



June 8, 2018

Valerie R. Roberson, Ph.D.
President
Roxbury Community College
1234 Columbus Avenue
Roxbury Crossing, MA 02120-3400

UPS Tracking #
1Z37X7Y30298777274

Re: Campus Crime Final Program Review Determination
OPE ID: 011930 00
PRCN: 201220327921

Dear President Roberson:

On December 5, 2016, the U.S. Department of Education (the Department) issued a Program Review Report regarding Roxbury Community College's (RCC; the College) failure to comply 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 College submitted a response to the Department's initial report on February 2, 2017. RCC's response and the supporting documentation submitted with the response are being retained by the Department, and are available for inspection by the College 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 College.

Purpose:

Final determinations have been made concerning the findings identified during the program review. The purpose of this letter is to advise RCC of the Department's final determinations and to close the review. Please note that this FPRD contains several findings regarding RCC'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 will be referred to the Administrative Actions and Appeals Service Group (AAASG) for consideration of a formal fine pursuant to 34 C.F.R. §668, *Subpart G*. If a fine action is initiated by AAASG, detailed information about the action and RCC's appeal rights will be provided under separate cover.

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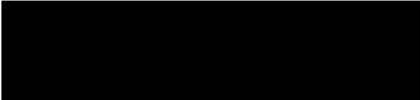
830 First St., N.E. Washington, D.C. 20202
StudentAid.ed.gov

Record Retention:

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

The courtesy and cooperation that was extended to Department officials throughout the program review process is appreciated. If you have any questions concerning this FPRD or the program review process, please contact Mr. Donald Tantum on 215-656-6467 or at Donald.Tantum@ed.gov.

Sincerely,



Candace R. McLaren, Esq.
Director
Clery Act Compliance Division

cc: Mrs. Jackie Michalowski, Director of Public Safety, RCC
Mrs. Laure Biechler, Director of Financial Aid, RCC
Mr. James L. Moore, III, Senior Advisor, Clery Act Compliance/Campus Safety Ops, ED

Enclosure:

Final Program Review Determination

Prepared for:

Roxbury Community College

OPE ID: 01193000

PRCN: 201220327921

Prepared by:

U.S. Department of Education

Federal Student Aid

Clery Act Compliance Team

Final Program Review Determination
June 8, 2018

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A. The Clery Act and DFSCA

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

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

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

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

institutions comply with the *Clery Act*, which includes providing technical assistance and training programs and materials as well as monitoring and enforcement through program reviews.

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

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

On an annual basis, each institution must provide a DAAPP disclosure to all current students (including all students enrolled for any type of academic credit except for continuing education units) and all current employees that explains the educational, disciplinary, health, and legal consequences of illegal drug use and alcohol abuse as well as information about available counseling, treatment, and 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 policies and codes of conduct.

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

B. Institutional Information

Roxbury Community College
1234 Columbus Avenue
Roxbury Crossing, MA 02120-3400

Institution Type: 2-Year, Public

Highest Level of Offering: Associates Degree

Academic Calendar: Semester Hours

Accreditation Agency: New England Assoc. of Schools and Colleges -
Commission on Institutions of Higher Education

Current Student Enrollment: 2,106 (Approx. Fall 2016)

Percentage of Students Receiving Title IV Funds: 80% (Approx. Fall 2016)

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

2016-2017 Award Year

Federal Pell Grant Program	\$ 5,092,637
Federal Supplemental Educational Opportunity Grant Program	\$ 211,346
Federal Work Study Program	<u>\$ 111,471</u>
Total	<u>\$ 5,415,454</u>

The Institution

Roxbury Community College (RCC; the College) is a public, two-year coeducational institution founded in 1973. The College offers programs in liberal arts, business administration, health sciences, human services, and the technologies. RCC is a comprehensive urban community college situated along three and half city blocks in the Roxbury Crossing neighborhood of Boston, Massachusetts. RCC grants associate degrees and certificates.

The campus of RCC is comprised of four buildings supporting student, academic, and administrative services. RCC's campus includes an indoor track and basketball facility. The Reggie Lewis Track and Athletic Center (RLTAC) is governed by RCC and primarily serves RCC students athletes, local high school students, and college and club teams. In addition, the RLTAC can be rented for public or private events.

At the time of the site visit, the RCC campus security operation was staffed by a Director of Facilities Management and Public Safety, who is responsible for facility planning, maintenance,

development and management, and campus safety. Currently, the College employs an Interim Director of Security. The head of security reports directly to the Vice President of Administration and Finance. In addition, RCC contracts with a private company to provide security services. The campus safety office is comprised of non-sworn security officers who are responsible for patrolling the campus and responding to safety-related complaints, completing incident reports, and maintaining activity logs. At times, the RLTAAC has contracted security services separate from the RCC main campus. The day-to-day operations of the RLTAAC security services may or may not fall under the oversight of the Director of Facilities Management & Public Safety; however the collection of incident reports and crime statistics would. The Director of Facilities Management & Public Safety is RCC's primary campus security authority and is responsible for collecting all campus crime statistics. RCC primarily relies on the Boston Police Department for law enforcement assistance.

C. Background and Scope of Review

The Department conducted an on-site campus crime program review at RCC from February 27, 2012 to March 2, 2012, and returned to campus on May 14, 2012 to May 17, 2012. The site visit was conducted jointly by the New York School/Boston School Participation Division (NYBSPD) and the Clery Act Compliance Team (CACT) and was led by Don Tantum. The review was initiated when the Department received a complaint from two RCC employees, [REDACTED] and [REDACTED], alleging violations of the *Clery Act* and other Title IV requirements. Specifically, the complaint claimed that RCC underreported sexual assaults and other violent crimes and also failed to produce ASRs, issue timely warnings, and maintain a crime log, among other allegations. In addition, the complaint alleged RCC made ineligible disbursements of Title IV, Federal Student Aid funds and also made false statements to Department officials that conducted an earlier program review at the institution. After receiving the complaint, the CACT conducted preliminary research and determined that a campus security program review was necessary. The allegations associated with the improper disbursement of Title IV funds were referred to the NYBSPD for appropriate action.

The objective of this review was to evaluate RCC's compliance with the *Clery Act* and the *DFSCA*. The review has included a careful examination of RCC's publications, written agreements, security incident reports, investigative reports, arrest records, and disciplinary files as well as the College's policies, practices, procedures, and programs related to the *Clery Act*. In addition, the Department reviewed the campus crime statistics submitted by RCC to the Department and those provided to students and employees in the College's ASRs. The Department's initial review focused on the year covered by the ASRs for calendar years 2006-2012; however, as a result of additional complaints received and information acquired during the review the scope was expanded. The review team interviewed several current and former institutional officials with *Clery Act* responsibilities as well as current and former students. The review team also examined RCC's drug and alcohol abuse prevention information.

The Department started its on-site review on February 27, 2012 and returned to campus on May 14 2012. The on-site activity focused on interviewing RCC staff and students and gathering

documents concerning *Clery Act* operations. In addition, the roles of campus staff regarding campus safety, communications, reporting structures, compliance and accountability, and operational management were assessed. During the first site visit, RCC staff was not able to produce most of the requested documentation and few officials made themselves available for interviews. The Department found it necessary to return on May 14, 2012 to continue its fieldwork. RCC officials stated that they were willing to produce requested records related to *Clery*-reportable crimes; however, the review team was advised that most of them could not be located or that they were otherwise not available. Some records were found and eventually produced several months later.

The Department must note that the allegations against RCC resulted in multiple audits and investigations going on at about the same time. State auditors were attempting to conduct A-133 Single Audit Act review while a separate accounting firm and a law firm were retained to conduct an internal audit and investigation of the allegations raised by various complainants.

Prior to the on-site review by the Department, the Board of Trustees of RCC entered into a letter of engagement with O'Connor & Drew P.C. (OD) to investigate the numerous allegations concerning *Clery Act* compliance, academic advising, fiscal mismanagement, and improper employment contracts. This engagement was initiated approximately three months prior to the Department's site visit. OD released its report in the spring of 2012. OD's investigation results, noted in a report titled *RCC Agreed-Upon Procedures Report*, specifically addressed a "Failure to report a crime as required under the *Clery Act* and compliance with other requirements of the Act." OD found that the alleged sexual assaults dating back to 2003 met the reporting requirements of the *Clery Act*; however, RCC failed to disclose these criminal incidents. Furthermore, RCC's handling of another case that precipitated the dismissal of a faculty member also violated the *Clery Act's* reporting requirements. OD's review of the crime statistics submitted to the Department's website for 2001 through 2010 revealed that the college reported zero "forcible sexual offenses - on campus" in 2003, the year in which the incident was first alleged, and in 2006, the year that the faculty member was dismissed in connection with a separate sexual assault. The incidents were again reported in 2008 and 2010 to various RCC officials and the incidents still were not disclosed to the campus community or to the Department. OD also noted several other deficiencies, including an inadequate crime log, an incomplete list of CSAs, incomplete crime statistics for prior years, and a failure to produce an ASR, that are very similar to the violations documented in this report.

