimized by at least one incident of non-consensual sexual assault, 77.5% said they had used alcohol or drugs just prior to the incident and 72.8% said that the perpetrator had used alcohol or drugs just prior to the incident as well. Current and former students characterized the level of alcohol consumption as "staggering" and "scary" and related that it contributed to a campus culture that was at times dangerous. The review team also detected a discernible reluctance to intervene to an adequate extent given these risks. A long-tenured member of the PSUPD reported that former President Spanier and other senior officials ordered a change in policy that alcohol violations in dormitories would be handled administratively and not by the PSUPD.

Notwithstanding these ongoing concerns, the review team's examination of available information, including the response, indicates that the identified violations were, for the most part, satisfactorily addressed by Penn State's updated DAAPP materials and revised internal policies and procedures. As such, the Department determined that the University's remedial action plan meets minimum requirements. The Department reminds the University that its lack of regulatory compliance for the entire period of this review is a violation of the *DFSCA* which could result in the termination of any or all forms of Federal financial assistance (*34 C.F.R. §86.301*) and a repayment of any or all forms of Federal financial assistance received by the University for the period(s) it was determined to be in violation. Nonetheless, the Department has accepted the University's response and considers this finding to be closed for purposes of this program review. Penn State is advised that the University must take all other actions that may be necessary to address the deficiencies that were detected during the preparation of Penn State's response and/or as may be needed to otherwise ensure that these violations do not recur.

Going forward, Penn State is advised that it must continue to develop its DAAPP and ensure that it addresses all program components in detail. In accordance with the *DFSCA* and the University's established procedures, Penn State must also ensure that it actively produces and distributes accurate and complete disclosure materials to all students and employees on an annual basis. These materials shall be made available to students and employees who enroll or are hired at any time during the fiscal year subsequent to the University's regular DAAPP distribution cycle. In addition, the University must ensure that its next biennial review is a comprehensive and substantive assessment of the DAAPP's effectiveness. The review must include an evaluation of the goals and objectives of Penn State's substance abuse programs. University officials must also carefully consider the strengths and weaknesses of the program as well as the efficacy of the policies and procedures that underlie it. Care must be taken to ensure that the review process does not become a conclusory ratification of existing policy. The content of Penn State's reports must be sufficiently detailed and all findings and recommendations must be supported by valid evidence. Each report must also be approved by the University's President and/or its board. Finally, Penn State must implement procedures and provide sufficient oversight to ensure that future reviews are conducted on the required schedule.

Penn State is once again reminded that the exceptions identified above constitute a serious violation of the *DFSCA* that by its nature cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. The University asserted that it has taken adequate remedial actions and is now in compliance with the *DFSCA* as required by its PPA. Nevertheless, Penn

State officials must understand that the Department considers compliance with the *DFSCA* to be essential to maintaining a safe and healthy learning environment. This is true for all institutions regardless of their size, location, or organizational structure. Data compiled by the Department shows that the use of illicit drugs and alcohol abuse is highly correlated to increased incidents of violent crime on campus. *DFSCA* violations deprive students and employees of important information regarding the educational, financial, health, and legal consequences of illicit drug use and alcohol abuse and may also deprive institutions of important information about the effectiveness of any drug and alcohol programs that may have been in place during the program review period. For these reasons, Penn State is advised that its remedial measures cannot and do not diminish the seriousness of these violations nor do these actions eliminate the possibility that the Department will impose an adverse administrative action and/or additional remedial measures as a result.

Finally, the Department strongly recommends that the University re-examine its drug and alcohol policies, procedures, and programs on at least an annual basis and revise them as needed to ensure that they continue to reflect current institutional policy and are in full compliance with the *DFSCA*. Please be advised that the Department will further assess Penn State's remedial efforts during post-review monitoring.

Appendix A

Incident No.	Determinations of Improperly Classified or Under-reported Incidents (Based on Department Analysis of Penn State File Review Data)	Omitted Stats
PSU2008-131	2:Liquor Law Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Referral) Prior Classification 2:Liquor Law Violation:Residence Hall (Arrest)	1
PSU2008-152	1:Drug Abuse Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Arrest) 1:Drug Abuse Violation:Residence Hall (Referral) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Arrest)	1
PSU2008-226	11:Liquor Law Violation:Residence Hall (Arrest) 6:Liquor Law Violation:Residence Hall (Referral) Prior Classification 11:Liquor Law Violation:Residence Hall (Arrest)	6
PSU2008-244	2:Drug Abuse Violation:Residence Hall (Arrest) 3:Drug Abuse Violation:Residence Hall (Referrals) Prior Classification 2:Drug Abuse Violation:Residence Hall (Arrest)	3

PSU2008-254	1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 90208) No Prior ASR Statistic	1
PSU2008-267	1:Drug Abuse Violation:On-Campus (Arrest) 2:Drug Abuse Violation:On-Campus (Referral) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	2
PSU2008-339	1: Liquor Law Violation: Residence Hall (OSC No. 90418) No Prior ASR Statistic	1
PSU2008-347	1:Drug Abuse Violation:On-Campus (Arrest) 2:Drug Abuse Violation:On-Campus (Referral) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	2
PSU2008-350	1:Liquor Law Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Referral) Prior Classification 1:Liquor Law Violation:Residence Hall (Arrest)	1
PSU2008-355	1:Liquor Law Violation:Residence Hall (Arrest) 4:Drug Abuse Violation:Residence Hall (Referral) Prior Classification 1:Liquor Law Violation:On-Campus (Arrest)	4

PSU2008-564	Drug Abuse Violation: Residence Hall (Arrest) Drug Abuse Violation: Residence Hall (Referral) (OSC No. 91050) Prior Classification Drug Abuse Violation: Residence Hall (Arrest)	1
PSU2008-686	2:Drug Abuse Violation:Residence Hall (Arrest) 3:Drug Abuse Violation:Residence Hall (Referral) Prior Classification 2:Drug Abuse Violation:Residence Hall (Arrest)	3
PSU2008-723	1:Liquor Law Violation:On-Campus (Referral) (OSC No. 97948) No Prior ASR Statistic	1
PSU2008-731	9:Liquor Law Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Referral) Prior Classification 9:Liquor Law Violation:Residence Hall (Arrest)	1
PSU2008-741	1:Liquor Law Violation:Residence Hall No Prior ASR Statistic	1
PSU2008-742	1:Aggravated Assault:Public Property No Prior ASR Statistic	1
PSU2008-970	1:Drug Abuse Violation:Residence Hall (Arrest) 1:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 91931) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest)	1

PSU2008-1038	2:Liquor Law Violation:Residence Hall (Referral) (OSC Nos. 92135 & 92137) No Prior ASR Statistic	2
PSU2008-1129	1:Liquor Law Violation:Residence Hall No Prior ASR Statistic	1
PSU2008-1149	1:Drug Abuse Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Arrest) 1:Drug Abuse Violation:Residence Hall (Referral) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Arrest)	1
PSU2008-1188	1:Aggravated Assault:On-Campus No Prior ASR Statistic	1
PSU2008-1352	4:Liquor Law Violation:Residence Hall (Arrest) 6:Liquor Law Violation:Residence Hall (Referral) Prior Classification 4:Liquor Law Violation:Residence Hall (Arrest)	6
PSU2008-1427	1:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 92845) No Prior ASR Statistic	1
PSU2008-1467	1:Liquor Law Violation:On-Campus (Arrest) 3:Drug Abuse Violation:On-Campus (Referral) Prior Classification 1:Liquor Law Violation:On-Campus (Arrest)	3

