



March 5, 2024

Dondi E. Costin, Ph.D.  
President  
Liberty University  
1971 University Boulevard  
Lynchburg, VA 24515

**Via Electronic Mail**

**Re: Campus Crime Final Program Review Determination**  
**OPE ID: 02053000**  
**PRCN: 202230330635**

Dear President Costin:

On May 1, 2023, the U.S. Department of Education (the Department) issued a Program Review Report (PRR) regarding Liberty University's (Liberty; the University) compliance with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*), the Higher Education Act (HEA) fire safety provisions, the Drug-Free Schools and Communities Act (*DFSCA*) and the Department's implementing regulations. The original text of that report is incorporated into the enclosed Final Program Review Determination (FPRD). The University submitted acceptable narrative responses, including supporting documents and information, to the Department's initial report. Liberty's responses and all associated supporting materials are being retained by the Department and are available for inspection by the University upon request. Please be advised that this FPRD may be subject to release under the Freedom of Information Act and may be provided to other oversight entities now that it has been issued to the University.

**Purpose:**

Final determinations have been made concerning all findings identified in the PRR. As you know, this FPRD contains numerous serious findings regarding Liberty's failure to comply with the *Clery Act*. Because these findings do not result in financial liabilities, they may not be appealed. The purpose of this letter is to advise Liberty of the Department's final determinations and to close the review. The executed Settlement Agreement, together with the Appendices, will be provided under separate cover.

**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

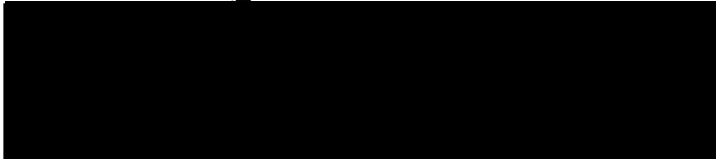
**Federal Student Aid**  
An OFFICE of the U.S. DEPARTMENT of EDUCATION

**Clery Group**  
**830 First St., N.E. Washington, D.C. 20202**  
**StudentAid.gov**

regular record retention period applicable to all Title IV records, including *Clery Act*, HEA fire safety, and *DFSCA*-related documents under *34 C.F.R. § 668.24(e)*.

We would like to express our appreciation for the cooperation extended to us during the program review process. 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](mailto:Donald.Tantum@ed.gov).

Sincerely,



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

cc: Mr. David Corry, General Counsel, Liberty  
Dr. Robert Ritz, Chief Financial Officer, Liberty  
Ms. Ashley Reich, Senior Vice President of Equity Compliance, Liberty  
Mr. Marcus Tinsley, Vice President, Security and Public Safety, Liberty  
Mr. Matthew Cooper, Vice President, Student Financial Services, Liberty

Enclosure:

Campus Crime Final Program Review Determination

**Liberty University**  
**OPE ID 02053000**  
**PRCN: 202230330635**

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

**Liberty University**  
**Final Program Review Determination**  
**March 5, 2024**

## Table of Contents

<b>A. Table of Acronyms.....</b>	<b>3</b>
<b>B. The Clery Act and the Drug-Free Schools and Communities Act.....</b>	<b>4</b>
<b>C. Institutional Information .....</b>	<b>6</b>
<b>D. Background and Scope of Review.....</b>	<b>7</b>
<b>E. Findings and Final Determinations .....</b>	<b>8</b>
<b>Finding #1: Lack of Administrative Capability .....</b>	<b>8</b>
<b>Finding #2: Inaccurate and Incomplete Informational Disclosures.....</b>	<b>17</b>
<b>Finding #3: Failure to Comply with Violence Against Women Act Requirements ...</b>	<b>22</b>
<b>Finding #4: Failure to Identify and Notify Campus Security Authorities and to     Establish an Adequate System for Collecting Crime Statistics from All Required     Sources .....</b>	<b>31</b>
<b>Finding #5: Failure to Properly Classify and Disclose Crime Statistics .....</b>	<b>38</b>
<b>Finding #6: Failure to Issue Emergency Notifications in Accordance with Federal     Regulations .....</b>	<b>50</b>
<b>Finding #7: Failure to Issue Timely Warnings in Accordance with Federal     Regulations.....</b>	<b>61</b>
<b>Finding #8: Failure to Maintain an Accurate and Complete Daily Crime Log .....</b>	<b>69</b>
<b>Finding #9: Failure to Define Clery Geography in Accordance with Federal     Regulations.....</b>	<b>76</b>
<b>Finding #10: Failure to Comply with Title IV Record Retention Requirements.....</b>	<b>81</b>
<b>Finding #11: Failure to Publish and Distribute Annual Security Report in     Accordance with Federal Regulations .....</b>	<b>89</b>
<b>Finding #12: Failure to Protect Whistleblower from Retaliation.....</b>	<b>92</b>
<b>F. Summation .....</b>	<b>95</b>
<b>G. Appendices.....</b>	<b>96</b>
<b>Appendix A: Underreported Criminal Offenses from PRR.....</b>	<b>96</b>
<b>Appendix B: Final Determination: Clery-Reportable Crimes Omitted from Liberty’s     Crime Statistics.....</b>	<b>100</b>
<b>Appendix C: Final Determination: Timely Warning Violations.....</b>	<b>104</b>

**A. TABLE OF ACRONYMS**

<b>AFSR</b>	Annual Fire Safety Report
<b>ASR</b>	Annual Security Report
<b>BOLO</b>	Be On the Lookout
<b>CCC</b>	Clery Compliance Committee
<b>CERE</b>	Center for Engineering Research and Education
<b>CSA</b>	Campus Security Authority
<b>DAAPP</b>	Drug and Alcohol Abuse Prevention Program
<b>DAWG</b>	Data Assurance Working Group
<b>DFSCA</b>	Drug-Free Schools and Communities Act
<b>EER</b>	Emergency Evacuation and Response Procedures
<b>EVP</b>	Executive Vice President
<b>FSA</b>	Federal Student Aid
<b>FPRD</b>	Final Program Review Determination
<b>HEA</b>	Higher Education Act
<b>HR</b>	Liberty University's Human Resources Department
<b>IDE</b>	Office of Inclusion, Diversity, and Equity
<b>IT</b>	University Information Technology
<b>LCA</b>	Liberty Christian Academy
<b>LGH</b>	Liberty Godparent Home
<b>LMMG</b>	Liberty Mountain Medical Group
<b>LPD</b>	Lynchburg Police Department
<b>LUPD</b>	Liberty University Police Department
<b>NCD</b>	No Contact Directive
<b>NCES</b>	National Center for Education Statistics
<b>NIBRS</b>	National Incident Based Reporting System
<b>OCL</b>	Office of Community Life
<b>OEC</b>	Office of Equity and Compliance
<b>OSPS</b>	University's Office of Security and Public Safety
<b>PPA</b>	Program Participation Agreement
<b>PRR</b>	Program Review Report
<b>RA</b>	Resident Assistants
<b>SVP</b>	Senior Vice President
<b>TRBC</b>	Thomas Road Baptist Church
<b>VAWA</b>	Violence Against Women Act

## B. The Clery Act and the Drug-Free Schools and Communities Act

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

The *Clery Act* requires institutions to produce and distribute Annual Security Reports (ASRs) containing their campus crime statistics. Statistics must be included for the most serious crimes against persons and property that occur in buildings or on grounds that are owned or controlled by the institution or recognized student organizations, as well as on adjacent and accessible public property. These crimes are considered to have been reported anytime such an offense is brought to the attention of an institution's campus police or security department, a local or state law enforcement agency with appropriate jurisdiction, or another campus security authority (CSA). There are four general categories of CSAs. These include: (i) a campus police or security department, (ii) any institutional employee with safety-related job functions, such as a security desk receptionist in a residence hall or an attendant that controls access to a parking facility, (iii) anyone designated to receive reports of crime and/or student or employee disciplinary infractions, such as Human Resources, and (iv) any official that has significant responsibilities for student life or activities, such as residential life staff, student advocacy and programming offices, and athletic department officials and coaches.