Public concern about RCC's management of several core administrative functions, *Clery Act* compliance among them, have been well-documented by the Boston news media in recent years. Local media outlets consistently reported on these concerns and as a result, RCC's President resigned under pressure on June 19, 2012. Then, in September of 2012, the Governor appointed six new board members. During this administrative change, the RCC Board of Trustees determined that an investigation into allegations that had been brought to the Board's attention concerning the conduct of RCC employees working within the College as well as RCC's Reggie Lewis Track and Athletic Center (RLTC) was necessary and initiated a second review of the allegations previously examined by OD. The allegations claimed that RCC administrators failed to account for and disclose accurate sexual assault crime statistics in the ASR. Complainants

also alleged that: 1) RCC provided a student with scholarship funds in exchange for their silence concerning a sexual assault; 2) that officials failed to intervene to stop an illegal sexual interaction with a minor; and, 3) that officials did not take appropriate action to stop a RLTC employee who allegedly committed multiple sexual assaults on female athletes.

On August 21, 2012, the Executive Committee of the RCC Board of Trustees engaged Goodwin Procter, LLP to conduct an independent investigation of RCC, in addition to engaging the law firm to investigate the allegations concerning board-level issues such as governance, organizational, and compliance related matters, the firm also investigated certain allegations of sexual assault. Goodwin Procter LLP (Independent Counsel) conducted this investigation and issued a report on March 4, 2013.

In relevant part, the Goodwin Procter report stated that RCC failed to comply with its obligation under the *Clery Act* to disclose sexual assaults to the Department. In addition, Goodwin Procter stated the following concerning RCC:

“There were serious deficiencies in RCC’s controls, policies, training and organization that left the College ill-equipped to properly respond to incidents of crime – including allegations of sexual assault – on campus. For instance, the Board historically has been lacking in certain key areas of competency, has not had any formal committee responsible for compliance and audit and has not updated its by-laws to reflect changes it has adopted over time. RCC struggled with hiring and retaining senior administrators with the appropriate experience and competencies for an academic institution. Many administrators lack knowledge of their obligations under the *Clery Act* and Title IX to investigate, report, and take corrective action in response to alleged incidents of sexual assault. These weaknesses, in addition to gaps in the College’s policies and procedures, limited resources and inadequate training, played a significant role in RCC’s failures.”

Special Note Regarding Claims of Retaliation:

As mentioned in the “Background and Scope of Review” section of this report, the Department received a complaint from [REDACTED] and [REDACTED]. The complaint alleged serious violations of the Clery Act by RCC. After reviewing the complaint, the Department conducted its own preliminary research and determined that an on-site campus crime program review was warranted. The decision to conduct this program review was specifically informed by the complaint.

The Clery Act is, first and foremost, a public safety and consumer protection law based on the premise that students, employees, parents, and other stakeholders are entitled to accurate and complete campus safety and crime prevention information. To achieve the Act’s goal of making campuses safer, everyone must play a part. Members of each campus community must be vigilant and responsible to help ensure their own safety and that of others. The Department depends on concerned members of the campus community, other stakeholders, and the media to

inform the Department about dangerous conditions or when they have good reason to question an institution's compliance with the Clery Act. To help ensure that complainants are not subjected to retaliation or other abuse, the Department's regulations specifically prohibit any act by an institution or any person acting on behalf of an institution to "retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual" for acting in accordance with the Clery Act or in response to a person's efforts to see that the Clery Act is effectively enforced." See §485(f)(17) of the HEA, 20 U.S.C. 1092(a)(17). During the site visit, Department officials specifically advised RCC officials to make every effort to prevent any acts of retaliation against complainants by College personnel or persons acting on their behalf.

Unfortunately, complainants provided the Department with information that indicated that RCC officials initiated actions that may constitute retaliation against RCC employees who cooperated with the Department's review. ██████████ and ██████████, the former RCC employees who filed the initial complaint stated that once their actions became known, they were referred to derisively as "the whistleblowers" by RCC officials. Other persons who provided information to the review team also claimed that they were retaliated against or otherwise treated unfairly, primarily by management at the RLTC.

Per the complainants, RCC's actions against these employees increased in severity after the Department intensified its oversight activities. During the course of this review, RCC administrators allegedly directed other staff members to "not talk with them [██████████ and ██████████] as they are trouble." RCC officials referred to and identified ██████████ and ██████████ as "the whistleblowers," while advising others to "stay away" from them. Some of these statements were allegedly made by senior RCC administrators, some of whom were themselves CSAs for Clery Act purposes.

As ██████████ claimed that he repeatedly attempted to improve RCC's compliance with Title IV financial aid regulations. He further represented that after those efforts failed, he attempted to bring attention to the most serious areas of noncompliance with Title IV and Clery Act requirements, both internally and externally. He also claimed that his well-intentioned efforts resulted in further retaliatory actions and marginalization by senior RCC administrators. In this context, ██████████ alleged that RCC employees were repeatedly told to stay away from him, identifying him as a "troublemaker." He further states that College officials referred to him and ██████████ in pejorative terms, including calling them ██████████. These actions by RCC administrators reportedly caused ██████████ to be in fear of serious retribution and other negative consequences.¹

██████████ served as RCC's ██████████ from April 2007 to August 13, 2012, when he was terminated. In a prepared statement made by RCC's then President, ██████████ stated that he was referred to as "the individual who had the

¹ The Department notes that the records in its possession indicate that ██████████ was not formally terminated from his employment until June 2014. Rather, ██████████ alleged that he was constructively terminated earlier as a result of actions taken by RCC management, including but not limited to manipulation of his medical leave. ██████████ further alleged that many of his serious health problems were the result of mistreatment at the hands of senior College officials.

responsibility to report Clery Act violations” and insinuated that compliance would improve because he was “no longer employed by the College.” ██████████ alleged that that he repeatedly attempted to reform RCC’s campus safety and Clery Act compliance program; however, senior management undermined his efforts. Like ██████████, he also claimed that he made his concerns known to his superiors and only reported violations to the Department when he believed that he had no other option. Also like ██████████, ██████████ further alleged that he was mistreated by superiors as well as colleagues after he was singled out as a “whistleblower” and a problem employee by senior management. Both men claim that the resultant treatment caused them to suffer health problems, exacerbate existing health issues, and to experience serious emotional distress.

Under the PPA, the institution is responsible for complying with all regulations governing participation in the Title IV, Federal Student Aid programs, including the Clery Act. 34 C.F.R. §668.14(c)(2). Under the Clery Act, the institution is responsible for producing and distributing accurate and complete ASRs, submitting crime statistics to the Department, issuing timely warnings and emergency notifications to the campus community, maintaining an accessible daily crime log, among other requirements. In this context, the Department reminds that Clery Act compliance is an institutional obligation that cannot typically be accomplished fully by one person. There is no question that appropriate remedial action in the face of such serious violations may rightly include the termination of responsible staff. However, given the facts of the case, the treatment of these individuals during their term of employment and their eventual termination raise some serious concerns. For example, the available record does indicate that both gentlemen brought their concerns about problems in their areas of responsibility to the attention of senior management as early as 2010. In both cases, the complainants further alleged that their efforts to remediate were undermined by superiors. At the same time, management did not take any specific action to address their concerns nor did they take any particular punitive actions against either former employee for incompetency or dereliction of duty at that time. Instead, the complainants pointed out that no specific action was taken until they brought their concerns to the attention of the Department. This point seems to support the complainants’ retaliation claims. The complainants pointed out that they felt that they had no other choice but to file a complaint with the Department, an act that would specifically call attention to myriad violations that occurred during their tenure. For these reasons, both men stated that they believed that the alleged acts of retaliation were a direct result of their willingness to report serious concerns to the Department and to cooperate with this investigation.

As noted above, the Department relies on members of all campus communities to come forward with concerns about Clery Act compliance. A guiding principle of the Clery Act is that students, employees, parents, other stakeholders and the public are entitled to accurate, complete, and transparent information about campus safety and crime prevention matters. For the Clery Act to be effective, students and employees must be assured that they can come forward with concerns about campus safety issues without fear of retaliation or other negative outcomes. Any perceived detrimental impact to a person affiliated with RCC as the result of submitting a good-faith complaint to the Department triggers a special regulatory concern and may have a chilling effect on the willingness of others to come forward.

For all of these reasons, the Department makes an initial finding that that the alleged actions taken against these former employees constituted a violation of §485(f)(17) of the HEA, 20 U.S.C. §1092(a)(17). This statutory provision is specifically intended to prohibit the types of actions that are alleged to have been taken against these individuals. The information further indicates that the various actions and eventual termination of these individuals was the result, at least in significant part, of their attempts to ensure that the Clery Act was followed by the College and enforced by the Department. Therefore, RCC is required to address these allegations of retaliation and mistreatment with specificity in its official response to this Program Review Report. All representations made and positions taken in the response must be substantiated with credible supporting documentation. Finally, the College is required to provide a full accounting of any steps taken to remediate the retaliatory acts alleged by the complainants and provide an update on the current status of any claims by the former employees.