PSU2008-1735	1:Liquor Law Violation:Residence Hall (Referral) No Prior ASR Statistic	1
PSU2008-2207	1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 94361) No Prior ASR Statistic	1
PSU2008-2354	1:Drug Abuse Violation:On-Campus (Arrest) 1:Drug Abuse Violation:On-Campus (Referral) (OSC No. 94535) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	1
PSU2008-2438	1:Drug Abuse Violation:On-Campus (Arrest) 2:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 95216 and 95217) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	2
PSU2008-2446	1:Forcible Sex Offense:Residence Hall No Prior ASR Statistic	1
PSU2008-2539	1:Aggravated Assault:On-Campus No Prior ASR Statistic	1
PSU2008-2636	1:Liquor Law Violation:On-Campus No Prior ASR Statistic	1
PSU2008-2653	1:Motor Vehicle Theft:On-Campus No Prior ASR Statistic	1
PSU2008-2723	1:Liquor Law Violation:On-Campus No Prior ASR Statistic	1

PSU2008-2756	<p>1:Drug Abuse Violation:On-Campus (Arrest)</p> <p>2:Drug Abuse Violation: On-Campus (Referral) (OSC Nos. 97201 and 97202)</p> <p>Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)</p>	2
PSU2008-2759	<p>1:Drug Abuse Violation:On-Campus (Arrest)</p> <p>1:Drug Abuse Violation:On-Campus (Referral) (OSC No. 97197)</p> <p>Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)</p>	1
PSU2008-2860	<p>1:Drug Abuse Violation:On-Campus (Referral) (OSC No. 97602)</p> <p>No Prior ASR Statistic</p>	1
PSU2008-2941	<p>1:Drug Abuse Violation:On-Campus</p> <p>No Prior ASR Statistic</p>	1
PSU2008-2961	<p>3:Liquor Law Violation:Residence Hall (Arrest)</p> <p>2:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 97280 and 97286)</p> <p>Prior Classification 1:Drug Abuse Violation: Residence Hall (Arrest)</p> <p>2:Liquor Law Violation:Residence Hall (Arrest)</p>	2
PSU2008-2975	<p>1:Drug Abuse Violation:On-Campus (Arrest)</p> <p>1:Drug Abuse Violation:On-Campus (Referral) (OSC No. 96397)</p> <p>Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)</p>	1

PSU2008-2999	1:Liquor Law Violation:Non-campus No Prior ASR Statistic	1
PSU2008-3322	1:Burglary:Residence Hall No Prior ASR Statistic	1
PSU2008-3330	1:Liquor Law Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 96090) Prior Classification 1:Liquor Law Violation:Residence Hall (Arrest)	1
PSU2008-3406	1:Liquor Law Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 96405) Prior Classification 1:Liquor Law Violation:Residence Hall (Arrest)	1
PSU2008-3428	1:Liquor Law Violation:Residence Hall No Prior ASR Statistic	1
PSU2008-3530	2:Liquor Law Violation:Public Property Prior Classification 1:Liquor Law Violation:Public Property	1
PSU2008-3562	1:Drug Abuse Violation:On-Campus No Prior ASR Statistic	1
PSU2008-3581	1:Drug Abuse Violation:On-Campus No Prior ASR Statistic	1
PSU2008-3719	1:Aggravated Assault:On-Campus No Prior ASR Statistic	1

PSU2008-3725	1:Liquor Law Violation:On-Campus (Arrest) 1:Liquor Law Violation:On-Campus (Referrals) (OSC Nos. 97991, 97992, 97993) Prior Classification 1:Liquor Law Violation:On-Campus (Arrest)	1
PSU2008-3834	1:Drug Abuse Violation:On-Campus (Arrest) 1:Drug Abuse Violation:On-Campus (Referral) (OSC No. 99524) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	1
PSU2008-3855	1:Drug Abuse Violation:Residence Hall (Arrest) 1:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 97291) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest)	1
PSU2008-3962	1:Liquor Law Violation:On-Campus No Prior ASR Statistic	1
PSU2008-4048	1:Burglary:Residence Hall No Prior ASR Statistic	1
PSU2008-4109	1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 98011) No Prior ASR Statistic	1

PSU2008-4183	<p>2:Drug Abuse Violation:Residence Hall (*In 2010 ASR)</p> <p>4:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 101017, 101018, 101041 and 101042) (*In 2010 ASR)</p> <p>Prior Classification 2:Drug Abuse Violation:Residence Hall (*In 2010 ASR)</p>	4
PSU2008-4277	<p>1:Drug Abuse Violation:Residence Hall</p> <p>No Prior ASR Statistic</p>	1
PSU2008-4415	<p>1:Liquor Law Violation:On-Campus</p> <p>No Prior ASR Statistic</p>	1
PSU2008-4565	<p>1:Drug Abuse Violation:Residence Hall (*In 2010 ASR)</p> <p>2:Liquor Law Violation:Residence Hall (Arrest) (*In 2009 ASR)</p> <p>Prior Classification 1:Drug Abuse Violation:Residence Hall (*In 2010 ASR)</p>	2
PSU2008-4603	<p>1:Drug Abuse Violation:Residence Hall (In 2010 ASR)</p> <p>2:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 100714 and 100715) (In 2010 ASR)</p> <p>Prior Classification 1:Drug Abuse Violation:Residence Hall (Reported in 2010 ASR)</p>	2
PSU2008-4623	<p>2:Drug Abuse Violation:Residence Hall (*In 2010 ASR)</p> <p>1:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 100891) (*In 2010 ASR)</p> <p>Prior Classification 2:Drug Abuse Violation:Residence Hall (*In 2010 ASR)</p>	1

PSU2008-4658	1:Robbery:On-Campus No Prior ASR Statistic	1
PSU2008-4676	1:Drug Abuse Violation:On-Campus (*In 2010 ASR) 8:Drug Abuse Violation:On-Campus (Referral) (*In 2010 ASR) Prior Classification 1:Drug Abuse Violation:On-Campus (*In 2010 ASR)	8
PSU2008-9014	1:Drug Abuse Violation:Residence Hall No Prior ASR Statistic	1
PSU2008-9026	1:Drug Abuse Violation:On-Campus No Prior ASR Statistic	1
PSU2009-59	2:Drug Law Violation: Residence Hall (Arrest) 1:Liquor Law Violation: Residence Hall (Arrest) 7:Drug Abuse Violation: Residence Hall (Referral) Prior Classification 2:Drug Law Violation: Residence Hall (Arrest) 2:Liquor Law Violation: Residence Hall (Arrest)	6
PSU2009-73	1:Liquor Law Violation:On-Campus (Referral) (OSC No. 99859) No Prior ASR Statistic	1

PSU2009-140	1:Drug Abuse Violation:Residence Hall (Arrest) 1:Drug Abuse Violation:Residence Hall (Referral) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest)	1
PSU2009-224	1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 100099) No Prior ASR Statistic	1
PSU2009-305	1:Drug Abuse Violation:Residence Hall (Arrest) 1:Drug Abuse Violation:Residence Hall (Referral) (OSC #100451) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest)	1
PSU2009-464	2:Drug Abuse Violation:Residence Hall (Arrest) 5:Drug Abuse Violation:Residence Hall (Referral) Prior Classification 2:Drug Abuse Violation:Residence Hall (Arrest)	5
PSU2009-484	1:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 100678) No Prior ASR Statistic	1
PSU2009-538	1:Liquor Law Violation:On-Campus No Prior ASR Statistic	1
PSU2009-614	2:Drug Abuse Violation:Residence Hall (Arrest) 2:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 103870 and 103871) Prior Classification 2:Drug Abuse Violation:Residence Hall (Arrest)	2

PSU2009-617	1:Drug Abuse Violation:Residence Hall (Arrest) 1:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 101709) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest)	1
PSU2009-618	1:Drug Abuse Violation:Residence Hall (Arrest) 1:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 101560) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest)	1
PSU2009-635	1:Liquor Law Violation:Residence Hall No Prior ASR Statistic	1
PSU2009-676	2:Drug Abuse Violation:Residence Hall (Arrest) 1:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 101568) Prior Classification 2:Drug Abuse Violation:Residence Hall (Arrest)	1
PSU2009-718	1:Drug Abuse Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Arrest) 2:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 101706 and 101707) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Arrest)	2