An ASR must include several statements of policies, procedures, and programmatic information regarding issues of student safety and crime prevention. The *Clery Act* also requires institutions with campus police or security departments to maintain daily crime logs that are available for public inspection. In addition, the institution must issue Timely Warnings and Emergency Notifications to provide up-to-date information about ongoing threats to the health and safety of the campus community. The *Clery Act* also requires institutions to develop emergency response and evacuation plans. Under § 485(i) and (j) of the HEA, 20 U.S.C. § 1092(i) and (j), institutions that maintain student residential facilities must develop missing student notification procedures and produce and distribute Annual Fire Safety Reports (AFSRs) containing fire statistics and important policy information about safety procedures, fire safety and suppression equipment, and what to do in case of a fire. Finally, certain amendments to the *Clery Act* were included in Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) which went into effect on July 1, 2015. These provisions are aimed at preventing campus sexual assaults and improving the response to these crimes when they do occur. For ease of reference, we will refer to all of these campus safety requirements, including any implementing regulations, as "*Clery Act* requirements" or simply the "*Clery Act*" in this Final Program Review Determination (FPRD).

Because the vast majority of violent crimes on campus are alcohol and drug-related, the Secretary of Education delegated oversight and enforcement responsibilities for the Drug-Free Schools and Communities Act (*DFSCA*), in § 120 of the HEA, 20 U.S.C. § 1011(i), to Federal Student Aid (FSA) in 2010. The *DFSCA* requires all institutions of higher education that receive Federal funding to develop and implement comprehensive drug and alcohol abuse prevention programs (DAAPP) and to certify to the Secretary that these programs are in place. The programs must be designed to prevent the unlawful possession, use, and distribution of drugs and alcohol on campus and at recognized events and activities.

The *Clery Act* and other campus safety requirements are based on the premise that students and employees are entitled to accurate and honest information about the realities of crime and other threats to their personal safety and the security of their property. Armed with this knowledge, members of the campus community can make informed decisions about their educational and employment choice, play active roles in their own personal safety and secure and protect their personal property. FSA uses a multi-faceted approach to ensure that institutions comply with the *Clery Act*, which includes providing technical assistance, training programs, and materials, as well as monitoring and enforcement through program reviews. Program reviews entail in-depth analysis of campus police and security records, as well as interviews of institution officials, crime victims, and witnesses. During a program review, an institution's policies and procedures related to campus security matters are also examined to determine whether they are accurate and meet the needs of the campus community.

### C. Institutional Information

Liberty University  
1971 University Boulevard  
Lynchburg, VA 24515

**Control Type:** Private, Non-Profit

**Highest Level of Offering:** Doctorate Degree

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

**Student Enrollment:** 96,709 (approx.) Fall 2023 (NCES)

**Percentage of Students Receiving Title IV:** 67% (approx.) Fall 2023 (NCES)

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

#### 2022-2023 Award Year

Federal Pell Grant	\$ 112,264,954
Federal Supplemental Educational Opportunity Grant	\$ 6,708,010
Federal TEACH Grant	\$ 623,242
Federal Work Study	\$ 4,901,087
Federal Perkins Loan Program	\$ 0
Direct Loan Program	\$ 755,201,003
TOTAL	\$ <b><u>879,698,296</u></b>

#### **DL Cohort Default Rate:**

2020 0.0%  
2019 2.0%  
2018 6.3%  
2017 8.5%



## Liberty University

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

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

### D. Background and Scope of Review:

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

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

The review team selected both random and judgmental samples of LUPD’s incident and investigative reports, arrest records, daily crime logs, and other relevant materials from calendar years 2016 through 2022. The review team also selected samples of records generated by other CSA offices at Liberty responsible for employee and student conduct. The initial review period was selected to test the accuracy and completeness of statistical and informational disclosures that were included in the ASRs produced by the University in 2016 through 2022. Selected incident reports from the above-referenced samples were cross-referenced to LUPD’s daily crime logs to ensure that crimes occurring within the patrol jurisdiction had been properly classified and recorded. The review period was subsequently expanded to test certain compliance attributes into calendar year 2023. The program review report (PRR) issued on May 1, 2023, included several

findings of violations that were identified by the Department. The University filed its primary narrative response to the PRR on June 30, 2023. Throughout the response analysis and FRPD development phases of the review, the Department requested additional information from the institution to clarify key issues. Liberty submitted a supplemental narrative response to the PRR on September 21, 2023. References to the institution's "narrative response" in this FPRD are inclusive of the information included in these two documents. The University also provided additional information on July 18, August 10, August 11, August 31, October 4, October 20, October 23, October 31, and November 3, 2023.

### **Disclaimer:**

Although the review was planned and conducted in a thorough manner, neither the review, the PRR nor this FPRD can be assumed to be all-inclusive. The absence of statements in this FPRD concerning Liberty's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those practices and procedures. Furthermore, it does not relieve Liberty of its obligation to comply with all statutory or regulatory provisions governing the Title IV, HEA programs, including the *Clery Act*, the HEA fire safety provisions, and the *DFSCA*. Although official positions and offices are mentioned in this document, findings of violations are attributed solely to the University. References to specific institutional officials are included solely to improve the document's clarity. Like any institution, Liberty is ultimately responsible for complying with the *Clery Act* and other statutory and regulatory requirements and is responsible for the actions of its employees, agents, and contractors.

### **E. Findings and Final Determinations**

During the review, numerous areas of noncompliance were identified. Findings of noncompliance are referenced to the applicable statutes or regulations and specify the actions to be taken by Liberty to bring campus crime reporting policies and procedures into compliance with the *Clery Act* and the Department's regulations. The findings identified in the Department's May 1, 2023, PRR appear in italics below. Certain non-substantive changes to the text were made for the sake of clarity. A summary of Liberty's responses and the Department's Final Determination appear at the end of each finding.

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

##### ***Citation:***

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

*“checks and balances in a system of internal controls.” 34 C.F.R. § 668.16(b)(2) and 34 C.F.R. § 668.16(c)(1).*

*An administratively capable institution also “has written procedures for or written information indicating the responsibilities of the various offices with respect to . . . the preparation and submission of reports to the Secretary.” 34 C.F.R. § 668.16(b)(4). These standards apply to all aspects of the Title IV operations, including Clery Act compliance. An institution that participates in any Title IV, HEA program is required to cooperate with the Secretary, in the conduct of program reviews and other reviews authorized by law, including by providing timely access to requested records and by providing reasonable access to personnel associated with the institution’s administration of the Title IV, HEA programs for the purpose of obtaining relevant information. 34 C.F.R. § 668.24(f)(1)-(2).*

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

### **Noncompliance:**

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

*For these reasons, the Department finds that the University was unable to demonstrate the ability and/or willingness to properly administer the Title IV, HEA programs, which include the Clery Act and the Department’s regulations during this period. This Finding is supported by the numerous and serious deficiencies identified in this report. It must be noted that many of these violations and their impacts contributed to, and in some cases caused, significant harm to members of the campus community. The provisions of the Clery Act establish standards for the creation of a system of campus safety, crime prevention, and consumer protection processes that requires the development and implementation of policies, procedures, programs, and systems that work in concert with each other to make campuses safer and stakeholders more informed.*

*The law relies on enterprise-wide communications and the effective coordination of information and a strong system of internal controls. Strong internal controls ensure that accurate information is effectively and often quickly communicated to responsible officials and vulnerable populations. The Department finds that the University failed to carry out these responsibilities in numerous material respects.*

*Specifically, the evidence acquired and examined by the Department shows, among other things, that the University failed to: 1) implement an adequate system of internal controls to properly report, investigate, and adjudicate crime, including acts of sexual misconduct; 2) issue Timely Warnings to advise the campus community about criminal activity that may have posed a significant or ongoing threat; 3) issue Emergency Notifications to advise the campus community about emergencies or dangerous situations that may have posed a threat to health or safety; 4) compile and disclose accurate and complete crime statistics in its ASRs and in its reporting to the Department; 5) implement an adequate system to create, manage, retain and retrieve relevant crime and conduct records in accordance with Federal requirements; 6) identify institutional officials who met the definition of a CSA and adequately notify them of their reporting obligations; 7) prevent retaliation against whistleblowers and other persons trying to ensure compliance with the Clery Act; 8) develop and implement required campus safety and crime prevention policies and procedures; and 9) properly identify its buildings and properties in order to categorize them in accordance with Clery Geography definitions.*

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

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

*The University's Clery Compliance Officer is assigned to OEC. To be effective, a Clery Compliance Officer must be able to work across the enterprise, taking in and synthesizing information, reviewing, and refining publicly facing and internal policies and procedures, and providing technical advice on an ongoing basis. Based on interviews and review of documents, the Department has determined that prior to the initiation of the Department's program review, the*

*Clery Compliance Officer was not given the requisite access or authority to perform these functions. Specifically, the review team was advised on multiple occasions during the review period, the Clery Compliance Officer raised concerns about specific and ongoing violations of the Clery Act, including, but not limited to, the general failure to issue Timely Warnings and to identify and notify CSAs. During this time, the Clery Compliance Officer also regularly presented recommendations for enhancements of policies, procedures, programs, and systems, most of which were rejected or ignored by senior management.*