Institutional Response Regarding Claims of Retaliation:

In its response, dated February 2, 2017, the College generally concurred with the Department's findings of non-compliance as to both the *Clery Act* and the *DFSCA*. However, RCC denied the Program Review Report's initial finding that the College had retaliated against [REDACTED] and [REDACTED]. Rather, the College noted that, during the years covered by this review, RCC was undergoing a major transition. The former President, Terrence Gomes, left the institution in 2012, replaced by an Interim-Acting President, Linda Turner, who only served for one year. In July of 2013, RCC appointed Dr. Valerie Roberson as President; then, in October 2013, the RCC Board of Trustees hired Dr. Roberson as its new President. The RCC Board of Trustees was acutely aware that work was needed to address its *Clery Act* compliance. In an effort to bring the school into compliance, RCC indicated that its current and past administrations have continued to assess campus security operations and to implement new policies, procedures, and practices to ensure a safe learning environment for its students and employees.

With respect to [REDACTED], RCC, in its response, stated,

“In October 2012, [REDACTED] filed suit in Massachusetts Superior Court (No. 12-4-4160) alleging that his termination from employment at Roxbury Community College on August 12, 2012, constituted defamation, wrongful termination, civil conspiracy, and violations of the Commonwealth of Massachusetts' Whistleblower's Act, M.G. L. Chapter 149, Section 185, and Wage Act, M.G.L. Chapter 149. In response, the Commonwealth prepared and filed an *Answer and Jury Demand* and subsequently a *Motion for Summary Judgment*, including a *Statement of Material Facts Concerning Roxbury Community College's Motion for Summary Judgment*. In its filings the College asserted that [REDACTED] was terminated for legitimate and non-retaliatory reasons and not in retaliation for his alleged reports of *Clery Act* violations. Accordingly, the College denies any and all allegations that it subjected [REDACTED] to any retaliatory conduct.”

In its Summary Judgement Motion, RCC further stated that [REDACTED], the former [REDACTED], was fired in August 2012. An investigation by an outside auditor

in the spring of 2012 reported that RCC lacked any system for reporting *Clery Act* crimes, and that [REDACTED] was the person responsible for *Clery Act* reporting. The College stated that, “in the course of providing information to the US DOE, RCC officials learned of additional crime reporting deficiencies by [REDACTED], which were reflected in his performance evaluation prior to his termination.” Ms. Turner, RCC’s President at that time, reviewed the auditor’s report and [REDACTED] performance evaluation, and fired [REDACTED] on August 13, 2012.

Additionally, the College denied that [REDACTED] firing violated the Massachusetts Whistleblower Statute as it believes that [REDACTED] does not qualify for protection thereunder. More specifically, the College stated, “The Whistleblower Statute does not cloak [REDACTED] in immunity for his deficiencies even if the outside auditor’s investigation originated with a repost about one of the dozens of crimes [REDACTED] failed to report under the *Clery Act*.”

RCC advised that, “[REDACTED] litigation against the College remains pending in the state court and the Commonwealth continues to vigorously deny the allegations presented in [REDACTED] complaint.”

With respect to [REDACTED], in its response, the College denied that it retaliated against him as well, stating the following:

“In October 2013, the RCC Board of Trustees hired Dr. Valerie Roberson as its new President.... Upon her arrival, Dr. Roberson was charged by the Board of Trustees with the responsibility of addressing the fiscal, legal, academic and programmatic challenges facing the College. In order to do so, she extensively reorganized the College’s administrative structure by replacing personnel and eliminating and/or consolidating positions and functions. Her stated goals were to increase productivity and efficiencies, reduce costs, maximize resources, ensure full compliance with state and federal laws and enhance the College’s reputation and mission success. To accomplish these goals, Dr. Roberson exercised her professional judgment in selecting senior staff and managers to address the challenges facing the College. In January 2014, the implementation of the college reorganization plan resulted in the separation of 28 non-unit professional employees. The discontinuation of [REDACTED] employment as [REDACTED] was included in this number. [REDACTED] became ill at work the morning of Monday, January 13, 2014, before he was informed of the discontinuation of his employment. Thereafter, he was placed on paid sick leave and leave under the Family and Medical Leave Act (FMLA). On March 17, 2014, the College received a letter from his health care provider stating that due to the on-going nature and severity of his symptoms and daily struggles, he was not able to return to work and would be re-evaluated in sixty (60) days. As of June 2014 the College had received no further medical up-dates from [REDACTED] health care provider indicating when, if ever, he would be capable of returning to work and performing his essential job functions. As of June 10, 2014, [REDACTED] had exhausted his leave under the FMLA and all other accrued paid leave. As the College was not obligated to maintain [REDACTED] position indefinitely, and could no longer delay filling the [REDACTED] vacancy, RCC informed [REDACTED] of the discontinuation his appointment as the

██████████. Based on ██████████ rights under the College's Non-Unit Professionals Personnel Policy's Handbook, he received an additional six (6) months of paid leave following the discontinuation of his employment. Therefore, the effective date of this employment was December 26, 2014."

The College further stated that it maintains a policy of Affirmative Action, Equal Opportunity, and Diversity, and emphasized that RCC is an Affirmative Action/Equal Opportunity employer that does not discriminate on the basis of race, creed, religion, color, gender sexual orientation, age, disability, genetic information, maternity leave, national origin, or gender identity in its education programs or employment. This policy specifically prohibits acts of retaliatory conduct. Concerning ██████████ and ██████████, the College asserts that neither individual was retaliated against; therefore no steps to remediate the alleged retaliation were taken.

Final Determination Regarding Claims of Retaliation:

In the Department's PRR, RCC was cited for violations of the *Clery Act* and the Department's regulations as a result of specific acts of intimidation and retaliation that were directed against RCC employees, as outlined in the Special Note section above. Specifically, the review team found that RCC officials intimidated and retaliated against RCC employees who cooperated with the Department's review. Furthermore, per the complainants, ██████████ and ██████████, RCC's actions against them increased in severity after the Department initiated its program review. More specifically, the complainants alleged that, during the course of the program review, RCC administrators directed other staff members "not talk with them [██████████ and ██████████] as they are trouble." It was further reported that RCC officials referred to and identified ██████████ and ██████████ as "the whistleblowers," while advising others to "stay away" from them. Some of these statements were allegedly made by senior RCC administrators, some of whom were, themselves, CSAs for *Clery Act* purposes. This information further indicates that the eventual termination of ██████████ employment and the elimination of ██████████ position at RCC were the result, at least in significant part, of their attempts to ensure that RCC complied with the *Clery Act* and their cooperation with the Department's review. As such, RCC was required to address these allegations of retaliation and mistreatment of employees with specificity in its official response to this PRR.

In its response, the College denied any claims of retaliation. Specifically, RCC stated that ██████████. ██████████ was fired due to his poor job performance. Additionally, the College advised that ██████████ position was terminated due to the College's administrative reorganization, which replaced or eliminated personnel, and consolidated job positions. The Department acknowledges RCC's position that ██████████ termination was performance based, and that ██████████ position was eliminated during an organizational restructuring. However, the Department notes that the College's response failed to address any of the retaliatory comments or directives which occurred during the Department's program review and directly impacted the complainants -- specifically, directions from RCC administrators to refrain from talking with ██████████ and ██████████ they "are trouble," and referring to them as "the whistleblowers," and "██████████ ██████████." In fact, RCC employees have testified in depositions that ██████████ and ██████████ were referred to by RCC's Vice President of Administration and Finance as the "██████████"

who “hurt our college.” Yet, the College offered no comment in its response to address these allegations of mistreatment and retaliation, and their impact on the review. Rather, the College’s response only noted the complainants’ most recent employment statuses.

The Department carefully examined all available information gathered from the review, including RCC’s response and supporting documentation. Based on that review, the Department has determined that the actions taken by RCC fostered an environment in which employees were fearful of acts of intimidation and retaliation. As such, the College’s actions had a chilling effect on the willingness of other RCC employees to come forward and participate in the program review process, as evidenced by the multiple RCC employees who advised the review team that they had been intimidated and remained concerned about being retaliated against or treated unfairly by RCC and RLTC management. More specifically, RCC employees referenced actions taken by RCC such as: employment agreements not being renewed, positions being eliminated, and/or employees being terminated as a result of their participation in the review. These acts arguably, are in keeping with the firing of [REDACTED] and the elimination of [REDACTED] position. The Department finds that the personnel actions taken against the complainants resulted directly from the complainants’ participation in the Department’s review, and their filing of a *Clery* complaint against RCC.

The Department reminds RCC that compliance with the *Clery Act* is not defined by one individual, employee, or CSA; rather the obligation to comply with the *Clery Act* is an institutional obligation. Compliance with the *Clery Act*, the *DFSCA*, and the Department’s regulations are specifically required by the terms and conditions of RCC’s Program Participation Agreement (PPA), under which the College participates in the Title IV, HEA Federal Student Aid Programs. Under the *Clery Act*, the institution is responsible for producing and distributing accurate and complete ASRs, submitting crime statistics to the Department, issuing timely warnings and emergency notifications to the campus community, and maintaining an accessible daily crime log, among other requirements. In this context, the Department reminds RCC’s administration that *Clery Act* compliance is an institutional obligation that cannot typically be accomplished fully by one employee.