PSU2009-735	5:Liquor Law Violation:Residence Hall (Arrest) 7:Liquor Law Violation:Residence Hall (Referral) (OSC #s 101173, 101176, 101177, 101178) Prior Classification 5:Liquor Law Violation:Residence Hall (Arrest)	7
PSU2009-737	1:Liquor Law Violation:On-Campus (Arrest) 1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 101266) Prior Classification 1:Liquor Law Violation:On-Campus (Arrest)	1
PSU2009-813	1:Drug Abuse Violation:Residence Hall (Arrest) 5:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 102250, 102255) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest)	5
PSU2009-949	1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 101811) No Prior ASR Statistic	1
PSU2009-979	1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 101814) No Prior ASR Statistic	1
PSU2009-1022	1:Drug Abuse Violation:Residence Hall (Arrest) 2:Drug Abuse Violation:Residence Hall (Referral) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest)	2

PSU2009-1063	1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 102163) No Prior ASR Statistic	1
PSU2009-1077	4:Liquor Law Violation:Residence Hall (Referral) (OSC Nos. 102120, 102122) No Prior ASR Statistic	4
PSU2009-1247	1:Liquor Law Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Referral) Prior Classification 1:Liquor Law Violation:Residence Hall (Arrest)	1
PSU2009-1252	1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 102545) No Prior ASR Statistic	1
PSU2009-1304	1:Burglary:On-Campus No Prior ASR Statistic	1
PSU2009-1315	1:Drug Abuse Violation:On-Campus (Arrest) 1:Liquor Law Violation:On-Campus (Referral) (OSC No. 103454) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	1
PSU2009-1335	1:Liquor Law Violation:Non-Campus (SCPD No. 2009-5316) No Prior ASR Statistic	1
PSU2009-1482	1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 103582) No Prior ASR Statistic	1

PSU2009-1492	4:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 103464, 103465, 103468) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest)	3
PSU2009-1515	1:Motor Vehicle Theft:On Campus No Prior ASR Statistic	1
PSU2009-1565	1:Liquor Law Violation:On-Campus (SCPD 09-5829) No Prior ASR Statistic	1
PSU2009-1601	1:Liquor Law Violation:On-Campus (Arrest) 3:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 103517, 103518 and 103516) Prior Classification 1:Liquor Law Violation:On-Campus (Arrest)	3
PSU2009-1603	4:Drug Abuse Violation:On-Campus (Referral) No Prior ASR Statistic	4
PSU2009-2037	1:Drug Abuse Violation:On-Campus (Arrest) 1:Drug Abuse Violation:On-Campus (Referral) (OSC No. 104692) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	1
PSU2009-2248	1:Drug Abuse Violation:On-Campus (Arrest) 1:Drug Abuse Violation:On-Campus (Referral) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	1

PSU2009-2331	3:Liquor Law Violation:Residence Hall (Arrest) 2:Liquor Law Violation:Residence Hall (Referral) (OSC Nos. 104723 and 104724) Prior Classification 3:Liquor Law Violation:Residence Hall (Arrest)	2
PSU2009-2409	1:Drug Abuse Violation:On-Campus (Arrest) 1:Drug Abuse Violation:On-Campus (Referral) (OSC No. 105503) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	1
PSU2009-2421	1:Drug Abuse Violation:Residence Hall (Arrest) 4:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 108903, 108905, 108907 and 108912) Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest)	4
PSU2009-2426	1:Drug Abuse Violation:On-Campus (Arrest) 1:Drug Abuse Violation:On-Campus (Referral) (OSC No. 106551) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	1
PSU2009-2487	1:Liquor Law Violation:Public Property No Prior ASR Statistic	1
PSU2009-2525	4:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 109455, 109456, 109459, 109460) No Prior ASR Statistic	4

PSU2009-2626	2:Liquor Law Violation:On-Campus Prior Classification 1:Liquor Law Violation:On-Campus	1
PSU2009-2650	1:Drug Abuse Violation:On-Campus (Arrest) 2:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 110142 and 110143) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	2
PSU2009-2661	1:Liquor Law Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 105167) Prior Classification 1:Liquor Law Violation:Residence Hall (Arrest)	1
PSU2009-2685	2:Drug Abuse Violation:On-Campus (Arrest) 1:Drug Abuse Violation:On-Campus (Referral) (OSC No. 106001) Prior Classification 2:Drug Abuse Violation:Public Property (Arrest)	1
PSU2009-2688	2: Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 106154 and 106155) No Prior ASR Statistic	2
PSU2009-2711	1:Drug Abuse Violation:On-Campus (Arrest) 1:Drug Abuse Violation:On-Campus (Referral) (OSC No. 105998) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	1

PSU2009-2713	2:Drug Abuse Violation:On-Campus (Arrest) 2:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 105729 and 105730) Prior Classification 2:Drug Abuse Violation:On-Campus (Arrest)	2
PSU2009-2758	2:Liquor Law Violation:On-Campus Prior Classification 1:Liquor Law Violation:On-Campus	1
PSU2009-2849	2:Drug Abuse Violation:Residence Hall (Arrest) 3:Drug Abuse Violation:Residence Hall (OSC Nos. 106532, 106533 and 106534) Prior Classification 2:Drug Abuse Violation:Residence Hall (Arrest)	3
PSU2009-2858	1:Drug Abuse Violation:On-Campus (Arrest) 1: Drug Abuse Violation:On-Campus (OSC No. 106704) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	1
PSU2009-2889	1:Drug Abuse Violation:On-Campus (Arrest) 2:Drug Abuse Violation:On-Campus (OSC Nos. 106290, 106291) Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)	2

PSU2009-2932	<p>1:Drug Abuse Violation:Residence Hall (Arrest)</p> <p>1:Drug Abuse Violation:Residence Hall (OSC No. 105748)</p> <p>Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest)</p>	1
PSU2009-2971	<p>2:Drug Abuse Violation:On-Campus (Arrest) (*In 2011 ASR)</p> <p>1:Drug Abuse Violation:On-Campus (Referral) (OSC No. 113417) (*In 2011 ASR)</p> <p>Prior Classification 2:Drug Abuse Violation:On-Campus (Arrest)</p>	1
PSU2009-2999	<p>1:Drug Abuse Violation:Residence Hall (Arrest)</p> <p>1:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 106978)</p> <p>Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest)</p>	1
PSU2009-3205	<p>2:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 106259 and 106260)</p> <p>No Prior ASR Statistic</p>	2
PSU2009-3221	<p>2:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 106984 and 106985)</p> <p>Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)</p>	1
PSU2009-3332	<p>2:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 106702 and 106703)</p> <p>No Prior ASR Statistic</p>	2

PSU2009-3454	<p>1:Drug Abuse Violation:On-Campus (Arrest)</p> <p>2:Drug Abuse Violation:On-Campus (OSC Nos. 109461 and 109607)</p> <p>Prior Classification</p> <p>1:Drug Abuse Violation:On-Campus (Arrest)</p>	2
PSU2009-3465	<p>1:Drug Abuse Violation:Residence Hall (Arrest)</p> <p>2:Drug Abuse Violation:Residence Hall (OSC Nos. 107685 and 107687)</p> <p>Prior Classification</p> <p>1:Drug Abuse Violation:Residence Hall (Arrest)</p>	2
PSU2009-3477	<p>18:Liquor Law Violation:On-Campus</p> <p>Prior Classification</p> <p>15:Liquor Law Violation:On-Campus</p>	3
PSU2009-3492	<p>2:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 108887, 108898)</p> <p>No Prior ASR Statistic</p>	2
PSU2009-3503	<p>1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 107122)</p> <p>No Prior ASR Statistic</p>	1
PSU2009-3604	<p>1:Drug Abuse Violation:On Campus (Arrest)</p> <p>2:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 109843, 109844)</p> <p>Prior Classification</p> <p>1:Drug Abuse Violation:On Campus (Arrest)</p>	2