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

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

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

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

*The Department has determined that victims of sexual crime that occur on the University's Clery Geography are often fearful of reporting their incidents. For instance, the Department has found that numerous victims of sexual assault have been reluctant to speak up about their assaults because of fear of reprisal. In fact, over the course of this review period, several sexual assault victims were punished for violating the student code of conduct known as "The Liberty Way," while their assailants were left unpunished. Consequently, victims of sexual assault often felt dissuaded by Liberty administration's reputation for punishing sexual assault survivors rather than helping them. Such fears created a culture of silence where sexual assaults commonly went unreported. In addition, several whistleblower faculty members who have spoken up about the University's failure to fix the problem of fear of reprisal among sexual assault victims were intimidated or terminated in retaliation for speaking up. This has resulted in a systemic apprehension among Liberty's workforce about raising employee concerns about the University's treatment of sexual assault victims and other campus safety-related issues.*

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

*Liberty also failed to maintain records documenting crime and violations of its student and employee codes of conduct in accordance with Federal requirements. For example, Athletics was unable to produce records that document its important role in the conduct process. To the extent that records are created, many of them are in the form of email. The reliance on email was so extensive that the email platform essentially became a system of record for certain departments. One of the problems with this approach is that, under the University's policies, email messages, and consequently student-athlete conduct data, are not stored in a manner that complies with Federal record retention requirements. This failure was evidenced by the University's inability to produce key email messages sought by the Jane Doe<sup>2</sup> plaintiffs during the discovery phase of their lawsuit.<sup>3</sup> Liberty eventually conceded that many of the requested emails had been deleted even*

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

<sup>3</sup> In an interview with the plaintiffs' attorney, the review team learned that numerous records requested during discovery had been destroyed or could not be located. Through its interview with other current former and current

*though less relevant messages continued to be readily available.*

*In point of fact, signs of Liberty's administrative impairments emerged before this program review ever began. As noted in the Background and Scope of Review section of this report, the Department started a limited-scope compliance assessment in May 2021 in response to various student complaints. From the outset of the assessment, the University was unable to produce data in accordance with stated due dates. Since that time, this pattern has continued as the institution has consistently failed to produce data requested by the Department on the established dates for production. Due dates for production are not advisory or mere aspirational targets.*

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

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

*In this context, it is important to note that the very limited number of incidents that were examined during this review occurred in 2005, long before the VAWA provisions became part of the Clery Act. At that time, the law largely treated crimes of sexual violence substantially the same as other offenses. Even under that legal standard and the limitations on the scope of the review, the Department identified serious violations related to the classification and counting of crimes, the compilation and disclosure of accurate and complete crime statistics, the issuance of timely warnings, the maintenance of a compliant crime log, the development and implementation of policies and procedures, and the production and distribution of the ASR. The actual harm caused by the violations documented in the Department's 2010 FPRD cannot be overstated. The victim*

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*students and employees, the review team has learned of more recent cases where individuals were unable to access records for their cases.*

<sup>4</sup> The due date was March 3, 2022.

<sup>5</sup> The due date was November 23, 2022.

*attested that the crimes perpetrated against her and the indifference and revictimization that followed had a painful and profound effect on her life. Upon learning of this new investigation, this survivor reached out to the Department to implore the agency to take decisive action in the interest of the numerous other victims of sexual violence that she came to know during her time as a Liberty student, through her involvement in the Jane Doe litigation, and in her interactions with current and former Liberty students and employees since that time.*

*As a result of the earlier program review, the University was specifically advised to address these deficiencies and the conditions and weaknesses that permitted them to occur. The most senior officials at Liberty asserted that comprehensive remedial action would be taken. While some actions were taken, including replacing the Chief of Police, it is now clear that the efforts were not adequate or comprehensive. The Department also takes notice that the University has not yet followed through on the safety enhancements that it pledged would be made as part of its settlement with the Jane Doe plaintiffs such as installation of the blue phones.<sup>6</sup>*

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

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

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

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



*Impaired administrative capability and weak internal controls are an indication that an institution lacks the ability or willingness to comply with Federal regulations.*

**Required Action:**

*As a result of this violation, Liberty is required to take all necessary remedial actions to cure the violations identified in this PRR and to adequately address the organizational weaknesses that contributed to the violations. The University is required to develop and implement a system of policies and procedures under each finding in this report to ensure that these and similar findings do not recur. Through this process, the University will have established a comprehensive remedial action plan that will be evaluated and approved by the Department.*

**Institutional Response:**

In its narrative response, the University concurred that the Department had sufficient information to reasonably conclude that the University lacked the administrative capability to develop and implement a *Clery Act* compliance program but disagreed that the deficiencies “call the willingness and the ability of the University to meet its obligations to its students, employees, the campus community, and the Department into serious question.” The University also took exception with the Department’s characterization that multiple due dates for the production of documents and information were not met. The University specifically pointed to the current compliance framework, the file review, and the program improvement plan as evidence of the institution’s willingness and ability to meet its obligations under the *Clery Act*.

**Final Determination:**

Based on the Department’s review of all available information, this finding is sustained<sup>7</sup> and closed for purposes of this program review. In Finding #1, the Department found that Liberty lacked the administrative capability required of all Title IV participating institutions in that it had substantially failed to comply with the *Clery Act* throughout the review period, as outlined in the Noncompliance section above. The regulations governing the Title IV, HEA student financial assistance programs establish certain standards that all participating institutions must maintain to be considered administratively capable. To begin or continue to participate in any Title IV, HEA program, an institution must demonstrate that it is capable of adequately administering that program by substantially complying with all statutory and regulatory requirements, including the campus crime requirements. This finding was based on the University’s systemic and persistent failure to develop and implement adequate campus safety and crime prevention compliance programs. This determination is supported by the serious, persistent, and systemic violations of the *Clery Act* that were noted throughout the PRR and are discussed in this FPRD.

During the review period, Liberty did not have an effective internal control structure or an adequate communication and coordination strategy to facilitate compliance with the applicable requirements.

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<sup>7</sup> As noted in the PRR, Liberty failed to meet due dates for production of certain documents and information. However, the Department acknowledges that the University also met many of the deadlines established for several requests. The dates of productions for several of these requests are listed in the Background and Scope of Review section above.

Specifically, the review team found that the University substantially and persistently failed to: 1) provide accurate and complete informational disclosures; 2) comply with the Violence Against Women Act requirements; 3) identify and notify Campus Security Authorities of their status and obligations; 4) compile and disclose accurate, complete, and fully-reconciled crime statistics; 5) issue Timely Warnings and Emergency Notifications as required by the applicable regulations ; 6) maintain an accurate and complete daily crime log; 7) accurately identify Clery Geography; 8) comply with required record-retention provisions; and 9) publish and distribute a compliant ASR.

The number and scope of the violations and administrative impairments identified in the initial report and in this FPRD support the Department's determination that Liberty failed to establish an adequate system of checks and balances and failed to create an environment of basic internal controls during the review period. Furthermore, based on the timing of identified remedial actions, it appears that the Department's review was the impetus for most of the remedial steps that have been taken to this point, and that but for the Department's intervention the University might not have undertaken many of these efforts to address longstanding deficiencies. The compliance concerns noted during the review period were significant enough to call Liberty's ability and/or willingness to properly administer the Title IV, HEA programs during the program review period into serious question.

To address these administrative impairments, the University was required to review and revise its internal policies and procedures related to its campus safety and *Clery Act* compliance programs, and to develop and implement any new policies and procedures needed to ensure that these violations do not recur. In its narrative response, Liberty concurred with this finding and asserted that some remedial actions had been undertaken in response to the PRR and that other remedial work was ongoing to address the conditions that were identified during the program review.

Notwithstanding these serious and persistent failures, the review team's analysis of the response indicates that the University has made some progress towards reviewing and revising its policies and procedures to address the violations which form the basis for this finding, although Liberty's remedial actions will be subject to ongoing testing as part of the Department's post-review monitoring. Nevertheless, the officers and directors of Liberty are put on notice that the University must take all additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the institution's response and as may otherwise be needed to ensure that these violations do not recur.