A controlling principle of the *Clery Act* is that students, employees, parents, and the public are entitled to accurate, complete, and transparent information about campus safety and crime prevention. The law relies on institutions to make campuses as safe as possible, and on the vigilance of campus community members to call attention to safety concerns. The Department encourages campus community members to make informed decisions about their own safety and to act in the security interests of the larger community as well. For the *Clery Act* to be truly effective, students and employees must be assured that they can come forward with concerns about campus safety issues without fear of retaliation or other negative outcomes.

For all of these reasons, the Department made an initial finding that the actions taken against the complainants constituted a violation of §485(f)(17) of the HEA, 20 U.S.C. § 1092(a)(17). This statutory provision is specifically intended to prohibit the types of actions that RCC was alleged to have taken against these employees. For obvious reasons, any detrimental impact that befalls any person affiliated with RCC in response to the submission of a complaint to the Department or participation in a Department review triggers a special regulatory concern as it can have a

chilling effect on the willingness of others to come forward. For all of these reasons, the finding is sustained.

Disclaimer:

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

D. Findings

This report includes information about the Department's initial findings. These findings are not final. The Department will issue its final conclusions in a subsequent Final Program Review Determination (FPRD) letter.

During the review, several areas of noncompliance were noted. Findings of noncompliance are referenced to the applicable statutes and regulations and specify the actions that must be taken by RCC to bring operations into compliance with Federal laws and regulations.

Finding #1: Lack of Administrative Capability

Citation:

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

Noncompliance:

RCC has substantially failed to develop and implement an adequate Clery Act compliance program since the Act's inception. The violations are interrelated and show that RCC failed to adequately report required crime statistics, develop and implement required policies, and meet its responsibility to provide important security information to the campus community. Accordingly, the Department finds that the College lacked the ability and/or willingness to properly implement and to administer Clery Act and DFSCA requirements. RCC demonstrated a lack of institutional governance, training, coordination, oversight, and supervision of the College's campus security operations.

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 RCC lacked an adequate system of internal controls and did not exercise or maintain compliance with the Clery Act during the initial review period. The evidence reviewed by the Department shows that RCC: 1) failed to adequately report required crime statistics; 2) failed to identify employees meeting the definition of CSAs and require them to provide crime statistics for inclusion in the ASR; 3) failed to develop and adequately implement certain required crime reporting and security policies and procedures; and, 4) 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 RCC personnel were unaware of the requirements of Clery Act compliance and that the College failed to exercise sufficient oversight, governance, or coordination of those College 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 College 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 RCC's PPA. The College's current PPA was executed on May 8, 2015. RCC was granted provisional certification through March 31, 2018. The PPA requirements can be found at 34 C.F.R. §668.14(c). The Department will consider all available information, including the determinations made during this review, in its evaluation of the College's next application for recertification.

In this context, the Department notes its concern about the pattern of noncompliance observed during the site visit and subsequent fieldwork. These violations call RCC's ability and willingness to properly administer the Title IV, Federal student aid programs into serious question. Compliance with the Clery Act and the DFSCA are essential to demonstrating the stewardship expected of a Federal fiduciary and are an important indicator of the College's commitment to its students, employees, the wider campus community, and the Department.

In addition to the specific findings of noncompliance noted in this report, the Department's program review team identified numerous and substantive weaknesses that contributed to the occurrences of these violations, as follows:

- 1) RCC failed to designate an individual with sufficient authority and training to oversee Clery Act compliance;*
- 2) RCC failed to provide or arrange for Clery Act training for public safety staff and other institutional officials with significant Clery Act-related responsibilities;*
- 3) RCC failed to implement a system of policies and procedures for RCC and Public Safety staff to effectively carry out their responsibilities to comply with the Clery Act;*
- 4) RCC failed to establish clear paths of communication and systems of coordination to ensure the effective compilation and disclosure of crime statistics and information;*
- 5) RCC failed to establish a system that ensured standardization, custody, and control of important records needed to comply and document compliance with the Clery Act;*
- 6) RCC failed to maintain appropriate administrative oversight and control over the RLTA and other campus buildings and properties; and,*
- 7) RCC violated multiple requirements of the DFSCA; RCC failed to develop and implement a comprehensive DAAPP.*

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 and DFSCA, such impairment may result in an institution's systemic failure to provide students and employees with important campus crime information and services that are essential to their safety and security. Impaired administrative capability and weak internal controls are an indication that an institution lacks the ability or willingness to comply with Federal regulations.

Required Action:

As a result of these violations, RCC is required to take all necessary corrective actions to cure the violations identified in this Program Review Report and to adequately address the numerous organizational weaknesses that contributed to the violations. In addition, the College 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 College will be required to develop and implement a comprehensive corrective action plan.

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

Institutional Response:

In its official response, RCC President Dr. Valerie Roberson concurred with the PRR's finding. In its response, RCC states that the College has taken the following affirmative steps to address the deficiencies noted in the report:

1. As of 2014, the College's Director of Public Safety Oscar Walker, was designated as the person responsible for the College's Clery compliance. Director Walker attends the Clery Center trainings, receives updates, and is responsible for implementing any and all "changes" to campus security operations in order to maintain compliance with the *Clery Act*;
2. Public Safety staff receives annual CSA training in January of each year;
3. RCC's Director of Public Safety has implemented additional CSA training, and a daily crime log review;
4. RCC now receives annual crime statistics from the Boston Police Department. Additionally, the Director of Public Safety maintains contact with the Boston Police Department and the Massachusetts State Police;
5. All *Clery* records are maintained within the Office of Public Safety by the Director; 6. Campus security regularly patrols the RLTAAC as part of its daily duties, and all renters of RCC facilities, including the RLTAAC, are encouraged to utilize campus security to ensure safety of guests. Beginning in FY'18, space utilization contracts will include a provision for mandated security presence; and
7. RCC has developed a DAAPP which is included in the student handbook, available electronically on RCC's website, and is emailed to all faculty, students, and staff on a yearly basis. The DAAPP is overseen by the Dean of Student Life, and policies affecting faculty and staff are overseen by the Director of Human Resources.

Final Determination:

Finding #1 cited RCC for multiple violations of the *Clery Act*, the *DFSCA*, and the Department's regulations, as outlined in the noncompliance section above. Specifically, the review team found that RCC failed to: designate an individual with sufficient authority and training to oversee *Clery Act* compliance; provide or arrange for *Clery Act* training for public safety staff and other institutional officials with significant *Clery Act* -related responsibilities; implement a system of policies and procedures for RCC and Public Safety staff to effectively carry out their responsibilities in compliance with the *Clery Act*; establish a system to effectively compile and disclose crime statistics and information; establish a system to ensure custody and control of important records needed to document compliance with the *Clery Act*; maintain appropriate administrative oversight and control over the RLTAAC, campus buildings, and properties; and develop and implement a comprehensive DAAPP. As a result of these violations, RCC was required to review and revise its existing policies, procedures, and processes regarding the

previously stated discrepancies; to develop new internal processes, as needed; and to ensure that these deficiencies do not recur. In its response, RCC concurred with the finding and submitted documentation and implemented policies and procedures to show that adequate remedial action was taken.

The Department carefully reviewed all available information, including RCC's response and supporting documentation. Based on that review and RCC's admissions, the numerous violations identified in the initial finding are sustained. In upholding this violation, the Department must emphasize that institutions must be continually active, both operationally and administratively, in producing positive *Clery Act* results that support and enhance a campus' safety and security programs. RCC's corrective action plan, if fully implemented, will be a positive step towards RCC's *Clery* compliance. However, the institution's response to the PRR is incomplete. Specifically, RCC has, without explanation, failed to complete the file review of its crime statistics as required by the PRR. For this reason, the Department has conditionally accepted RCC's response and will consider this finding to be closed for the purposes of this program review *upon receipt of the outstanding file review documentation*. The file review of all records related to crimes reported within calendar years 2012-2015 must be submitted, via email, to Donald.Tantum@ed.gov by June 18, 2018. A copy of RCC's 2017 ASR must be submitted with the outstanding file review as well. In the submission's subject line, RCC must reference the Program Review Control Number noted on the FPRD's cover letter. Additionally, RCC officials and directors are put on notice that they must continue to develop the institution's campus safety program and take any additional necessary action to fully address the deficiencies and weaknesses identified by the Department. These corrective measures must also address any deficiencies that were identified during the preparation of the College's response or as otherwise needed to ensure that these violations do not recur. 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 RCC's Title IV eligibility. Serious lapses in *Clery Act* compliance in the future could negatively affect the College's Title IV eligibility.

RCC 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. The requirement to produce an accurate and complete ASR, and to distribute this report to students and employees, 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 more active roles in their own safety and security. RCC has stated that it has brought its overall campus safety operations program into compliance with the *Clery Act* as required by its PPA. Had the College successfully done so, the Department would still have advised RCC that such actions cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding #2: Failure to Compile 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:

RCC failed to compile and publish accurate and complete crime statistics for calendar years 2003 through and including 2011. The review team determined that RCC had no written policies or procedures for compiling and reporting crime statistics. In addition, based on interviews and available documentation (or lack thereof), the review team determined that RCC did not publish or distribute an ASR prior to 2012. The Department's initial review focused on ASRs for the years of 2006 through 2012; however, based on documentation, complaints, and sexual assault allegations the review team expanded its review to include the years of 2001 to 2012.