PSU2009-3763	<p>1:Drug Abuse Violation:On-Campus (Arrest)</p> <p>2:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 107929 and 107930)</p> <p>Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)</p>	2
PSU2009-3766	<p>1:Liquor Law Violation:Residence Hall (Arrest)</p> <p>4:Liquor Law Violation:Residence Hall (Referral) (OSC Nos. 108310, 108311, 108312 and 108313)</p> <p>Prior Classification 1:Liquor Law Violation:Residence Hall (Arrest)</p>	4
PSU2009-3802	<p>4:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 109846, 109847, 109848 and 109849)</p> <p>Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest)</p>	3
PSU2009-3814	<p>1:Aggravated Assault:On-Campus</p> <p>No Prior ASR Statistic</p>	1
PSU2009-3836	<p>1:Drug Abuse Violation:On-Campus (Arrest) (*2011 ASR)</p> <p>4:Drug Abuse Violation:On-Campus (OSC Nos. 110150, 110151, 110152 and 110153) (*2011 ASR)</p> <p>Prior Classification 1:Drug Abuse Violation:On-Campus (Arrest) (*2011 ASR)</p>	4
PSU2009-4006	<p>1:Liquor Law Violation:On-Campus</p> <p>No Prior ASR Statistic</p>	1

PSU2009-4159	<p>1:Drug Abuse Violation:Residence Hall (Arrest) (*2011 ASR)</p> <p>1:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 108700)</p> <p>Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest) (*2011 ASR)</p>	1
PSU2009-4163	<p>1:Drug Abuse Violation:Residence Hall (Arrest)</p> <p>3:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 108678, 108679 and 108680)</p> <p>Prior Classification 2:Drug Abuse Violation:Residence Hall (Arrest)</p>	2
PSU2009-4207	<p>1:Burglary:On-Campus</p> <p>No Prior ASR Statistic</p>	1
PSU2009-9000	<p>1:Drug Abuse Violation:Residence Hall (PTP-2009-0170)</p> <p>No Prior ASR Statistic</p>	1
PSU2010-408	<p>1:Drug Abuse Violation: Residence Hall (Arrest)</p> <p>2:Liquor Law Violation: Residence Hall (Referral) (OSC Nos. 111352 and 111353)</p> <p>Prior Classification: 1:Drug Abuse Violation:Residence Hall (Arrest)</p>	2
PSU2010-491	<p>2:Burglary:Non-Campus</p> <p>Prior Classification: 1:Burglary:Non-Campus</p>	1
PSU2010-693	<p>1:Liquor Law Violation:On-Campus (Referral) (OSC No. 112802)</p> <p>No Prior ASR Statistic</p>	1

PSU2010-801	2:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 113424 and 113425) No Prior ASR Statistic	2
PSU2010-834	1:Forcible Sex Offense:On-Campus No Prior ASR Statistic	1
PSU2010-1080	1:Liquor Law Abuse Violation:Residence Hall (Arrest) 2:Liquor Law Abuse Violation:Residence Hall (Referral) (Not on OSC Referral List) Prior Classification: 1:Liquor Law Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Referral)	1
PSU2010-1107	1:Aggravated Assault:Residence Hall No Prior ASR Statistic	1
PSU2010-1299	1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 113559) No Prior ASR Statistic	1
PSU2010-1512	1:Burglary:Residence Hall No Prior ASR Statistic	1
PSU2010-1570	5:Liquor Law Violation:Residence Hall (Referral) (OSC Nos. 114108, 114106, 114107, 114109 and 114110) No Prior ASR Statistic	5
PSU2010-1993	1:Forcible Sex Offense:Residence Hall No Prior ASR Statistic	1
PSU2010-2172	1:Forcible Sex Offense:Residence Hall No Prior ASR Statistic	1
PSU2010-2663	1:Arson:On-Campus No Prior ASR Statistic	1

PSU2010-2838	5:Liquor Law Violation:Residence Hall (Referral) (OSC Nos. 116625, 116626, 116627, 116628, 116629) No Prior ASR Statistic	5
PSU2010-3070	1:Drug Abuse Violation:On-Campus (Arrest) 2:Drug Law Violation:On-Campus (Referral) (OSC Nos. 116989 & 116990) Prior Classification: 1:Drug Abuse Violation:On-Campus (Arrest)	2
PSU2010-3095	1:Drug Abuse Violation:On-Campus (Arrest) 4:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 119956, 119959, 119971 & 119972) Prior Classification: 1:Drug Abuse Violation:On-Campus (Arrest) 3:Drug Abuse Violation:On-Campus (Referral)	1
PSU2010-3114	7:Liquor Law Violation:Residence Hall (Referral) (OSC Nos. 117181, 117179, 117182, 117184, 117180, 117183 and 117185) No Prior ASR Statistic	7
PSU2010-3255	5:Drug Abuse Violation:On-Campus (Referral) (OSC Nos. 123040, 123041, 123043, 123044 and 123116) Prior Classification: 4:Drug Abuse Violation:On-Campus (Referral)	1

PSU2010-3269	<p>1:Drug Abuse Violation:Residence Hall (Arrest)</p> <p>1:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 117250)</p> <p>Prior Classification: 1:Drug Abuse Violation:Residence Hall (Arrest)</p>	1
PSU2010-3519	<p>1:Drug Abuse Violation:Residence Hall (Referral) (Not on OSC Referral List)</p> <p>No Prior ASR Statistic</p>	1
PSU2010-3583	<p>2:Liquor Law Violation:On-Campus</p> <p>3:Liquor Law Violation:On-Campus (Referral) (Not on OSC Referral List)</p> <p>Prior Classification: 2:Liquor Law Violation:On-Campus (Arrest)</p> <p>1:Liquor Law Violation:On-Campus (Referral)</p>	2
PSU2010-3721	<p>1:Drug Abuse Violation:Residence Hall (Arrest)</p> <p>2:Drug Abuse Violation:Residence Hall (Referral) (Not on OSC Referral List)</p> <p>Prior Classification: 1:Drug Abuse Violation:Residence Hall (Arrest)</p>	2
PSU2010-3756	<p>5:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 122975, 122973, 122972, 122976 and 122974)</p> <p>Prior Classification: 4:Drug Abuse Violation:Residence Hall (Referral)</p>	1

PSU2010-3771	<p>2:Liquor Law Violation:On-Campus (Arrest)</p> <p>2:Liquor Law Violation:Residence Hall (Referral) (OSC No. 118431 & 118429)</p> <p>Prior Classification: 2:Liquor Law Violation:On-Campus (Arrest)</p>	2
PSU2010-3850	<p>1:Drug Abuse Violation:Residence Hall (Arrest) (*In 2012 ASR)</p> <p>1:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 119487) (*In 2011 ASR)</p> <p>Prior Classification: 1:Drug Abuse Violation:Residence Hall (Arrest) (*In 2012 ASR)</p>	1
PSU2010-3907	<p>1:Aggravated Assault:On-Campus</p> <p>No Prior ASR Statistic</p>	1
PSU2010-4022	<p>1:Aggravated Assault:On-Campus</p> <p>No Prior ASR Statistic</p>	1
PSU2010-4062	<p>1:Motor Vehicle Theft: On-Campus</p> <p>No Prior ASR Statistic</p>	1
PSU2010-4111	<p>1:Liquor Law Violation:On-Campus (Referral) (Not on OSC Referral List)</p> <p>No Prior ASR Statistic</p>	1
PSU2010-4148	<p>1:Aggravated Assault:On-Campus</p> <p>No Prior ASR Statistic</p>	1
PSU2010-4212	<p>2:Liquor Law Violation:On-Campus</p> <p>No Prior ASR Statistic</p>	2