Liberty is reminded that the exceptions identified above constitute serious and persistent violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" violations of the type that form the basis for this finding once they occur. Therefore, although Liberty has asserted that it has taken adequate remedial actions and, that by doing so, has brought its overall campus safety program into compliance with the *Clery Act* going forward as required by the terms and conditions of its PPA, the University is advised that its remedial actions cannot and do not diminish the seriousness of these violations. As a result of these serious, persistent, and systemic violations, the Department has imposed a significant civil monetary penalty and the University will be subject to a period of post-review monitoring during which the Department will oversee the institution's remedial efforts and will require additional process improvements to address

continuing deficiencies and other areas of concerns.

## **Finding #2: Inaccurate and Incomplete Informational Disclosures**

### **Citation:**

*The Clery Act and the Department's regulations require institutions to include several policy statements in their ASRs. These disclosures are intended to inform the campus community about the institution's security policies and procedures, and the availability of programs and resources as well as channels for victims of crime to seek recourse. In general, these policies include topics such as the law enforcement authority and practices of campus police and security forces, incident reporting procedures for students and employees, and policies that govern the preparation of the ASR itself. Institutions are also required to disclose their drug and alcohol education and prevention programs. Policies pertaining to sexual assault education, prevention, and adjudication and policies governing the issuance of Timely Warnings and Emergency Notifications and certain operational details about the institution's emergency evacuation and response procedures also must be disclosed in detail. The institution must include all required informational and statistical disclosures in a single comprehensive ASR. With the exception of certain drug and alcohol program information, cross-referencing to other publications is not sufficient to meet the publication requirements of the Clery Act. 20 U.S.C. § 1092(f); 34 C.F.R. § 668.46(b).*

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

*Federal regulations also require institutions that provide on-campus housing to publish an annual fire safety report that must include fire statistics for each on-campus student housing facility for the previous three years. The statistics must include the number of fires, the cause of each fire, the number of persons who received fire related injuries, the number of deaths caused by fires as well as the value of any property damage caused by fire. The report must additionally contain, at a minimum, a description of the fire safety system in each housing facility, the number of fire drills held during the previous year and the institution's policies and procedures pertaining to fire safety. The policy statements must address any rules regarding electrical appliances, smoking and open*

*flames in student housing and provide the procedures that students and employees should use in the case of a fire as well as procedures for evacuation during a fire. Statements must also include any policies regarding fire safety education and training programs provided to students and employees and any plans for future improvements in fire safety. 20 U.S.C. § 1092; 34 C.F.R. § 668.49.*

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

### **Noncompliance:**

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

*The Department uses a three-pronged test to evaluate an institution's compliance with the policy and procedural development, implementation, and disclosure requirements. The first inquiry is simply to determine if the institution has included a required statement in the ASR or other required document. If that requirement is met, the Department will determine if the policy or procedure fit into the parameters established in the law for that requirement. If both of those requirements are met, the Department will review case documents and conduct interviews to determine if the compliant disclosures actually reflect institutional policy and whether they were followed generally or in a specific case. While the review team found instances where certain policies and procedures were missing completely or not developed accurately or fully,<sup>8</sup> the more concerning and frequent problem was that the inclusion of statements of policy and procedure did not accurately describe actual institutional practices.<sup>9</sup> In most of these cases, the published disclosures appeared to meet Federal requirements but simply did not align with operations at the enterprise or departmental level.*

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<sup>8</sup> *Examples of this condition include the omission of instructions on how to register a confidential emergency contact as part of the missing student notification procedure. Additionally, information about its emergency evacuation and response (EER) procedures, such as results about the annual testing of the procedures, is missing. The institution's EER disclosures were further compromised by the inaccurate information about the issuance of Emergency Notifications.*

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

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

*This condition is most evident in the following areas:*

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

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

*The Clery Act is first and foremost a consumer information initiative based on the premise that students and employees should have the information they need to take steps for their own safety and security. Accurate and complete disclosure of policies and a clear articulation of the institution's programs are essential to that goal and allow the campus community to be more fully informed and actively provide for their own safety. Any failure in this area deprives the campus community of vital campus safety information and effectively negates the intent of the Clery Act.*

**Required Action:**

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

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

*As part of its response to this PRR, Liberty must ensure that its new and revised policies and procedures are fully implemented as published and that they align with The Liberty Way and all other directives of the institution.<sup>10</sup> As part of this process, the University must also evaluate its current Amnesty policy and ensure that it aligns with all policy directives of the institution and that the details of the Amnesty policy are clearly and consistently communicated to the entire campus community.*

*Furthermore, Liberty must review and revise its missing student notification procedures. Liberty must review all of its incident reports that indicate one or more missing students from 2016 to Present. The University must also detail the actions taken in response to each report of a missing student. For any student who was missing for 24 hours or more, Liberty must detail in its response if the student registered an emergency contact and if so, whether that individual was appropriately contacted. Liberty must also provide credible evidence that students were provided the opportunity to register an emergency point of contact. Credible documentation must be provided in support of all claims regarding this component of the institution's response. The concerns about Liberty's missing student notification procedures are heightened due to the fact that the Department became aware of approximately 40 reports<sup>11</sup> of students who went missing for some period of time between 2016 to Present.*

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<sup>10</sup> The Department is not, in any way, calling into question the legitimacy of the University's doctrinal views or positions on controversial issues, *per se*. Rather, the Department's focus is on the effect that institutional policies have on compliance with Federal requirements.

<sup>11</sup> Not all of these reported cases would have required a missing student notification.

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

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

### **Institutional Response:**

In its narrative response, Liberty concurred that it failed to consistently develop and implement required statements of campus safety and crime prevention policy, procedure, practice, and programs, and that it failed to include fully accurate and complete informational disclosures in its ASRs. The University concurred that it did not include all required statements in the ASR or other required publications, and that the disclosures that were included did not consistently reflect actual institutional practice, especially with regard to the issuance of Timely Warnings and Emergency Notifications and its emergency evacuation and response procedures. The University also conceded that multiple disclosures related to its sexual violence prevention and response efforts were inadequate or inaccurate.

Liberty also described several steps it has taken to address these deficiencies. To support the development and implementation of required statements of campus safety and crime prevention policy, procedure, practice, and programs, the University has drafted an Umbrella Clery Act Compliance Policy, which the University claims is intended to inform the development of all required policy statements and protocols going forward. The University also advises that it is in the process of drafting additional policies as referenced throughout this FPRD. In addition, Liberty has situated the Clery compliance program under the leadership of the Vice President of Equity and Compliance in an effort to ensure sufficient institutional authority to facilitate collaboration and cooperation with all University offices.

### **Final Determination:**

Based on the Department's review of all available information, this finding is sustained and closed for purposes of this program review. Finding #2 cited Liberty for its failure to develop and implement required statements of campus safety and crime prevention policy, procedure, and programs and to include accurate and complete informational disclosures as required by the *Clery Act*. Specifically, the University's ASRs/AFSRs for reporting years 2019 through 2022 revealed inadequate or omitted disclosures concerning certain required policy, procedure, and programming information for campus safety and crime prevention. The University failed to publish accurate and complete statements of policy, procedure, and programming intended to prevent acts of sexual violence and to ensure that victims of sexual violence were made aware of their rights and available support services, accommodations, and flexibilities. In addition, Liberty failed to publish accurate statements of policy and procedure regarding Emergency Notifications and the issuance of Timely Warnings. Further, the Department found that, while several of Liberty's published disclosures appeared to meet Federal requirements, those disclosures did not align with the actual operations at

the University, OSPS, or LUPD levels.

Notwithstanding these serious and persistent failures, the review team's analysis of the responses also showed that the University has made some progress towards reviewing and revising its policies and procedures to address the violations which form the basis for this finding.<sup>12</sup> Nevertheless, the officers and directors of Liberty are put on notice that the University must take all additional actions necessary to address the deficiencies and weaknesses identified by the Department and any deficiencies that Liberty detected in the preparation of the institution's response to ensure that these violations do not recur. Furthermore, Liberty's remedial actions will be subject to ongoing testing as part of the Department's post-review monitoring.

Liberty is reminded that the exceptions identified above constitute serious and persistent violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. The requirement to produce ASRs and other required publications related to an institution's campus safety and crime prevention programs is foundational to the goals of the *Clery Act*. Access to this information permits campus community members and their families to make well-informed decisions about where to study and work and empowers individuals to play a more active role in their own safety and security. Proper policy formation also serves as a guide to institutional officials to help ensure that operations are carried out in a manner that will maintain the safety of the campus community to the greatest extent possible. Therefore, although Liberty has asserted that it has taken adequate remedial actions and, that by doing so, has brought its overall campus safety program into compliance with the *Clery Act* going forward as required by the terms and conditions of its PPA, the University is advised that its remedial actions cannot and do not diminish the seriousness of these violations.