RCC does not have an adequate structure of governance, control, policies or procedures to adequately compile and disclose statistics. RCC has (1) no written procedures for maintaining reports; (2) an incomplete list of designated CSAs; (3) persistent recordkeeping weaknesses; and, (4) systemic Clery Act and compliance failures such as failure to publish and distribute an ASR.

As noted throughout this report, the College substantially failed to implement a minimally adequate Clery Act compliance program. Untrained campus security officials were assigned primary Clery Act duties for the College. This is evidenced by the College's failure to disclose forcible sex offenses (FSOs). The RCC and RLTA administrators had knowledge of multiple

sexual assault allegations and failed to disclose the statistics in the College's ASR. One RCC adjunct professor had multiple complaints of inappropriate sexual contact reported to RCC administrators by both employees and students. Eventually this employee was terminated. The sexual assault allegations were reportable offenses under the Clery Act, yet RCC failed to report any FSO statistics to the Department or to the community.

The failure to investigate and report incidents of sexual assault is an ongoing problem at RCC and across all administrative lines. Multiple CSAs have documented sexual assaults that have gone unreported for years. The RLTAC has documented sexual assaults between coaches/administrators and students, yet the incidents were never reported. College administrators and RLTAC administrators have continually failed to report sexual assaults. The human resource department has terminated employees due to sexual assault allegations, yet nothing was reported to the Department or ever published and distributed. The student disciplinary process has documented incidents that require disclosure for Clery-reportable statistics, yet no statistics are reported.

RCC has no policies or procedures to collect, compile, preserve, and disclose statistics to the Department. The College has failed to provide evidence of a published ASR and the distribution of such a document for all years prior to 2012. RCC's systemic failure to comply with disclosing statistics triggers a special regulatory concern for the Department and may indicate a general failure to properly implement the Clery Act and calls into question the College's ability and willingness to properly administer the Title IV, Federal student financial aid programs.

Required Action:

As a result of these violations, RCC is required to take all necessary corrective actions to rectify this violation and all others identified in this Program Review Report. In addition, as discussed below, the College must conduct a full file review of records relating to crime statistics for calendar years 2012 to the present. We note that our review demonstrated that there were serious flaws in the College's campus security statistics for the full review period. The College 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, RCC must:

- *Conduct a full file review to identify and correct all errors in its crime statistics for calendar years 2012-2015. This requirement applies to all of the violations identified above and all others identified by RCC during the conduct of the institutional self-study and in the preparation of its response. RCC must re-examine all campus safety and other institutional records regarding incidents of crime reported to campus safety 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 College 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. RCC 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 RCC's ASRs and all submissions to the Department's online campus crime database. As part of its response, RCC 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 campus safety, 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 College provides and publishes complete and accurate crime statistics. In addition, the College must develop and implement procedures to ensure that CSAs receive appropriate regular training. Finally, the College must design and deploy an effective crime statistics data request and collection mechanism for CSAs to use.*

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

Institutional Response:

In its official response, RCC concurred with the PRR's findings. Since the on-site program review, RCC has taken the following affirmative steps to address the deficiencies noted in the report: developed procedures for maintaining the crime log; identified and developed a list of CSAs; and distributed the ASR in accordance with Clery definition since 2015. RCC has also begun a thorough review of data from 2012 – 2015; however, it does not anticipate completion of this review until the end of 2017. Upon completion of this review the college will immediately remedy the identified inconsistencies. In its response to the PRR, RCC stated that, "the Director of Public Safety reviews all in-house reported incidents and crime statistics from the Boston Police Department. The Director attends regular training to ensure accuracy." Further, the College noted that its Director of Public Safety and the Human Resource Director are now trained to identify victims of hate crimes, and to report and respond accordingly.

In its response, RCC further states that it now provides on-line, web-based training annually for all CSAs, offering it to all faculty, staff, and students as well. The College also participated in two-day and four-day trainings, conducted by its General Counsel's office, on the Clery Act and the VAWA requirements. In addition, RCC has developed a partnership with Casa Myrna, a legal advocacy organization for victims of domestic violence. As a result of this alliance, Casa

Myrna will now provide sexual assault training for all faculty and staff during RCC's Professional Development Day.

In addition, RCC added the following statement to all job and student applications: "The Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act require all institutions of higher education to disclose campus policy statements and crime statistics. Our annual report is available at www.rcc.edu/clery."

Final Determination:

Finding #2 cited RCC 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 College had failed to compile and publish accurate and complete crime statistics for calendar years 2003 through and including 2011. Additionally, it was determined that RCC lacked an adequate structure of governance, control, policies, and/or procedures to adequately compile and disclose statistics. More specifically, the review team found that RCC had: (1) no written procedures for maintaining reports; (2) an incomplete list of designated CSAs; (3) persistent recordkeeping weaknesses; and, (4) systemic *Clery Act* and compliance failures, such as the failure to publish and distribute an ASR for all years prior to 2012. The College also substantially failed to implement a minimally adequate *Clery Act* compliance program, assigning *Clery Act* duties to untrained campus security officials and failing to develop policies or procedures to collect, compile, preserve, and disclose statistics to the Department. Further, RCC's systemic failure to accurately disclose crime statistics triggered a special regulatory concern for the Department may indicate a general failure to properly implement the *Clery Act*, and calls into question the College's ability and willingness to properly administer the Title IV, Federal Student Financial Aid Programs.

As a result of the foregoing, RCC was required to conduct a full file review to identify and correct all errors in its crime statistics for calendar years 2012-2015. RCC was further required to review and improve its policies, procedures, internal controls, and training programs to ensure that all incidents of crime, reported to campus safety, security entities, CSAs, and local law enforcement agencies, are properly classified. RCC was also required to develop appropriate policies and internal controls to ensure that the official charged with compiling the required crime statistics properly requests information from all CSAs and local law enforcement agencies, to ensure that it provides and publishes complete and accurate crime statistics, and to develop and implement procedures to ensure that CSAs receive appropriate, regular training. Finally, RCC was required to design and deploy an effective crime statistics data request and collection mechanism for CSAs to use. In its response, RCC concurred with the finding and submitted documentations to affirm that remedial action had been taken.

The Department carefully examined RCC's narrative response and supporting documentation. Based on that review and the College's admission of noncompliance, the finding identified in the PRR is sustained. The Department has also determined that RCC's remedial action plan is a step towards complying with the *Clery Act* requirements; however, this finding will not be considered closed until RCC submits a complete response. Specifically, RCC has failed complete its file

review of the 2012 -2015 data, indicating that said review will not be completed until late 2017. The outstanding file review and RCC's complete assessment of that review must be submitted, via email, to Donald.Tantum@ed.gov by June 18, 2018. In the subject line of that email, RCC must reference the Program Review Control Number noted on the FPRD cover letter in the subject line.

For these reasons, the Department has conditionally accepted RCC's response and will consider this finding to be closed for the purposes of this program review *upon receipt of the outstanding file review*. Additionally, the officials and directors of RCC 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 College's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

As part of the ongoing monitoring program, the Department will continue to evaluate the RCC'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 RCC's ability to participate in Title IV programs. If the Department determines that RCC 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.

RCC 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. The requirement to produce an accurate and complete ASR as a single, comprehensive document, and to distribute this report to students and employees, is fundamental to the goals of the *Clery Act*. RCC must ensure 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 more active roles in their own safety and security. RCC has stated that it has implemented measures to bring its overall campus safety operations program into compliance with the *Clery Act* as required by its PPA. Nevertheless, RCC is advised that such actions cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding #3: 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:

RCC substantially failed to gather statistics for incidents of crime reported to CSAs as well as failing to include them in its campus crime statistics. This very serious, systemic, and persistent condition contributed significantly to RCC'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 campus safety office has been charged by the College with compiling crime statistics and preparing the ASR. The day-to-day Clery Act compliance functions were assigned solely to the Director of Public Safety. The Director of Public Safety 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, RCC 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 2012. RCC has substantially failed to implement the Clery Act in several material respects. In particular, it was at this time that public safety officials realized that the Clery Act required the inclusion of statistics for incidents of crime reported to CSAs.

The review team determined that RCC had no written policies or procedures for compiling and reporting crime statistics. In addition, the College could not produce documents evidencing that RCC ever published and distributed an ASR prior to 2012. RCC officials were ill-equipped to develop and implement a means to fix it. The RCC Public Safety Office did not have the requisite expertise, inclination, or resources to identify all CSAs. The RCC Public Safety Office also lacked the authority to compel CSAs at the College and the RLTAAC to perform the basic crime reporting functions and other obligations conferred upon CSAs under the Clery Act. The

Public Safety Office also did not have the technical expertise to develop and deliver training for CSAs nor did it have sufficient influence or support from RCC top administrators to persuade CSAs to participate in training. The RCC failed to govern and engage staff at RCC to address day-to-day Clery Act compliance. The College completely failed to implement the Clery Act requirements to such a degree that information reported internally to the RCC community and externally to visitors and external guests was deemed inadequate. Specifically, prior to 2012 the College did not publish or distribute an ASR. Internal controls and governance over use of RLTA facilities, security contracts, contracts for leasing RLTA space, and other campus property lacked administrative oversight, control, policies, and procedures.