PSU2010-4557	<p>1:Drug Abuse Violation:Residence Hall (Arrest) (In 2012 ASR)</p> <p>2:Drug Abuse Violation:Residence Hall (Referral) (In 2012 ASR)</p> <p>Prior Classification: 1:Drug Abuse Violation:Residence Hall (Referral) (In 2011 ASR)</p> <p>1:Drug Abuse Violation:Residence Hall (Arrest) (In 2012 ASR)</p>	1
PSU2011-0037	<p>2:Burglary:Residence Hall</p> <p>Prior Classification: 1:Burglary:Residence Hall</p>	1
PSU2011-0044	<p>2:Burglary:Residence Hall</p> <p>Prior Classification: 1:Burglary:Residence Hall</p>	1
PSU2011-0334	<p>1:Liquor Law Violation:Residence Hall (Arrest)</p> <p>3:Liquor Law Violation:Residence Hall (Referral) (OSC Nos. 121591, 121592 and 121593)</p> <p>Prior Classification: 1:Liquor Law Violation:Residence Hall (Arrest)</p>	3
PSU2011-0366	<p>1:Liquor Law Violation:On-Campus (Arrest)</p> <p>1:Liquor Law Violation:On-Campus (Referral)</p> <p>Prior Classification: 1:Liquor Law Violation:On-Campus (Arrest)</p>	1

PSU2011-0440	1:Drug Abuse Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 121743) Prior Classification: 1:Drug Abuse Violation:Residence Hall (Arrest)	1
PSU2011-0499	1:Liquor Law Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 123101) Prior Classification: 1:Liquor Law Violation:Residence Hall (Arrest)	1
PSU2011-0838	2:Liquor Law Violation:Residence Hall (Referral) (Not on OSC Referral List) No Prior ASR Statistic	2
PSU2011-0844	2:Liquor Law Violation:On-Campus (Referral) (OSC Nos. 124060 and 124061) Prior Classification: 1:Liquor Law Violation:On-Campus (Referral)	1
PSU2011-0937	1:Liquor Law Violation:On-Campus No Prior ASR Statistic	1
PSU2011-1124	2:Liquor Law Violation:Residence Hall (Arrest) 1:Liquor Law Violation:On-Campus (Referral) Prior Classification: 2:Liquor Law Violation:On-Campus (Arrest)	1
PSU2011-1229	1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 123674) No Prior ASR Statistic	1

PSU2011-1846	2:Liquor Law Violation:On-Campus (Arrest) 1:Liquor Law Violation:On-Campus (Referral) (OSC No. 124890) Prior Classification: 2:Liquor Law Violation:On-Campus (Arrest)	1
PSU2011-2465	1:Weapon:Residence Hall (Arrest) 3:Drug Abuse Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Arrest) Prior Classification: 1:Weapon:Residence Hall (Arrest) 3:Drug Abuse Violation:Residence Hall (Arrest)	1
PSU2011-2754	1:Burglary:On-Campus No Prior ASR Statistic	1
PSU2011-3057	1:Drug Abuse Violation:On-Campus (Arrest) 2:Drug Abuse Violation:On-Campus (Referral OSC Nos. 126777, 129535) Prior Classification: 1:Drug Abuse Violation:On-Campus (Arrest)	2
PSU2011-3329	3:Liquor Law Violation:On-Campus (Arrest) Prior Classification: 2:Liquor Law Violation:On-Campus (Arrest)	1

<p>PSU2011-3357</p>	<p>3:Liquor Law Violation:Residence Hall (Arrest)</p> <p>3:Liquor Law Violation:Residence Hall (Referral) (OSC Nos. known 127232, 127233)</p> <p>Prior Classification: 3:Liquor Law Violation:Residence Hall (Arrest)</p> <p>2:Liquor Law Violation:Residence Hall (Referral)</p>	<p>1</p>
<p>PSU2011-3502</p>	<p>1:Drug Abuse Violation:Residence Hall (Arrest)</p> <p>4:Drug Abuse Violation:Residence Hall (Referral) (OSC Nos. 127485, 127486, 127487 and 127488)</p> <p>Prior Classification: 1:Drug Abuse Violation:Residence Hall (Arrest)</p>	<p>4</p>
<p>PSU2011-3651</p>	<p>26:Liquor Law Violation:On-Campus (SCP201108620 SCP201108621 SCP201108622)</p> <p>Prior Classification: 25 Liquor Law Violation:On-Campus</p>	<p>1</p>
<p>PSU2011-4043</p>	<p>4:Liquor Law Violation:On-Campus (Arrest)</p> <p>1:Liquor Law Violation:On-Campus (Referral) (OSC No. 129006)</p> <p>Prior Classification: 4:Liquor Law Violation:On-Campus (Arrest)</p>	<p>1</p>

PSU2011-4260	1:Drug Abuse Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Referral OSC No. 129073) Prior Classification: 1:Drug Abuse Violation:Residence Hall (Arrest) 1:Liquor Law Violation:Residence Hall (Arrest)	1
PSU2011-4262	1:Drug Abuse Violation:Residence Hall (Arrest) 2:Drug Abuse Violation:Residence Hall (Referral) (OSC No. 130401, 1 Not on OSC Referral List) Prior Classification: 1:Drug Abuse Violation:Residence Hall (Arrest) 1:Drug Abuse Violation:Residence Hall (Referral)	1
PSU2011-4349	1:Forcible Sex Offense:Residence Hall No Prior ASR Statistic	1
PSU2011-4375	1:Drug Abuse Violation:Residence Hall (Arrest) <i>(In 2013 ASR)</i> 3:Drug Abuse Violation:Residence Hall (Referral) (OSC No. known 132826) <i>(In 2013 ASR)</i> Prior Classification 1:Drug Abuse Violation:Residence Hall (Arrest) <i>(In 2013 ASR)</i>	3
PSU2011-4392	1:Aggravated Assault:On-Campus No Prior ASR Statistic	1

PSU2011-4830	2:Liquor Law Violation:On-Campus (Referral) (OSC No. 130389) No Prior ASR Statistic	2
PSU2011-5113	1:Liquor Law Violation:Residence Hall (Referral) (OSC No. 130727) No Prior ASR Statistic	1
PSU2011-5319	1:Aggravated Assault:Residence Hall No Prior ASR Statistic	1
PSU2011-5412	3:Liquor Law Violation:On-Campus (Arrest) Prior Classification: 1:Liquor Law Violation:On-Campus (Arrest)	2

Exhibit 1

Attorneys

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State College, PA
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1149 Municipal Drive
PO Box 663
Duncansville, PA 16635
814-693-0500

Exhibit 2

To Whom it May Concern,

I am very sorry to hear what happened Saturday night. I don't presume to know exactly what happened with the fight that occurred in this apartment, but there was most likely an alternative solution that wasn't taken. There are probably people to blame on both sides, but in any case, it was an unfortunate event.

I want you to realize that you have the power now to press charges or to drop them. Legally, the ball is in your hands. However, you can be a hero in this situation and forgive the attackers for what they have done. There is no question that what they did was wrong, and now you can show them the mercy they failed to show you. This isn't about payback, this is about doing what is good for everyone.

The problem with pressing charges is that you not only punish them, but you punish the entire student body and alumni who have come before you. Joe Paterno is almost inevitably on his way out soon and he probably does not want to deal with this issue during his last years. You can bet that he will take separate action from the law to make sure that the football players involved are punished accordingly though. He has a history of holding his players to a strict moral code. Also, this will just become a long legal battle for yourselves in which both parties involved will most likely be making accusations. You could end it now.

I write this letter to you asking politely that you drop the charges. Instead of pressing charges, I challenge those of you involved to seek out the football department and ask for a formal meeting with your attackers that would be mediated by several coaches. I am sure that the coaches want to know exactly what happened and it would be good for all of you to discuss everything so that any ambiguity is washed out. Then the coaches will be able to punish the actors accordingly. There is contact information at the bottom of this page for Tim Curley, the athletic director. He would be able to set up a meeting of this sort if you would like.

Again, I am very sorry about what happened. You did not deserve that and I feel empathy for you. I just ask that you have empathy for those who did you wrong and be the bigger man in this situation.