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

#### ***Citation:***

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

*The VAWA requirements also expanded the policies, procedures, programs, and protocols required by the Campus Sexual Assault Victim's Bill of Rights. One of the most important components of this subsection requires institutions to develop and deliver ongoing sexual violence education and*

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<sup>12</sup> For example, pursuant to the requirements in the PRR, Liberty submitted a draft version of its 2023 ASR. The Department conducted a cursory review of this draft and noted several revisions and enhancements to its policies and procedures. Please note that the Department's review does not in any manner serve as an endorsement or approval of the contents in this report.



prevention programs and campaigns. 34 C.F.R. § 668.46(j). Students and employees must also be provided with detailed information about a range of vital topics, including the rights and options for reporting, the importance of preserving evidence, and the process for securing accommodations and protective measures. 34 C.F.R. § 668.46(b)(11).

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

Institutions are also required to provide detailed information about the policies and procedures that will be used in their investigative and adjudicative processes in a case of an alleged incident of sexual violence. This disclosure must address each type of disciplinary proceeding used by the institution; the standard of evidence that will apply; the steps in the hearing process, anticipated timelines, and the decision-making process for each type of disciplinary proceeding; how to file a disciplinary complaint; and how the institution determines which type of proceeding to use based on the circumstances of the allegations. The disclosure must also describe the range of sanctions that may be imposed in cases where the accused is found responsible. 34 C.F.R. § 668.46(k)(1).

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

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

### ***Noncompliance:***

*Liberty failed to comply with numerous sexual violence prevention and response requirements of the Clery Act, including those that were added by Section 304 of VAWA. These serious violations persisted throughout the review period. These provisions, the newest of which went into effect in July 2015, work with the original reporting requirements related to crime reporting, statistical compilation and disclosure, daily crime log maintenance, CSA identification and notification, and the issuance of warnings and notices, among other requirements. As noted throughout this report, the Department has identified serious and, in some cases, systemic failures in these areas.<sup>13</sup> The violations identified throughout this report are sufficient to ground this Finding without further elaboration. Most of an institution's obligations under the Clery Act are triggered by a report of a covered crime. From there, an institution's ability to provide a web of reporting options, take in reports accurately, document those reports accurately, and provide accommodations and protective measures or help victims access those reports from public authorities are part of a series of action steps that must be undertaken and managed in an effective, timely, and nonjudgmental manner. Simply stated, none of this consistently happened at Liberty during the review period.<sup>14</sup>*

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

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

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<sup>13</sup> See Findings #1, #2, #4, #5, #6, #7, and #8 for violations that can be directly linked to the VAWA/sexual violence deficiencies noted here.

<sup>14</sup> Information developed during the Department's review indicates that many of these conditions predate the review period.

*adjudication of alleged cases of sexual violence and also failed to provide detailed information to the campus community about such training.*

*These and other violations caused actual harm to victims that was readily apparent to many of the institutional officials who were responsible for assisting victims of crime. The Department found through its review of records and through interviews that numerous employees with responsibilities for campus safety, sexual assault prevention and response, residential life, and other areas of campus life tried to call attention to the University's inability to respond to the needs of students and employees over many years. They also called attention to a lack of training, inadequate resources, and a paucity of clear, consistent, and effective policies, programs, and publications.<sup>15</sup>*

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

*The review team repeatedly heard that many of the most serious challenges to creating an effective and supportive sexual violence prevention and response program resulted from longstanding conduct rules established by The Liberty Way<sup>16</sup> and the institutional approach to victims that resulted from it. Under The Liberty Way, acts of sexual misconduct, consensual sex, and alcohol policy violations are all top-line offenses. As a result, the conduct monitoring and enforcement system established by The Liberty Way created an environment where people experiencing violence at the hands of an intimate partner or persons who were incapacitated by alcohol or drugs could be subject to disciplinary action if they reported the offense.*

*The Liberty Way has set out guiding principles for resident assistants (RAs) and the LU Shepherd<sup>17</sup> and has had a profound impact on the enforcement of the University's codes of conduct. For residential students, the code of conduct has endowed RAs and other officials across the University*

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<sup>15</sup> The Department acknowledges that some discernible progress was detected in these areas. These improvements roughly track to the initiation of the Department's compliance assessment in May 2021 that ultimately led to the opening of the program review in February 2022.

<sup>16</sup> The Department does not, in any regard, dictate or question the doctrinal views, missions, visions, or values of any institution. However, the Department must call attention to any factor that may have demonstrably contributed to violations. The University will have to reconcile its approach to such issues with the law, which has been accomplished by many institutions with different approaches to these complicated issues.

<sup>17</sup> The LU Shepherd trains the "Resident Shepherds" and "Community Group Leaders," who are focused on peer mentorship, life skills, and counseling.

*with broad authority to aggressively enforce the policy using a variety of tactics and methods, including the surveillance of other students and employees. The training provided to RAs and the authority vested in them has served to confirm and reinforce the common understanding of the role they were to play in the enforcement of campus roles. RAs have also been granted discretion to initiate complaints against campus community members that could carry significant penalties including large fines, revocation of privileges, and academic consequences. The Department has also learned that individuals who reported incidents of sexual violence or other offenses were frequently questioned about their own conduct that may have allegedly contributed to or, in some way, facilitated the crime, such as consumption of alcohol. Student complainants and witnesses were also questioned about issues such as their sexual history, sexual orientation, and their manner of dress, all of which are irrelevant to an analysis of Clery Act compliance.<sup>18</sup> Many survivors of sexual violence told the review team that the University's policies, whether intentionally or not, created serious hardship for victims and caused many to refrain from coming forward with reports of crime or violations of the University's codes of conduct.*

*Numerous interviewees asserted that the challenges created by The Liberty Way were further complicated by the University's amorphous Amnesty policy. Many institutions have an amnesty policy that is intended to allow victims and witnesses to come forward to report crimes and access accommodations, protective measures, and other harm reduction and support services. Some Liberty officials claim that the institution had such a policy but concede that it was poorly defined and barely communicated to campus community members, including RAs who were primarily responsible for enforcing The Liberty Way. The Department has also learned that the formation of the Amnesty policy was complicated by internal conflicts about whether it should exist at all and whether the Amnesty policy was consistent with the institution's mission, vision, and values. These conditions combined to ensure that the University did not communicate a clear message about the policy and how, if at all, it aligned with The Liberty Way.<sup>19</sup>*

*The consequences of the University's failures to develop and implement an adequate sexual violence prevention and response program had devastating impacts for victims. Under the Clery Act and Title IX, the process of addressing sexual violence starts with a report by a victim or witness. As noted throughout this report, Liberty lacked the internal controls necessary to manage an effective, accessible reporting process, free of recrimination, and revictimization. These conditions caused some victims of crime to not report incidents to the University in the first place and contributed to myriad problems down the line, ranging from the creation and management of useful incident reports to the compilation and disclosure of accurate, complete, and fully reconciled crime statistics, and the timely provision of accommodations, protective measures, and support services to survivors as required by the law and the institution's own policies. As noted in Finding #5, the effect of these conditions on the accuracy and completeness cannot be overstated. One of the most important and disturbing outcomes is that there is no way to know how many victims simply refused to report or who "dropped out" of the institution's reporting*

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<sup>18</sup> Issues such as manner of dress or prior sexual history are irrelevant to the proper administration of the Clery Act and Title IX by institutions and to the Department's assessment of an institution's compliance, notwithstanding how these matters might be treated under an institution's policies and procedures and its codes of conduct.

<sup>19</sup> The Department notes that the most recent iteration of The Liberty Way, issued on September 14, 2022, evidences some development of the Amnesty policy, and provides more clarity about its provisions.