Although the effect of RCC's systemic failure to collect crime reports from CSAs cannot be reliably quantified, it is abundantly clear that it caused RCC'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 RCC campus property 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. 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:

As a result of these violations, RCC 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 College 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, RCC 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

The Department will require RCC 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 gather as much information as possible about the extent of this serious and ongoing violation into calendar years 2012-2015, with the full acknowledgement that it will not be possible for RCC to identify all incidents that were reported to CSAs during this time. The College should be able to provide documentation regarding many of the Clery-reportable crimes that were reported to various College officials. RCC 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 College to comply going forward. A copy of all new and revised policies and procedures as well as the CSA list must be submitted with the College's official response to this Program Review Report.

In addition, RCC must provide a list of all CSAs who have been trained as well as a detailed plan as to how all future CSAs will be identified and trained.

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

Institutional Response:

In its official response, RCC concurs with the PRR's finding, except to the extent that the finding determined that the serious and ongoing violations extended beyond the 2012. Specifically, the College concurs with the noncompliance deficiencies noted prior to 2012; however, since the review team's 2012 on-site visit, the College proffers that it has taken the following steps to address the deficiencies: identified CSAs on the RCC website and maintain an additional CSA listing in the Public Safety office; developed an "On Duty Administrator" program, making administrators within it available to respond to any and all incidents during evening and weekend hours when classes are in session; and began conducting CSA training in January of each year, during which all CSAs are taught to provide data directly to the Director of Public Safety.

Final Determination:

Finding #3 cited RCC for multiple violations of the *Clery Act* and the Department's regulations. Specifically, the review team found that the College failed to gather statistics for incidents of crime reported to CSAs, and failed to include them in its campus crime statistics. The review team further determined that RCC had no written policies or procedures for compiling and reporting crime statistics.

As a result, RCC was required to establish policies and procedures for identifying all CSAs, and for requesting and compiling statistics of all *Clery* incidents of crime reported to any CSA, officials, or office that may receive such reports. In addition, the College was required to 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, RCC was required to develop and deliver an annual training program to educate CSAs about the *Clery Act* and to inform them about the reporting obligations conferred upon them by the law. In its response, RCC acknowledged that, prior to 2012, the college was out of compliance, as noted in the finding. However, the College maintains that, in the years since the Department's 2012 onsite review, remedial measures have been implemented to address the deficiencies noted in this finding, and provided documentation to support its claim.

The Department carefully reviewed all available information, including RCC's response and supporting documentation. Based on that review and RCC's admissions, the numerous violations identified in the initial finding are sustained. While the Department acknowledges that, subsequent to the onsite visit, RCC has implemented remedial measure to address its *Clery Act* compliance deficiencies, the Department remains concerned that the College's response is incomplete based on the fact that an outstanding file review of data has yet to be completed and

submitted to the Department for review. For these reasons, the Department has conditionally accepted RCC's response and will not consider this finding to be closed until RCC's file review documentation is submitted to the Department and reviewed. Upon receipt and review of the file review information, the Department will advise RCC if issues of noncompliance remain, and whether additional remedial actions will be required.

In upholding this violation, the Department must emphasize that institutions must be continually active, both operationally and administratively, in producing positive *Clery Act* results that support and enhance a campus' safety and security programs. However, the officials and directors of RCC are put on notice that they must continue to develop the institution's campus safety program and take any additional necessary action to fully address the deficiencies and weaknesses identified by the Department. These corrective measures must also address any deficiencies that were identified during the preparation of the College's response or are as otherwise needed to ensure that these violations do not recur.

RCC 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. The requirement to produce an accurate and complete ASR as a single, comprehensive document, and to distribute this report to students and employees, is fundamental to the goals of the *Clery Act*. RCC must ensure access to this information in that it permits campus community members and their families to make well-informed decisions about where to study and work, and empowers individuals to play more active roles in their own safety and security. RCC has stated that it has implemented measures to bring its overall campus safety operations program into compliance with the *Clery Act* as required by its PPA. Were that the case, RCC would still be advised that such actions cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding #4: Timely Warning Issuance and Policy Violations

Citation:

Under the Clery Act, an institution must issue timely warnings to the campus community to inform affected persons of crimes considered to be a threat to students and employees. See §485(f)(3) of 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) or (c)(3) may pose a serious or ongoing threat to students or employees and is reported to a campus security authority. 34 C.F.R §668.46(e). An institution's ASR must include detailed information about the issuance of timely warnings. 34 C.F.R. §668.46(b)(2)(i).

Noncompliance:

RCC failed to comply with the timely warning provisions of the Clery Act due to the absence of any and all required policies and procedures for the issuance of timely warnings. A timely warning policy is required to provide a clear understanding about the procedures the institution

will follow to create and transmit timely warning notices. Timely warning notices must be disseminated 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 Clery-reportable crimes.

Specifically, RCC failed to issue any timely warnings for the entirety of this program review period, despite several known incidents of Clery-reportable crimes that did in fact pose a serious or ongoing threat to students, employees, and the broader campus community. As noted previously, the College did not produce and distribute ASRs throughout the review period and as a result, also failed to develop, implement, and disclose a time warning policy.

Required Action:

As a result of these violations, RCC must review and revise its current timely warning policy. In accordance with 34 C.F.R. §668.46(e), RCC must develop and implement policies and procedures to facilitate the timely issuance of warnings for all Clery-reportable crimes that may pose a serious or an ongoing threat to the campus community. RCC must include in its policy statement for the making of timely warnings all of the required Clery geography that is prescribed by the Clery Act.

As part of this process, RCC must consider the range of factors that will influence its process for determining if a warning will be issued, the timing of the notice, the means/media by which it will be disseminated, and then incorporate this information into its policies and procedures. In its response, the College also must explain how the emergency alert system functions within RCC's overall emergency management system and response protocols and its crime prevention and mitigation strategies. The response also must address the College's assessment of the system's effectiveness and outline how effectiveness is tested. Finally, RCC must implement specific procedures to ensure the operative facts of an incident, such as dates, times, and geographic locations, are recorded accurately in its incident reports and daily crime logs to ensure that the information in timely warnings and emergency notifications provide useful and reliable information. Finally, RCC must provide copies of all new and revised internal and public policies and procedures as part of its response to this Program Review Report.

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

Institutional Response:

The College concurs with the PRR's findings, and has taken affirmative steps to address the deficiencies cited. In support of its claims that steps have been taken to address the violations noted, RCC submitted copies of its new Timely Warning and Emergency Notification policies and procedures. The Office of Public Safety will issue the Timely Warnings and Emergency Notifications. In addition, the College has established an "RCC Alert" notification system to send out Emergency Notifications and Timely Warnings, and has developed policies, procedures, and protocols for the "RCC Alert" system use.

Final Determination:

Finding #4 cited RCC for multiple violations of the *Clery Act* and the Department's regulations. RCC concurs with the PRR's finding. During the period of review, RCC had failed to comply with the timely warning provisions of the *Clery Act* due to the absence of any and all required policies and procedures for the issuance of Timely Warnings. A timely warning policy is required to provide a clear understanding of about the procedures the institution will follow to create and transmit timely warning notices. As a result of this violation, the College was required to develop and implement policies and procedures to facilitate the timely issuance of warnings for all *Clery*-reportable crimes that may pose a serious or an ongoing threat to the campus community, in accordance with *34 C.F.R. §668.46(e)*. In its response, RCC concurred with this finding and submitted documentation to prove that remedial measures have been taken to address this finding.

The Department carefully reviewed all available information, including RCC's response and supporting documentation. Based on that review and RCC's admissions, the numerous violations identified in the initial finding are sustained. In upholding this violation, the Department must emphasize that the *Clery Act* requires that reportable incidents that may constitute an ongoing threat must be disseminated campus-wide 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 *Clery*-reportable crimes. Institutions must be continually active, both operationally and administratively, in producing positive *Clery Act* results that support and enhance a campus' safety and security programs. As such, the Department has determined that RCC's corrective action plan appears to meet minimum requirements. For these reasons, the Department has accepted RCC's response and considers this finding to be closed for the purposes of this program review. However, the officials and directors of RCC are put on notice that they must continue to develop the institution's campus safety program and take any additional necessary action to fully address the deficiencies and weaknesses identified by the Department. These corrective measures must also address any deficiencies that were identified during the preparation of the College's response or as may be otherwise needed to ensure that these violations do not recur.