Sincerely,
The voice of the Penn State student body

To contact Tim Curley:
timc3@psu.edu
010 JORDAN CENTER
UNIVERSITY PARK, PA 16802
(814) 865 1086

Exhibit 3

Handwritten notes of Gary C. Schultz, Penn State Senior Vice President for Finance and Business, dated May 4, 1998, and May, 5 1998.

3
Mittle, - called his cell
to give King
had to be given full contact
because of age difference
but the contact of King
to go to 4-25-10
- Tracy B. Borden, age 10,
also a victim, said -
claiming King was
on with him
- Mittle also said
- Children of 11, 12, 13
were present in the
cell for the duration - thought

- 4 -
Mittle on 4-25-10 - 110
Sexual Contact
- Per judgment
Contact more - contact
in quarters
- Mittle and report
was done - no action

John H...
5/5

Last evening

- no references 11/2 11/20/11
- only change: address list
- happened in Skoser
- demonstrated on chair how
- Jerry hugged Jim - took
- hands around abdomen
- & down to thighs - pulled
- him up & held him at
- Skoser head - ruse
- report of ears
- observed by PSU FBs +
- concerned about getting Jerry
- in trouble - getting FBI help

-2-

- Kid has been seeing
- Psychiatrist
- Dr. Kelly, another problem
- but a psychiatric + behavioral
- therapist to Psychiatrist
- & said she would call
- child abuse hot line
- will quote in
- weeklong MO - with
- Dept of Public Welfare
- Officer Day - interviewed that
- night
- similar case
- last night
- something
- kissed on head.

-3-

Hanging from backline
stairs

No allegation against MAF

Kate does drawings of
Sharon's room

he initially went down to
Sharon's room sticks
around a spray bottle
him to complain
to Sharon next to his

- Except child abuse report
MAY of 2007 today the
adults report to old

-4-

Enlightenment, case worker
felt they would interview
young

also this opening to Paulina's
box?
Other children?

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Wednesday, May 06, 1998 2:06 PM
To: Tim Curley
Cc: Spanier-Graham (GBS)
Subject: Re: Joe Paterno

Will do. Since we talked tonight I've learned that the Public Welfare people will interview the individual Thursday.

At 05:24 PM 5/5/98 -0400, Tim Curley wrote:

>I have touched base with the coach. Keep us posted. Thanks.

>

>Tim Curley

>Tmc3@psu.edu

>

>

>

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Tuesday, June 09, 1998 2:03 AM
To: Harmon-Thomas (TRH)
Subject: Re: Jerry

Tom, I've been holding some "catch up time" on my calendar on Monday and I'd suggest that we use a piece of it to meet and discuss the status (I also recall the last time we talked you indicated that there was some aspects of this that you felt you should review with me when we had a chance to talk). Please get ahold of Joan and see what time will work. thanks

>Date: Mon, 08 Jun 1998 21:59:42 -0400
>To: Tim Curley <tmc3@psu.edu>
>From: "Gary C. Schultz" <gcs2@psu.edu>
>Subject: Re: Jerry

>
>Tim, I don't have an update at this point. Just before I left for vac, Tom told me that the DPW and Univ Police services were planning to meet with him. I'll see if this has happened and get back to you.

>
>At 10:27 AM 5/30/98 -0400, Tim Curley wrote:
>>Any further update?

>>
>>
>>
>>

>>At 09:46 AM 5/19/98 -0400, you wrote:
>>>No, but I don't expect we'll hear anything prior to the end of this week.

>>>
>>>At 09:37 PM 5/18/98 -0400, Tim Curley wrote:
>>>>Any update?
>>>>

>>>>At 04:11 AM 5/14/98 -0400, you wrote:
>>>>Tim, I understand that a DPW person was here last week; don't know
>>>>for sure if they talked with Jerry. They decided to have a child
>>>>psychologist talk to the boys sometime over the next week. We won't know anything before then.

>>>>At 02:21 PM 5/13/98 -0400, Tim Curley wrote:
>>>>>Anything new in this department? Coach is anxious to know where it stands.

>>>>>
>>>>>Tim Curley
>>>>>Tmc3@psu.edu

>>>>>
>>>>>

>>>>>Gary C. Schultz
>>>>>Sr. V.P. for Finance and Business/Treasurer
>>>>>208 Old Main
>>>>>Phone: 865-6574

>>>>Fax: 863-8685
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>>>>Tim Curley
>>>>Tmc3@psu.edu
>>>>
>>>>
>>>>
>>>Gary C. Schultz
>>>Sr. V.P. for Finance and Business/Treasurer
>>>208 Old Main
>>>Phone: 865-6574
>>>Fax: 863-8685
>>>
>>>
>>>
>>_____
>>Tim Curley
>>Tmc3@psu.edu
>>
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>

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Thursday, May 14, 1998 8:55 AM
To: Thomas Harmon
Subject: Re: Jerry

Good, Tom. Thanks for the update and I agree that we want to resolve quickly.

At 04:48 PM 5/13/98 EST, Thomas Harmon wrote:

>The psychologist from DPW spoke with the child. They have not spoken
>to him. It is still my understanding that they intend to do this. I
>have also been advised that they want to resolve this quickly.

>
>> Date: Thu, 14 May 1998 04:11:19 -0400
>> To: Tim Curley <tmc3@psu.edu>
>> From: "Gary C. Schultz" <gcs2@psu.edu>
>> Subject: Re: Jerry

>
>> Tim, I understand that a DPW person was here last week; don't know
>> for sure if they talked with Jerry. They decided to have a child
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>> >
>> >
>> > Thomas R. Harmon
>> > Director of Police Services
>> > The Pennsylvania State University
>> > 30-B Eisenhower Parking Deck
>> > University Park, PA 16802
>> > (814) 865-1864
>> > harmon@police.psu.edu

>> >
>> >

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Tuesday, June 09, 1998 2:04 AM
To: Thomas Harmon
Subject: Re: Confidential

Tom, you can ignore my earlier email, unless you feel that we should talk some more about this. thanks

At 01:11 PM 6/1/98 EST, Thomas Harmon wrote:

>Gary,

>

>The DPW investigator and our officer met discreetly with Jerry this
>morning. His account of the matter was essential the same as the
>child's. He also indicated that he had done this with other children
>in the past. He was advised since there was no criminal behavior
>established that the matter was closed as an investigation.
>He was a little emotional and expressed concern as to how this might
>have adversely affected the child.

>

>Tom

>

>

>

>

>Thomas R. Harmon
>Director of Police Services
>The Pennsylvania State University
>30-B Eisenhower Parking Deck
>University Park, PA 16802
>(814) 865-1864
>harmon@police.psu.edu

>

>

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Tuesday, June 09, 1998 2:09 AM
To: Curley-Tim (TMC)
Cc: Spanier-Graham (GBS); Harmon-Thomas (TRH)
Subject: Re: Jerry

They met with Jerry on Monday and concluded that there was no criminal behavior and the matter was closed as an investigation. He was a little emotional and expressed concern as to how this might have adversely affected the child. I think the matter has been appropriately investigated and I hope it is now behind us.

>Date: Mon, 08 Jun 1998 21:59:42 -0400
>To: Tim Curley <tmc3@psu.edu>
>From: "Gary C. Schultz" <gcs2@psu.edu>
>Subject: Re: Jerry

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>Tim, I don't have an update at this point. Just before I left for vac, Tom told me that the DPW and Univ Police services were planning to meet with him. I'll see if this has happened and get back to you.

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>>_____
>>Tim Curley
>>Tmc3@psu.edu
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Exhibit 4

PENNSTATE



Football Coaches Office
The Pennsylvania State University
Greenberg Sports Complex
University Park, PA 16802-1216

(814) 865-0411
Fax: (814) 863-3874

redacted

Driving home the other night from Snow Shoe I had many thoughts. Some happy, some a little sad. As you know, I am ~~so~~ very emotional and kind of let everything out. I'm not good at hiding my feelings. I have many "Forest Gump" qualities, and I thought a lot about that movie as I was driving home. As you would expect, I cried at that movie.