*processes without getting the help they needed.*

*The Department is aware of multiple cases that demonstrate the negative effects that these policy, procedural, and programmatic deficiencies had on the University's approach to incidents of sexual violence and the victims who reported them. As one example, the review team calls attention to LUPD Incident #19-02750.<sup>20</sup> In this case, a victim reported that she was raped. The victim stated that in furtherance of the attack, the perpetrator slapped her, pulled her hair, and threatened her by reminding her that he carried a knife. The perpetrator also engaged in coercive, intimidating, and manipulative behaviors. Despite these reported facts, the investigator unfounded this case based on a claim that the "victim indicates that she consented to the sexual act." In point of fact, the victim's own statement merely indicated that she "gave in" in an attempt to get away from the perpetrator. To state the obvious, "consent" acquired by threat or force is no consent at all. To make matters worse, it is now clear that the initial report was mishandled by an LUPD officer, and in that process, the investigator, and the LUPD at large, failed to gather more information about two other incidents of sexual assault reported by the victim.*

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

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

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<sup>20</sup> *The Department notes that this incident, which was improperly unfounded by LUPD Investigations, was included in the University's campus crime statistics because the Clery Compliance Officer, a former police officer himself, realized that the incident had been mishandled at several points in the process and unilaterally determined that the incident had to be counted and disclosed as a Clery-reportable crime.*

**Required Action:**

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

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

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

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

**Institutional Response:**

In its narrative response, Liberty concurred that it “failed to comply with a number of the sexual violence prevention and response requirements of the *Clery Act*, including those that were added by Section 304 of VAWA.” University officials conceded that the institution failed to produce accurate and complete information on the rights and options of students or employees who report incidents of alleged sexual violence. The University also acknowledged that previously published versions of “The Liberty Way” made it impossible to fully implement the VAWA provisions in the *Clery Act*. Liberty also concurred with the element of the finding that found that the institution failed to develop and implement adequate ongoing sexual violence prevention and response programs. The University did not agree that it had failed to provide required annual training to officials involved in the investigation and adjudication of alleged cases of sexual violence and challenged the Department’s conclusion that noncompliance in this area resulted in harm to specific students and employees.

Liberty also described several steps it initiated to address the deficiencies identified in the PRR. Liberty noted in its narrative response that the relevant offices and departments have been

reorganized under the leadership of the Vice President of Equity Compliance<sup>21</sup> in furtherance of a University-wide program and that several positions have been created in the Clery and Title IX space to increase “essential bandwidth” in order to allow the University to “develop, deliver and evaluate the effectiveness of prevention and awareness programming, which will require collaboration across multiple campus offices responsible for compliance with all the VAWA requirements.” Additionally, the University stated that it has drafted a “Clery Act Umbrella Policy” that includes VAWA-specific elements. Most importantly, Liberty stated that it has begun the process of revising the Sexual Misconduct Policy and The Liberty Way to ensure they do not conflict with *Clery Act* requirements and has also drafted a new “Notice of Rights and Options.”<sup>22</sup>

### **Final Determination:**

Based on the Department’s review of all available information, this finding is sustained and closed for purposes of this program review. In Finding #3, Liberty was cited for its general failure to comply with the sexual violence prevention and response requirements that were added to the *Clery Act* by Section 304 of VAWA. It was noted that the VAWA provisions went into effect in July 2015 and were therefore in place during the entire review period. During the review, numerous violations and other areas of concern were identified regarding ongoing failures to include required information in the University’s ASRs and serious deficiencies in the investigative and adjudication processes.<sup>23</sup> Due to the nature and extent of the violations in these areas, the Department focused the finding on the University’s failure to provide required information and assistance to victims of sexual violence at the time an incident was reported and certain staff training deficiencies. The Department’s PRR also emphasized the myriad ways that the other violations related to crime reporting, statistical compilation and disclosure, CSA identification and notification, the issuance of warnings and notices, and maintenance of an accurate and complete daily crime log, among other requirements, contributed to this condition. The noted deficiencies stemmed from a failure of the University to develop and implement a comprehensive system of sexual violence prevention and response policies, procedures, and programs and then operate in accordance with such policies, procedures, and programs.

As a result of these violations, Liberty was required to take all necessary remedial actions to address these deficiencies and to do so in a manner that would reasonably ensure that they do not recur. As part of this process, the University was required to review all existing statements of policy and procedure and current programming and to develop and implement new processes and/or revise existing ones as needed to ensure that all such information complies with Federal law and accurately reflects current institutional policy. Liberty was also required to develop and

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<sup>21</sup> This position has been renamed Senior Vice President of Equity Compliance. This official leads the University’s Office of Equity and Compliance (OEC).

<sup>22</sup> Prior to publication, Liberty submitted a draft copy of its Rights and Options Notice, commonly referred to as “The Survivor Brochure,” for the Department’s review.

<sup>23</sup> From the outset of the review, Liberty representatives acknowledged serious and systemic deficiencies in the University’s sexual assault prevention and response policies, procedures, and programs. For this reason, the Department chose to focus this finding on violations of specific elements of the VAWA requirements related to reporting processes, the rights and options of victims, and basic training requirements. It should be noted that Liberty also asserted an interest and willingness to work with the Department on remedial measures in these areas at the appropriate time.

implement an effective strategy to reconcile its existing prevention and response efforts with current institutional policies and Federal law and eliminate conflicts in its internal and publicly facing policies, procedures, and programs, including, but not limited to its Amnesty policy.

In its response, the University concurred with all elements of the finding except for one. The University argued that some training was provided to institutional officials with responsibilities for the investigation and adjudication of alleged acts of sexual violence. With regard to the training issue, it must be noted that the Department raised concerns about this and other related matters throughout the review. In the later stages of its fieldwork in 2023, the Department became aware that the University had contracted with outside vendors to begin the process of developing and delivering required training programs and other educational opportunities for Liberty employees at various levels of the organization and select student groups. While this is a positive development, the undeniable failure to provide the required annual training during the first seven years of the review period supports the Department's determination that the finding should be sustained in its entirety. Notwithstanding these serious and persistent failures, the review team's analysis of the response showed that the University has made some progress towards addressing the violations that form the basis for this finding, although Liberty's remedial actions will be subject to ongoing testing as part of the Department's post-review monitoring. However, the officials and directors of Liberty are put on notice that the University must continue to develop and refine its sexual violence prevention and response program and ensure that campus community members, including students, employees, and all person with responsibility for enforcing laws and conduct standards or for investigating and/or adjudicating alleged violations of the sexual misconduct policy, have a common understanding of the rules and their applicability.<sup>24</sup> Moreover, Liberty must continue to implement remedial measures to ensure that these violations do not recur.

Liberty is reminded that the exceptions identified here constitute serious and persistent violations of the VAWA provisions 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 multiple and persistent failures to comply with the sexual violence prevention and response requirements of the *Clery Act* caused direct harm to victims of sex crimes and sexual misconduct as defined by the institution's policies. These deficiencies also resulted in serious violations of Federal law that undermined the intended purpose of these provisions. Accurate and complete information about sexual violence prevention and response and compassionate and able assistance from an institution are invaluable to victims at a time of great vulnerability and risk. Any failure in this regard that undercuts the ability of campus community members and their families to make well-informed decisions about where to study and work is unacceptable. Liberty has asserted that it has taken remedial action to address these violations and that it is in the process of bringing its campus safety and crime prevention programs into compliance with the HEA and the *Clery Act*, as required by its PPA. Nevertheless, Liberty is advised that such actions cannot and do not diminish the seriousness of the violations that occurred throughout the review period.

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<sup>24</sup> Going forward, it will be essential for Liberty to ensure that campus community members understand the interplay between the law, the institution's conduct codes, the Amnesty policy, and The Liberty Way.



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

##### **Citation:**

*The Clery Act and the Department's regulations require institutions to compile and publish accurate and complete statistics concerning the reported occurrence of the following crimes on campus: homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assaults, burglary, motor vehicle theft, and arson. Institutions must also publish statistics providing the numbers of arrests and disciplinary actions related to violations of Federal, State, or local drug, liquor, and weapons laws. 34 C.F.R. § 668.46(c)(1)(B). To comply with these requirements, institutions must develop a system that allows for the collection of incidents of crime reported to any CSA. 34 C.F.R. § 668.46(c)(2). Federal regulations define a CSA as a campus police department or campus security department of an institution as well as any individuals who have significant responsibility for student and campus activities including but not limited to athletics, student housing, student conduct, and programming offices. 34 C.F.R. § 668.46(a). Among other things, CSAs serve as key conduits for the reporting of crimes covered by VAWA, including incidents of dating violence, domestic violence, sexual assault, and stalking as required by 34 C.F.R. § 668.46(c)(1)(iv).*

##### **Noncompliance:**

*Liberty failed to effectively collect statistics for incidents of crime reported to CSAs and to include them in its campus crime statistics. As noted throughout this report, the University did not have structures and processes<sup>25</sup> in place to identify and notify institutional officials who are or were CSAs.<sup>26</sup> CSAs perform a vital service and create the web of reporting options that are an essential part of facilitating the intake of information regarding incidents of crimes that are reported to them. From there, this information must be used for a variety of purposes, including, but not limited to, the compilation and disclosure of accurate and complete crime statistics. This information must also be evaluated to determine if a Timely Warning or Emergency Notification must be issued. Furthermore, of special importance to victims of sexual violence, this information may be used in support of investigative and adjudicative processes and the timely delivery of accommodations, protective measures, and support services. Given the size and complexity of the institution, Liberty's rudimentary processes for identifying and notifying CSAs, which were adopted in 2017 and remained in place until the commencement of the Department's compliance assessment in May 2021, were insufficient to meet the need as supported by the*

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<sup>25</sup> Institutions have flexibility to develop and implement procedures and processes to identify CSAs and to notify them about their crime reporting obligations, so long as those practices ensure that the institution achieves the intended purpose of the regulation, which is to identify incidences of Clery-reportable crimes.