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

Citation:

Institutions with a police or campus security department must maintain "a written, easily understood daily crime log" listing all crimes that occurred 1) on campus including residence halls; 2) in a non-campus buildings or on non-campus property; 3) on public property within the campus or immediately adjacent to and accessible from the campus; or 4) within the boundaries of the campus police or security department's patrol jurisdiction. 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:

RCC failed to maintain accurate and complete daily crime logs throughout the review period. The review team inspected the available log information and found that very few incidents were entered on the activity log and the entries that were there did not include the most basic information required by the Department's regulations, including the offense type, the date and time of the incident, the general location, and the disposition. Information on the disposition of reported offenses were rarely entered and were never updated, as required. In addition, RCC failed to enter any information on the log for incidents that occurred at the RLTAAC. Finally, it was observed that the security office had no internal procedures regarding the maintenance of the log nor did it provide any public information about how to report incidents of crimes or other safety concerns or how interested parties might access the log's contents.

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

Required Action:

As a result of these violations, RCC is required to take all necessary corrective actions to rectify this violation and all others identified in this Program Review Report. In addition, the College must develop and implement a system of policies and procedure improvements.

In addition, RCC must review and revise its policies, procedures, and internal controls to ensure that all incidents of crime reported as within campus and public safety's patrol map are entered on the daily crime log, as required. These policy and procedure revisions must provide for the designation of a capable official who will ensure that all incidents of crime reported are entered onto the log in an accurate and complete manner and that all fields of the crime log are updated within two business days as new information becomes available for at least the first 60 days that the incident is recorded, unless such disclosure is specifically prohibited by law or would substantially jeopardize the confidentiality of a victim or ongoing investigation. The crime log must take into account the incidents occurring at the RLTAAC. At times the presentation from RCC officials would lead one to view the RLTAAC as a separate entity; however, for Clery Act purposes the RLTAAC is a part of the RCC campus. Additionally, RCC must ensure that the log is made readily available for review by members of the campus community as well as the general public. A copy of the revised policies and procedures must be submitted with the College's response to this Program Review Report.

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

Institutional Response:

The College concurs with the Program Review Report's finding, and has taken the following affirmative steps to address the deficiencies cited:

- Maintains the crime log in the RCC's Office of Public Safety dispatch area, and makes it available upon request;
- Maintains the daily crime log, dispatch log, and incident reports in the Office of Public Safety, and includes all incidents reported at the RLTAAC in its crime logs;
- Requires RCC campus security to regularly patrol the RLTAAC, and encourages outside renters of that facility to consider hiring additional security;
- As of FY '18, has ensured that all contracts for the use of campus space will include a provision for security services.

Final Determination:

Finding #5 cited RCC for multiple violations of the *Clery Act* and the Department's regulations. More specifically, RCC failed to maintain accurate and complete daily crime logs throughout the review period. The review team inspected the available log information and found that very few incidents were entered in the activity log, and that the entries that were entered did not include the most basic information required by the Department's regulations, including the offense type, the date and time of the incident, the general location, and the disposition. As a result, RCC was required to review and revise its policies, procedures, and internal controls to ensure that all incidents of crime reported as having occurred on campus and within public safety's patrol map are entered on the daily crime log as required. The crime log must also take into account the incidents occurring at the RLTAAC. In its response, RCC concurred with this finding and submitted documentation to prove that remedial measures have been taken to address the violations noted therein.

The Department carefully examined RCC's narrative response and supporting documentation. Based on that review and RCC's admissions, the violations noted in the noncompliance section of the initial finding are sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by the College's new daily crime log and its new and revised internal policies and procedures. As such, the Department has determined that RCC's remedial action plan meets minimum requirements. For these reasons, the Department accepts RCC's response and considers this finding to be closed for purposes of this program review. Nevertheless, the officials and directors of RCC 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 College's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

RCC is reminded that the exception identified above constitutes a serious violation of the *Clery Act* that, by its nature, cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. RCC asserted that it took adequate remedial actions, and that, by doing so, is now in compliance with the *Clery Act* as required by its PPA. Nevertheless, RCC officials must understand that the failure to maintain a daily crime log deprives students, employees, parents, the media, and other stakeholder's 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 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 College 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 #6: 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 that receives Title IV, HEA funds must, by October 1 of each year, publish and distribute to its current students and employees through appropriate publications and mailing, a comprehensive ASR that contains, at a minimum, all of the statistical and policy elements enumerated in 34 C.F.R. §668.46(b).

The ASR must be prepared and actively distributed as a single document. Acceptable means of distribution include regular U.S. Mail, campus mail, hand delivery, or by posting the ASR 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 a link to its exact electronic address, a description of its contents, as well as an advisement that a paper copy will be provided upon request. 34 C.F.R. §668.41(e)(1). These regulations also require institutions to provide a notice containing this information to all prospective students and employees. This notice must also inform interested parties about how to obtain a paper copy of the ASR. 34 C.F.R. §668.41(e)(4).

An institution's ASR must include statistics for incidents of crimes reported during the three most recent calendar years. The covered categories include criminal homicide (murder and non-negligent manslaughter), forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. Statistics for certain hates crimes as well as arrest and

disciplinary referral statistics for violations of certain laws pertaining to illegal drugs, illegal usage of controlled substances, liquor, and weapons also must be disclosed in the ASR. These crime statistics must be published for the following geographical categories: 1) on campus; 2) on-campus student residential facilities (as a subset of category # 1); 3) certain non-campus buildings and property; and, 4) certain adjacent and accessible public property. 34 C.F.R. §668.46(c)(1).

The ASR also must include several mandated policy statements. These disclosures are intended to inform the campus community about the institution's security policies, procedures, and the availability of crime prevention programs and resources as well as channels for victims of crime to seek recourse. In general, these policies include topics such as the law enforcement authority and practices of campus police and security forces, incident reporting procedures for students and employees, and policies that govern the preparation of the ASR itself. Institutions are also required to disclose alcohol and drug policies and educational programs. Policies pertaining to sexual assault education, prevention, and adjudication must also be disclosed. Institutions also must provide detailed policies of the issuance of timely warnings, emergency notifications, and evacuation procedures. As noted above, the ASR must be published as a single comprehensive document. 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. §485(f) of the HEA; 34 C.F.R. §668.46(b).

Finally, each institution must also submit its crime statistics to the Department for inclusion in the Office of Postsecondary Education's "Campus Safety and Security Data Analysis Cutting Tool." This data must be submitted in the manner designated by the Secretary and in accordance with the timelines published in the Federal Register. 34 C.F.R. §668.41(e)(5).

Noncompliance:

For all years prior to 2012, RCC failed to produce and to distribute an ASR to all of its current students and employees by October 1 of each year. In fact, it was discovered that no ASRs had ever been produced until the Department initiated its review. While on-site, the review team interviewed several CSAs and RCC administrators, President, Vice President of Administration & Finance, Vice President of Academic Affairs, Vice President of Enrollment Management & Student Affairs, Dean of Student Success, and Director of RLTAAC, and all respondents provided no assurances or documented proof that an ASR was ever created and/or distributed. When asked to provide a copy of the ASRs and proof of distribution RCC failed to produce the documents requested or knowledge of how such a task or activity would be achieved. Effectively, this review clearly suggest that RCC has never produced nor distributed an ASR and that this condition existed since 1992, the first year that institutions were required to comply with the Clery Act.

RCC failed to prepare, publish, and distribute an accurate and complete ASR in accordance with Federal regulations. RCC is required to prepare and publish an accurate and complete ASR that includes all statistical and policy statements enumerated in 34 C.F.R. §668.46(b) and to

actively distribute it to current students and employees and notify prospective students and employees in accordance with 34 C.F.R. §668.41.

Failure to prepare an accurate and complete ASR, to actively distribute it to current students and employees, and to notify prospective students and employees in accordance with Federal regulations deprives the campus community of important security information and is an indication of a serious and persistent administrative impairment.

Required Action:

As a result of these violations, RCC is required to take all necessary actions to address this violation and all others identified in this Program Review Report to provide reasonable assurance that these deficiencies will not recur. Specifically, RCC is required to review and revise its current policies and procedures that govern the production of the ASR and the active distribution of the report to enrolled students and current employees in the required manner. The College's new and revised internal guidance must specifically state how prospective students and employees will be actively notified about the ASR, its contents, and how to obtain a copy of the report. Moreover, the distribution procedures must provide for full documentation of the College's efforts to comply with the requirements of 34 C.F.R. §668.41(e).

Furthermore, RCC is also required to conduct an internal review of its 2015 and 2016 ASRs to identify any omitted and inadequate disclosures, with a special focus on the VAWA provisions. If deficiencies are identified, the College must produce a revised 2016 ASR and then actively distribute the report to all current students and employees no later than January 15, 2017. RCC must submit a copy of the original 2016 ASR and any revised versions of the report along with credible evidence showing that each report was actively distributed to mandatory recipients as part of its response. Appendix A includes additional information about information that must be included in the response.

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

Institutional Response:

The College concurred with the PRR's finding, and, since the Department's on-site program review in 2012, has taken the following steps to address the deficiencies cited in the finding:

- The President of the College, the Vice President of Administration & Finance, and the Director of Public Safety have collaborated to ensure that the ASR is properly distributed;
- students and employees are now notified, via email, of the report's availability;

- students, faculty and staff may now request copies of the ASR directly from the Office of Public Safety; and
- the current ASR, as well as the ASRs from 2013 through 2015, have been made available on the RCC website.