I remembered Forest and how he was so naive (oblivious to the world) and not very smart. He was so happy because he wasn't caught up in being anything other than a caring person. (I wish that I had more of that in me.)

There was his wife and some friends who didn't understand what he had and tried to find their happiness by partying and living the fast life. So many people look for happiness that way. It didn't come for his wife or his friends. They turned away from him and went to searching. Unfortunately, they only found hopelessness, despair, and became depressed.

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Forest stayed loyal, he didn't know any better. Somehow, people like him are blessed. He never gave up because he cared. When those special people came back to his simple life of love and concern they found hope and true happiness.

As you go through life, you may have moments when you think that there is a lifestyle out there somewhere that is the answer. I hope that in the back of your mind will be a memory of simple times, hopefully laughter, joy, and warm smiles. Try not to ever forget all of those who care. Try to remember canoe, squirt guns, water balloons, fighting outside miniature golf, Polish soccer, basketball, racquetball, football, swimming, studying, lifting, working, golfing, volleyball, kick ball, soccer (Communist Team), laughing, hurting, arguing, crying, caring, and so much more fun.

Always,

Forest Jer

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The "B-J." Story

Very few people know about this story and probably less care. I guess that I'm writing it for me. I'm Jer.

redacted is a young man that came into Jer's life. It was a difficult time for Jer because he had lost his dad. Jer and his dad shared so much, did many things together. redacted comes along and he and Jer seem to enjoy the same experiences. Both seemed to be in need. They loved playing games, competing, singing, laughing, sharing experiences, just being themselves. Jer remembers driving redacted home. redacted would say, "Tell me another story, Jer." Jer, of course, being filled with them would come up with one. Jer remembers how he didn't want those rides to end.

Jer became attached to redacted and always will be. redacted loved Justice and Stausch, and they love him. He and Jer played Polish soccer, wrote papers together, rode redacted four wheeler even though Jer was scared to death, studied in the playground, roller skated, ice skated, jet-skied, went to a bowl game, spent days at football and soccer camp, camped, traveled, and more. He met and did things with Penn State football players and spent many hours with them and Jer. It wasn't redacted Jer, redacted, etc.; it was "we."

Times were not always perfect. There were ups and downs. There were arguments, fights, they cared! No matter what, there was

a connection that would help them last through their difficult times. There was always a sensitive, caring feeling deep inside. Jer had learned through many experiences that life isn't perfect, even with someone he considered to be his "best friend."

Life is far from perfect at this stage. Something or things have come into ^{redacted} life that appear to have taken him over. It's powerful, a cloud of smoke that has engulfed him, for Jer it has been a dark cloud. ^{redacted} seemed to fight it, coming over trying to do hockey, but couldn't pull it off. He seems to be losing these battles more and more. Inch by inch the cloud has choked him and taken over. It has smothered sensitivity and love, taken away his caring and enthusiasm. His enthusiasm has been replaced by sleep, his caring replaced by apathy (no concern). "Tell me another story, Jer," has been replaced by "I don't care!" This cloud has destroyed soccer and hockey, choked smiles and laughter. There is fear that it has reached his insides, killing his feelings.

Jer believes that there will always be something special inside ^{redacted}. He hopes that it will last, return, if it has left. The players miss him. They say, "Come back, ^{redacted}" "Stay with us, ^{redacted}" Jer would love to have the good times back. The players shout, "Be with us to the end!" Jer would love to hear, "Tell me another story, Jer." Jer may not be worthy, but he needs a "best friend." It doesn't look real good.

Jer understands life and its changes. He's proud, too proud to beg for a friend, extended family member. The story will end the way that ^{redacted} wants it. Jer wants to be there to the end, but that's ^{redacted} call. If ^{redacted} ever needs him, he'll come.

Regardless, they have had an experience that others won't. Jer will not forget and always care!

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Football Coaches Office
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Fax: (814) 863-3874

redacted

I hope that writing some of my thoughts will not annoy you as much as I do personally.

We have known each other for almost two years; gone through many highs and lows. There was tremendous encouragement as we went through last summer and into the fall. You seemed like you had brought into everything and were doing well. Those who had poured out their guts for you, stood by you, were there when you needed them, swelled with pride in your accomplishments.

Somehow this all slipped away. Agreements with people who really care about you didn't mean anything. You started missing school, your attitude, grades, and self-esteem dropped.

We tried many ways to get you to do your work but failed. You kept driving us away. It became clear that there were only two ways to make a difference in your life, and they weren't working. Somebody had to care enough to take control and help you succeed. Tim and I cared enough but were not in that kind of position. The only other hope was that you would attach to us, care enough, and want to please yourself and others.

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University Park, PA 16802-1216

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Inch by inch you continued to drive those that live and would die for you out. Instead, you bounce from one person to another, always measuring what others are willing to do for you.

Where are we? Discouraged, but we're still here, hope to remain.

When it comes to school, I conclude that there is nothing that I can do or say that will make a difference. However, there is always hope. Maybe you won't quit. Maybe you will decide down the road to make an effort. Maybe there will be some way that you will want help in the future. I will be there as long as you want me. I'll stand by you as a person who has been a large part of my life. I'll always care!

I see you getting better in soccer, playing hockey, etc. Hopefully, you will not throw those opportunities away. There is so much that I enjoy about you. You have special qualities. Hang on to the positive experiences whether you want us there or not. When it is all said and done remember us as very plain people who cared, tried, and always wanted to be a true friend (there in the clutch).

You will always be meaningful to us!

Keep Climbin! Keep on Keepin On!

Jen

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Greenberg Sports Complex
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redacted

Once again, I have decided to write some of my thoughts. I write because you mean so much to us. I write because I am concerned about all of us. I write because I have seen the hurt on Tim's face when you don't show for him, even though you have given your word. I write because of the churning in my own stomach when you don't care. I write because I still hope that there will be meaning to the time we have known each other.

Tim and I have seen this before, had similar experiences, and to be honest, not very happy conclusions. You like to express yourself in a straight-forward manner. This will be a very direct message from us.

We seem to be a convenience. When it is inconvenient or a little deal comes along, you leave a trail of broken promises. Commitments seem to be meaningless.

You are able to bounce from person to person, object to object. You seek happiness through control, domination, and what satisfies the moment. You have to hit the home run, swing for the fence. You don't understand or choose not to worry about loyalty, commitment, or caring. The motivation is to get what you want regardless of others.

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University Park, PA 16802-1216

(814) 865-0411
Fax: (814) 863-3874

On the surface this may appear to work for you. People enjoy your youthfulness. Different people show up to give you temporary fulfillment.

We could be wrong but don't believe that this works. Our experience shows otherwise. You will get older. People will expect more. Your youthfulness will disappear. If you cannot care, you will not be able to live up to the expectations. Your so-called "best friends" will vanish. Happiness will escape your life.

You might want to stop and think about true happiness. It seems to come more often when you don't try as hard, look to just get a single, reach out to others, love yourself, become satisfied with plain, simple people who care.

It's your life! You can continue as you have, keep looking for happiness, or you can find it. We'd love to be a part of your life, but that's your choice.

We've been here, made it through some challenges. We want to always be there for you!

With some hope and a lot of caring we are:

Jer & Tim

An Equal Opportunity University

Exhibit 5

From: Thomas R. Harmon <HARMON@SAFETY-1.SAFETY.PSU.EDU>
Sent: Monday, February 12, 2001 4:57 PM
To: gcs2@psu.edu
Subject: Incident in 1998

Regarding the incident in 1998 involving the former coach, I checked and the incident is documented in our imaged archives.

Thomas R. Harmon
Director, University Police
The Pennsylvania State University
30-B Eisenhower Parking Deck
University Park, PA 16802
(814) 865-1864
harmon@police.psu.edu

PENN STATE

Confidential



Date: 2/12/07
From: Gary C. Schultz
To:

Talked w TMC
reviewed 1988 history
- agreed TMC will discuss w JUP +
advise we think TMC should meet
w JUP on Friday.
- unless he ~~confirms~~ to having a problem,
TMC will indicate we need to
have PPW review the matter
as an independent agency concerned
w child welfare.
- TMC will keep me posted.