<sup>26</sup> The Department has discussed the importance of providing training for CSAs on an ongoing basis. While there is not a specific requirement in the law obligating institutions to provide training to CSAs, it is practically impossible to comply with the law without such training. In a letter dated January 28, 2023, from the Vice President of Equity Compliance, Liberty advised the review team that it has recently undertaken its first effort to identify, notify, and train CSAs.

*multiple failures documented in this report.*

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

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

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

*The Department also determined that the LUPD and the Clery Compliance Officer never had sufficient authority to require CSAs to attend training or to participate in a CSA crime-reporting system, even after they became aware of the CSA requirements. Further, the LUPD and the Clery Compliance Officer also did not have the authority to take direct action to request crime statistics from CSAs even after some staff had attended training and were put on notice regarding the requirement to do so. This condition contributed to the underreporting of crimes throughout the review period. In fact, multiple employees who met the criteria of a CSA informed the Department that they did not know they were CSAs or were only recently informed of their status. Furthermore, the Department has found that numerous CSAs did not know how to properly perform their duties as required by the Clery Act.*

*Although the effect of Liberty's systemic failure to collect crime reports from CSAs cannot be reliably quantified, it is abundantly clear that it caused Liberty's crime statistics to be substantially and systemically underreported. This failure resulted in an ongoing material misrepresentation of the occurrence of Clery-reportable crimes on all of Liberty campuses during*

*the entirety of the review period. The Department's current review and the prior limited-scope compliance assessment that closed in 2010 suggest that this condition has persisted for many years and may in fact track back to 1992, the first year that institutions were required to comply with the Clery Act.*

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

### **2016**

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

### **2017**

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

*On March 13, 2017, the Athletic Director did ask his executive assistant to forward an email with the subject line "Clery Act Compliance and Subsequent Responsibilities," to all coaches, head coaches, assistant coaches, graduate assistants, volunteer coaches, administrators, and staff within the Athletic Department. No evidence was provided that this email was ever sent. Instead, the institution provided to the Department a list of 165 Athletics Department names that Liberty had identified as being CSAs. The Department requested evidence of distribution of the email as requested by the Athletic Director on March 13, 2017, and again none was provided.*

*The only other Department that provided names and a total number of CSAs was Residence Life, which identified 296 CSAs for Spring of 2017 and 331 CSAs from Fall of 2017 to Spring of 2018.<sup>27</sup> There was no documentation provided that these individuals were aware of their status or responsibilities or that they reported any incidences of crime.*

### **2018**

*In 2018, the Office of Legal Affairs took over the process from the Clery Compliance Officer and used the 2017 method of sending out an email to certain institutional personnel.*

*Specifically, on January 24, 2018, the General Counsel sent Department Heads and Vice Presidents an email entitled, "Request for Assistance and Cooperation in Completion of Liberty*

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<sup>27</sup> Liberty provided the Department with a total count of CSAs, but the University did not break down the count by individual semester.

University's Annual Clery Campus Security and Fire Safety Reports," informing officials to notify anyone in their specific offices that met the definition of a CSA and had incident reports, to forward the information to the LUPD and the Clery Compliance Officer. A copy of this email was provided to the Department.

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

Residence Life identified 332 CSAs for Fall of 2018 to Spring of 2019.<sup>28</sup> There was no confirmation that these individuals were aware of their status or responsibilities.

### **2019**

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

Residence Life identified 313 CSAs for Fall of 2019 to Spring of 2020.<sup>29</sup> There was no confirmation that these individuals were aware of their status or responsibilities.

### **2020**

In 2020, Residence Life identified 336 CSAs for Fall of 2020 to Spring of 2021.<sup>30</sup> There was no confirmation that these individuals were aware of their status or responsibilities. No other information regarding CSAs was provided to the Department for 2020.

### **2021**

In 2021, Residence Life identified 335 CSAs for Fall of 2021 to Spring of 2022.<sup>31</sup> There was no confirmation that these individuals were aware of their status or responsibilities.

### **2022**

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

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<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

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

**SELF-REPORTED CSA COUNTS PER UNIVERSITY DEPARTMENT AND YEAR**

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

The information presented above highlights only one aspect of the problem. In 2016, Liberty did not have any reliable process in place to identify its CSAs. The process that was in place from 2017 to 2021 resulted in the identification of a significant and relatively consistent number of CSAs in Residence Life, most of whom were RAs.<sup>32</sup> The number of CSAs identified by the Department of Intercollegiate Athletics, however, fluctuated considerably during this time. The second column of the chart illustrates the weaknesses in the process used to identify CSAs in the other departments and workgroups across the enterprise. This process continued to fail to effectively identify CSAs until 2022 when the University engaged outside counsel and consultants with expertise in Clery Act administration. Building on this outside help and input from Liberty’s Clery Compliance Officer, 91 CSAs were finally identified beyond Athletics and Residence Life.

The problem is that while the process for identifying CSAs improved slightly over time, improvements in the process for notifying CSAs of their reporting obligations did not follow. In fact, the Department has not found any evidence that the that CSAs outside of Athletics and Residence Life were properly notified of their crime reporting obligations during the majority of the review period. While institutions are not required to provide CSA training, most institutions find that training is the best way to educate CSAs about their important role. The best evidence of the weaknesses in the institution’s CSA identification, notification, and reporting processes is that, with the exception of the RAs, it did not generate any actual reports. These conditions necessarily had a significantly detrimental impact, although not an entirely quantifiable one, on the institution’s reporting processes and the resulting crime statistics. Given the paucity and unreliability of credible records, the full extent of this violation can never be entirely known or quantified. Consequently, the accuracy of the statistical disclosures in the University’s ASRs and in its reporting to the Department will continue to be in doubt, as will the usefulness of this data as a

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<sup>32</sup> These RAs were the principal institutional officials charged with enforcing The Liberty Way in student residential facilities.

source of meaningful consumer information.<sup>33</sup>

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

**Required Action:**

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

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

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

**Institutional Response:**

In its narrative response, Liberty concurred that it failed to collect statistics for all incidents of crime reported to CSAs and to include them in its campus crime statistics. Further, the University concurred that the structures and processes to consistently identify and notify institutional officials

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<sup>33</sup> While additional information will be developed through the required comprehensive file review, this process cannot reverse the effects of the CSA deficiencies noted above.

who are or were CSAs were not sufficient.

### **Final Determination:**

Based on the Department's review of all available information, this finding is sustained and closed for purposes of this program review. Finding #4 cited Liberty for violations of the *Clery Act* and the Department's regulations, as outlined in the noncompliance section above. As noted above and throughout this FPRD, the University did not have structures and processes in place to identify institutional officials who met the definition of a CSA and to notify them of their responsibilities in that role. CSAs perform a vital service and create the web of reporting options that are an essential part of facilitating the intake of information regarding incidents of crimes that are reported to them. From there, this information must be used for a variety of purposes, including, but not limited to, the compilation and disclosure of accurate and complete crime statistics and evaluation to determine if a Timely Warning or Emergency Notification must be issued. Furthermore, of special importance to victims of sexual violence, this information may be used in support of investigative and adjudicative processes and the timely delivery of accommodations, protective measures, and support services. Given the size and complexity of the institution, Liberty's rudimentary processes for identifying and notifying CSAs, which were adopted in 2017 and remained in place until the commencement of the Department's compliance assessment in May 2021, were insufficient to meet the need as evidenced by the multiple failures documented in the PRR and this FPRD.