Final Determination:

Finding #6 cited RCC for multiple violations of the *Clery Act* and the Department's regulations. More specifically, RCC failed to produce and to distribute an ASR to all of its current students and employees by October 1 of each year, and had failed to do so since 1992, the first year that institutions were required to comply with the *Clery Act*. As a result, RCC is required to review and revise its current policies and procedures that govern the production and distribution of the ASR to enrolled students and current employees to ensure that said policies and procedures are crafted and carried out in the required manner.

The Department carefully examined RCC's narrative response and supporting documentation. Based on that review, and the College's admissions, the violations identified in the noncompliance section of this initial finding are sustained. However, the review team's examination also revealed that the identified violations were, for the most part, satisfactorily addressed by the College's revisions of its internal policies and procedures for the distribution and electronically posting of its ASR. As such, the Department has determined that RCC's remedial action taken to date is positive step towards complying with the *Clery Act* requirements. For these reasons, the Department has acknowledged RCC's response and considers this finding to be closed for purposes of this program review. Nevertheless, the officials and directors of RCC 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 College's response to the Department's report, and/or as may otherwise be needed to ensure that these violations do not recur.

RCC is reminded that the exception identified above constitutes a serious violation of the *Clery Act* that, by its nature, cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. RCC 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, RCC officials must understand that any failure to publish and distribute an accurate and complete ASR deprives students and employees of important campus safety and security information to which they are entitled. For these reasons, the College 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 #7: Drug and Alcohol Abuse Prevention Program Requirements Not Met

Citation:

The DFSCA and the Department's Part 86 regulations require each participating institution of higher education (IHE) that receives Federal education funding 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 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, 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:

RCC violated multiple provisions of the DFSCA and the Department's Part 86 regulations. A review of RCC's consumer information, student handbooks, and other pertinent publications disclosed no indication that a DAAPP is or has ever been in place for RCC students. RCC never developed nor implemented a DAAPP during its participation in the Title IV, FSA programs.

As a logical extension of this exception, the College did not produce an annual DAAPP disclosure that summarizes the program and also was not able to distribute required program materials to enrolled students and current employees.

Moreover, the failure to develop and implement a DAAPP also caused a persistent failure to conduct biennial reviews to assess the effectiveness of the DAAPP and the consistency of

sanctions imposed for violations of its disciplinary standards and codes of conduct. Once again, the available evidence indicates that this violation dates back to RCC's initial approval to participate in the Title IV, FSA programs.

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:

As a result of these violations, RCC is required to take all necessary corrective actions to rectify this violation and all others identified in this Program Review Report. To address the specific deficiencies identified in this finding, RCC 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. RCC 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. RCC 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. In addition, if RCC 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 Federal, state, and local laws and ordinances related to the unlawful possession or distribution of illicit drug and alcohol in all future DAAPP materials;*
- Describe the health risks associated with the use of illicit drugs and alcohol abuse; and,*
- Conduct a biennial review to measure the effectiveness of its DAAPP. RCC 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 RCC will ensure consistency of its enforcement of its disciplinary sanctions and will be made available to the public upon request. A copy of RCC's biennial review report must be submitted to the Department as part of the College's response to this report.*

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

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 RCC toward full compliance with the Clery Act and the DFSCA as soon as possible.

In closing, the Department must note that the findings documented in this report constitute serious violations of the Clery Act and the DFSCA that by their nature cannot be cured. There is no way to truly "correct" a violation of these important campus safety and substance abuse prevention laws once they occur. The College will be given an opportunity to conduct a meaningful review of its current policy and procedures and to develop and implement new policies and procedures, as needed. Copies of all new and revised internal guidance must accompany the College's response to this Program Review Report. Notwithstanding any remedial efforts undertaken pursuant to this finding, RCC is nevertheless advised that such remedial measures cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective measures as a result.

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

Finally, RCC management is reminded that Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) amended the Clery Act to require institutions to compile and disclose statistics for incidents of domestic violence, dating violence, sexual assault, and stalking. VAWA also requires institutions to include new policy, procedural, and programmatic disclosures regarding sexual assault prevention and response in their ASRs. All institutions are already obligated to make a documented good-faith effort to comply with the statutory requirements of VAWA and were required to include all new required content in the 2014 ASR. Because the Department issued Final Rules on the VAWA amendments on October 20, 2014, these regulations went into effect on July 1, 2015, per the Department's Master Calendar. College officials may access the text of the Final Rule at: <http://ifap.ed.gov/fregisters/attachments/FRI02014FinalRuleViolenceAgainstWomenAct.pdf>.

Institutional Response:

The College concurred with the PRR's finding, and has taken a number of affirmative steps to address the deficiencies cited. For example, each semester, as well as during Alcohol Awareness Month, the Division of Student Life will host informational sessions for students on the topic of Alcohol and Other Drug (AOD) use, distributing materials that outline the services available to students and the health risks associated with the illicit use of drugs and alcohol, as well as inviting guest lecturers to speak. The school's drug and alcohol policy is now also included in the student handbook, and details a written description of the legal sanctions imposed under Federal, state, and local laws, related to the unlawful possession or distribution of illicit drugs and alcohol. The policy will now be distributed annually to all students and employees through publication in the student handbook, email to all employees and students, and posting to the RCC website. In addition, on an annual basis, a systematic review of all DAAPP-related programmatic activities will be conducted, under the auspices of the Vice President of Academic and Student Affairs, and carried out by the Dean of Student Life.

Final Determination:

Finding #7 cited RCC for multiple violations of the *DFSCA* and the Department's regulations. Specifically, RCC's consumer information, student handbooks, and other pertinent publications disclosed no indication that a DAAPP was or has ever been in place for RCC students. In short, while onsite in 2012, the review team found that RCC had never developed or implemented a DAAPP during its participation in the Title IV, FSA programs. RCC's failure to develop and implement a DAAPP also caused the school to persistently fail to conduct biennial reviews to assess both the effectiveness of the DAAPP and the consistency of sanctions imposed for violations of its disciplinary standards and codes of conduct. As a result, RCC was required to develop and implement a complete DAAPP and to produce and distribute an annual disclosure. Then, RCC was required to conduct a substantive biennial review as soon as the initial program data was available. In its response, RCC concurred with the finding, described the remedial actions taken so far, and submitted documents in support of its claims.

The Department carefully examined RCC's narrative response and supporting documentation. Based on the Department's review and the College's admissions, each of the violations identified in the initial finding is sustained. The review team's examination also indicated that the identified violations were, for the most part, satisfactorily addressed by the institution's new DAAPP and annual disclosure, initial biennial review report, and new internal policies and procedures. As such, the Department determined that RCC's remedial action plan meets minimum requirements. For these reasons, the Department has accepted the response and considers this finding to be closed for purposes of this program review. Nevertheless, the officials and directors of RCC are put on notice that the institution must take all other action 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 response to the Department's report and as may otherwise be needed to ensure that these violations do not recur.

In this regard, RCC officials are reminded that the institution must continue to develop its DAAPP and ensure that it conducts substantive biennial reviews on the required schedule. At the conclusion of each review, the institution must produce a detailed report that contains specific information about the conduct of the review, including factual statements about the research methods used during the evaluation. Each report also must identify the official(s) who conducted the review and address how the institution analyzed whether or not its disciplinary standards and codes of conduct regarding drug use and alcohol abuse were consistently enforced. Care also must be taken to ensure that all findings and recommendations are supported by valid evidentiary data. Finally, each report must indicate that it was approved by RCC's President and/or its Board.

RCC is reminded that the exceptions identified above constitute serious and persistent violations of the *DFSCA* that, by their nature, cannot be cured. There is no way to truly "correct" violations of this type once they occur. RCC officials must understand that the Department deems 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 alcohol abuse and illicit drug use and deprive institutions of important information about the effectiveness of any drug and alcohol programs that may have been in place during the review period. For these reasons, RCC is advised that its remedial measures cannot and do not diminish the seriousness of these violations, nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or additional remedial measures as a result.

Finally, the Department strongly recommends that RCC 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 *DFSCA*. Please be advised that the Department may request information on a periodic basis to test the effectiveness of the College's new policies and procedures.

For these reasons, the Department strongly recommends that RCC also re-examine all of its campus safety and general Title IV policies and procedures on an annual basis to ensure that they continue to reflect current institutional practices and are compliant with Federal requirements. To that end, College officials are encouraged to consult the Department's "Handbook for Campus Safety and Security Reporting" (2016) as a reference guide on *Clery Act* compliance. The Handbook is online at: <http://www2.ed.gov/admins/lead/safety/handbook.pdf>. The Department also provides a number of other *Clery Act* training resources. College officials can access these materials at: www2.ed.gov/admins/lead/safety/campus.html. The *Clery Act* regulations can be found at 34 C.F.R. §§ 668.14, 668.41, 668.46, and 668.49.

As part of the ongoing monitoring program, the Department will continue to evaluate the RCC'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 RCC's ability to participate in Title IV programs. If the Department determines that RCC 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.