Senior Vice President for Finance and Business/Treasurer

The Pennsylvania State University
208 Old Main
University Park, PA 16802-1503
(814) 865-6574
Fax: (814) 863-7188

- 2/28/01
- ③ = Tell Chair ^{*} of Board of Secord Mite.
 - ② = Report to Dept of Welfare.
 - ① = Tell G.S to avoid bringing children alone into Lash Bldg.

* who's the chair ??

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Monday, February 26, 2001 1:57 PM
To: TMC3@psu.edu
Cc: Coble-Joan (JLC)
Subject: Confidential

Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept of Welfare. As you know I'm out of the office for the next two weeks, but if you need anything from me, please let me know.

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Wednesday, February 28, 2001 2:13 PM
To: Graham Spanier; Tim Curley
Subject: Re: Meeting

<html>

Tim and Graham, this is a more humane and upfront way to handle this. I can support this approach, with the understanding that we will inform his organization, with or without his cooperation (I think that's what Tim proposed). We can play it by ear to decide about the other organization.

 At 10:18 PM 2/27/01 - 0500, Graham Spanier wrote:
 <blockquote type=cite cite>Tim: This approach is acceptable to me. It requires you to go a step further and means that your conversation will be all the more difficult, but I admire your willingness to do that and I am supportive. The only downside for us is if the message isn't "heard" and acted upon, and we then become vulnerable for not having reported it. But that can be assessed down the road. The approach you outline is humane and a reasonable way to proceed.

 At 08:10 PM 2/27/01 - 0500, Tim Curley wrote:
 <blockquote type=cite cite>I had scheduled a meeting with you this afternoon about the subject we discussed on Sunday. After giving it more thought and talking it over with Joe yesterday-- I am uncomfortable with what we agreed were the next steps. I am having trouble with going to everyone, but the person involved. I think I would be more comfortable meeting with the person and tell him about the information we received. I would plan to tell him we are aware of the first situation. I would indicate we feel there is a problem and we want to assist the individual to get professional help. Also, we feel a responsibility at some point soon to inform his organization and maybe the other one about the situation. If he is cooperative we would work with him to handle informing the organization. If not, we do not have a choice and will inform the two groups. Additionally, I will let him know that his guests are not permitted to use our facilities.

 I need some help on this one. What do you think about this approach?</blockquote>

 Graham B. Spanier
 President
 The Pennsylvania State University
 201 Old Main
 University Park, Pennsylvania 16802

 Phone: 814-865-7611
 email: gspanier@psu.edu
 </blockquote></html>

From: Gary C. Schultz <gcs2@psu.edu>
Sent: Thursday, March 01, 2001 4:06 PM
To: Tim Curley
Subject: Re: Fwd: Re: Schedule

<html>

OK, Tim. You can reach me anytime thru my office.

 At 07:34 AM 3/1/01 -0500, Tim Curley wrote:

 <blockquote type=cite cite>Gary: I will be sure to keep in touch with you on the basketball situation.

 <blockquote type=cite cite>X-Sender: gspanier@mail.psu.edu

X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58

Date: Wed, 28 Feb 2001 21:18:24 -0500

X-PH: V4.1@f04n01

To: Tim Curley <tmc3@psu.edu>

From: Graham Spanier <gspanier@psu.edu>

Subject: Re: Schedule

Tim: I'll be in Australia, and it might be difficult to reach me--a 15 hour time difference. But call if you need me--Carolyn has my phone numbers. I will try to check email from time to time, but who knows how easy that will be. I will return late Saturday night (but that involves starting my return sometime on Friday, US time), so you might try calling me at home on Sunday afternoon if we haven't communicated earlier via email. If you need to start in one direction without me, do so. I think we are on the same wavelength and I will support you.

 At 08:19 PM 2/28/01 -0500, Tim Curley wrote:
 <blockquote type=cite cite>Graham: I know you are going out of town. When will you be returning? I may need to touch base with you regarding the basketball situation towards the end of next week. We will play next Thursday and pending the outcome of the next two games I will need to make a recommendation to you next Friday. I am planning to meet with the person next Monday on the other subject. Have a great trip!! You sure deserve a break!!!</blockquote>

Graham B. Spanier

President

The Pennsylvania State University

201 Old Main

University Park, Pennsylvania 16802

 Phone: 814-865-7611
 email: gspanier@psu.edu</blockquote>
 </blockquote></html>

From: Joan Coble <jlc9@psu.edu>
Sent: Wednesday, March 07, 2001 8:54 AM
To: TMC3@psu.edu
Cc: gcs2@psu.edu
Subject: Fwd: Confidential

Tim - Have you updated Gary lately? Before he left for FL, he asked me to ck. w/you re this.

Pls. know that he is doing e-mail, but will not be reading until Sun., 3/11. He is spending a few days with Dave Schuckers and you may either phone him on his cellphone at [REDACTED] or @ Schuckers at [REDACTED]. Pls. know that the Schuckers live in a Condominium & you may have to go through some referrals to get to speak w/them, so be patient if you go that route.

Thx. Joan

X-Sender: gcs2@imap.cac.psu.edu
X-Mailer: QUALCOMM Windows Eudora Version 4.3.2
Date: Mon, 26 Feb 2001 08:57:16 -0500
X-PH: V4.1@f04n01
To: TMC3@psu.edu
From: "Gary C. Schultz" <gcs2@psu.edu>
Subject: Confidential
Cc: jlc9@psu.edu

Tim, I'm assuming that you've got the ball to 1) talk with the subject ASAP regarding the future appropriate use of the University facility; 2) contacting the chair of the Charitable Organization; and 3) contacting the Dept of Welfare. As you know I'm out of the office for the next two weeks, but if you need anything from me, please let me know.

Gary C. Schultz
Senior Vice President for
Finance & Business/Treasurer
Penn State University
208 Old Main
University Park, PA 16802
814/865-6574
814/863-8685 (fax)
<http://www.psu.edu/dept/fab>

Joan L. Coble
Administrative Assistant
Office of the Senior Vice President for
Finance & Business/Treasurer
208 Old Main
University Park, PA 16802

Exhibit 6

**SANDUSKY
FOOTBALL CAMP**

Grades 4th - 9th

Featuring:



Jerry Sandusky

- Assistant Coach of the Year
- Long Time PSU Defensive Coordinator
- Dean of "Linebacker U"
- PSU Camp Director for 26 yr.

June 17 - 20, 2001
Penn State Behrend College
Erie, PA

"Learning to be the best, from the best"

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BE THE B.E.S.T!
Begin early, succeed tomorrow!
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S
CAMP FEATURES:

- Jerry Sandusky's personal attention and coaching!
- The best instructional camp for grades 4-9 anywhere in the country!
- Every offensive, defensive, & kicking position covered
- Focus on fundamentals that can be practiced at home!
- Team games that emphasize situational execution!
- Some of the top high school and college coaching from around the country!
- Beautiful setting and facilities!
- Individual evaluation sheets in order that each kid has an idea of what they need to work on
- Free Shirt!
- Personally autographed picture with Jerry Sandusky!
- Hours of football fun and learning!
- Group Discounts!
- Affordable!



"... He's the best linebacker coach in the history of college football. He taught me more than any coach can teach. He's a great teacher and a great humanitarian. And there were no stars with him. He treated everyone the same, and you have to love a guy for that."
- Gregg Buttle, PSU All-American Linebacker, on JERRY SANDUSKY

LOCATION:
The Sandusky Football Camp is located at the beautiful Penn State Behrend College, in the heart of Erie, PA. It is readily accessible and conveniently located. With fine facilities and a safe surrounding, Behrend is the perfect location for a camp of this nature.

S