Notwithstanding these serious and persistent failures, the Department recognizes that Liberty has implemented some remedial measures to address this finding. Specifically, OEC now has the authority to implement a systematic approach to identify, notify, and train CSAs. As part of the draft *Clery Act* Umbrella Policy, the University is developing policies and protocols designed to ensure consistent, coordinated University-wide support and evaluation of a year-round CSA program, including a mandatory annual training requirement for any CSA. The Department has been advised that the University and its consultants have reviewed more than 2,800 job descriptions to determine whether they meet the criteria for CSA designation. The University has also advised the Department that it is continuing to implement checks and balances to ensure it reviews new positions, roles, or job description changes to determine if the position has CSA responsibilities. The University has also stated that it has developed a CSA determination matrix template that has been shared with Human Resources to implement a consistent approach to reviewing all known job descriptions. In addition, the University has also notified the Department that it is engaged in ongoing efforts to collect information on domestic and study abroad trips for *Clery Act* reporting purposes, as well as the assessment of contractors, volunteers, and camps for CSA status and training. Liberty's remedial actions will be subject to ongoing testing as part of the Department's post-review monitoring. The officials and directors of Liberty are put on notice that the University must continue to develop and refine its CSA policies and procedures and to continue to implement remedial measures to ensure that these violations do not recur.

Liberty is reminded that the exceptions identified above constitute serious and persistent violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. In fact, the failure of the University to designate CSAs and advise them of their duties almost guarantees that the institution's crime statistics are neither complete nor

accurate. Liberty has asserted that it has taken adequate remedial actions and is now in compliance with the *Clery Act* as required by its PPA with respect to the designation and operation of its CSA program. However, the University is advised that its remedial actions cannot and do not diminish the seriousness of these violations.

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

### **Citation:**

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

*An institution must also compile and disclose statistics for Part I offenses and certain Part II offenses (simple assault, larceny-theft, vandalism/destruction of property) that manifest evidence that an individual or group is targeted for their actual or perceived membership in one or more of the following categories: race, gender, religion, sexual orientation, ethnicity or national origin, and disability. 34 C.F.R. §§ 668.46(c)(1) and (4); 34 C.F.R. § 668.46(c)(1)(iii).*

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

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

*Finally, each institution must also submit its crime statistics to the Department for inclusion in the Department's Campus Safety and Security Data Analysis Cutting Tool<sup>34</sup> and the College Navigator.<sup>35</sup> 34 C.F.R. § 668.41(e)(5).*

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<sup>34</sup> Campus Safety and Security Data Analysis Cutting Tool, Office of Postsecondary Education: <http://ope.ed.gov/campusafety/>.

<sup>35</sup> College Navigator, NCES: <https://nces.ed.gov/collegenavigator/>.



### **Noncompliance:**

*Liberty failed to compile and publish accurate and complete crime statistics throughout the review period. The Department has reviewed a sample of the University's incident reports from the calendar years in this period (2016-2020) however, the exceptions noted in this Finding were identified from records produced with respect to calendar years 2016-2020.<sup>36</sup> Numerous reporting errors were identified as a result of that analysis. The most frequent types of violations included:*

- 1. errors in entering all reported crimes, including VAWA offenses, associated with a single operation of crime;*
- 2. identification and disclosure errors commonly referred to as "underreports";*
- 3. classification errors including the improper use of non-criminal classification such as "All Other Offenses"; and,*
- 4. persistent recordkeeping weaknesses<sup>37</sup> and other deficiencies.*

*As noted throughout this report, Liberty failed to implement a minimally adequate Clery Act compliance program. None of the responsible officials were given the necessary authority or oversight responsibility to ensure that criminal incidents were properly identified, classified, and reflected in the campus crime statistics. As described in Finding #4, personnel interviewed by the Department during the site visit were unaware of the reporting obligations associated with their status as CSAs. The failure to notify employees that they were CSAs and the lack of training for CSAs contributed to the cited disclosure violations as well as other violations found during the program review.<sup>38</sup>*

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

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<sup>36</sup> At the time that the review was announced in February 2022, Liberty had not yet published its 2022 ASR, which included crime statistics for calendar years 2021, 2020, and 2019. The institution was not required to distribute this report until October 1, 2022. As such, the detailed analysis of crime statistics could only be conducted through the end of 2020. The University's comprehensive file review will include an analysis of the 2021 statistics that were included in the 2022 ASR and the 2022 statistics that will be included in the University's 2023 ASR. This information will be reviewed and validated by the Department and presented in the FPRD.

<sup>37</sup> Recordkeeping violations are discussed in greater detail in Finding #10.

<sup>38</sup> Once again, the Department acknowledges that no institution is required to provide CSA training; however, it is generally understood that a lack of training for CSAs makes it more difficult for institutions to establish a competent crime reporting structure.

were incomplete and inaccurate.

*As part of this review, the Department requested documentation to test the accuracy and completeness of the University's crime statistics. Shortly after the review was announced, Liberty's consultant reported to the Department that the institution did not have documentation that supported the statistical data included in its ASRs. As such, Liberty began the process of reconstructing back-up documents, commonly known as audit trails, with the assistance of a consultant with expertise in the field. As noted in Finding #10, this was a daunting task.*

*Because of the weakness in the University's record management system and other constraints, the consultant advised that it was not able to examine anything close to the universe of relevant documents. Instead, the consultant described the audit trail reconstruction process, which was merely a limited search of reports to identify incidents that roughly matched the number of crimes disclosed its ASRs. This scattershot approach provided virtually no credible substantiation for the University's crime data and was of little use for compliance monitoring and enforcement purposes.*

*Liberty, in essence, "backed into" the audit trails submitted to the Department. This approach, which neither Liberty or the consultant tried to hide, was riddled with problems, not least among them being that the exercise could not detect classification or count errors.<sup>39</sup> For example, Liberty would search the term "rape" in a given calendar year and would simply look for the first 5 incidents that matched the statistical disclosure reported in its ASR. While this methodology cannot result in the production of a reliable and valid audit trail, Liberty did manage to identify a number of incidents that appear to have been reported and documented appropriately with CSAs, but were not previously included in the statistical compilations, a condition referred to as "underreports." The Department acknowledges that although the process used to create the "audit trails" was deeply flawed, some additional underreports were identified. The majority of these incidents which have never been disclosed were found primarily in the records of OEC and would have never been discovered if the Department had not conducted this review. This revelation points to the fact that the University had failed to include these incidents and statistical disclosures for multiple years and raises a concern that there may be many other incidents that were not identified and identified and disclosed in the year they were first reported to Liberty officials.*

*Liberty's recordkeeping deficiencies also created challenges for Liberty when it attempted to create the "audit trails" that were produced to comply with the Department's document request. In some cases, the University was unable to locate LUPD incident reports or other records that officials believed were the source documents that substantiated the statistical disclosures in its ASRs. In such cases, the University asserted that incidents for which documentation could not be located should be eliminated from the statistical tallies for that category of crime. In fact, the University's "audit trail" information identified at least 44 incidents<sup>40</sup> for which no*

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<sup>39</sup> Liberty's consultants described the audit trail reconstruction process to the review team during video calls on May 16, 2022, and December 8, 2022.

<sup>40</sup> These incidents will be considered statistical reporting errors by the Department now and in the FPRD unless the University can provide source documents that indicate they should be excluded.

documentation could be found, and the institution apparently believes that those incidents should be removed from the statistical compilations as a result. Liberty is reminded that institutions are obliged to create and keep credible records to substantiate the accuracy and completeness of their own crime statistics. No safe harbor is created by an inability to find and retrieve records that are required to be maintained in an institution's own data sets.

The attached chart (Appendix A)<sup>41</sup> details 74 disclosure violations due to underreporting of criminal offenses during calendar years 2016-2020. These deficiencies were identified in a sample of the University's incident reports that was focused on the detection of underreports. The Department expects that a significant number of other statistical deficiencies including, classification, counting, compilation, and disclosure errors, will be identified in the comprehensive file review and that such errors did cause the University's crime statistics to be significantly underreported. This Finding is based primarily on records provided by Liberty officials and illustrates some of the violations that resulted in substantial misrepresentations of the crime statistics in the institution's ASRs and its reporting to the Department over time.

Examples of these violations include the underreported offenses attached as Appendix A.<sup>42</sup> Taken together the number of underreported incidents and cases for which the institution cannot produce documentation, currently represents 118 known statistical omissions. This number may increase if further discrepancies are identified.

As noted above and throughout this report, the accuracy and completeness of Liberty's crime statistics was negatively impacted by a number of other factors. The Department has found that the LUPD improperly "unfounded" multiple incidents that did not meet the criteria for that action. The review team has identified three<sup>43</sup> LUPD reports that document incidents of sexual violence that were improperly unfounded by LUPD investigations. Liberty failed to disclose any unfounded incidents in its statistics included in its ASRs and its reporting to the Department during the review period. Misuse of the option to unfound a reported incident is especially concerning to the Department for several reasons. Firstly, the available information on these cases does not establish that the report was false or baseless. Secondly, it appears that the decision to unfound each of these incidents was made solely by LUPD Investigations without supervisory review and without any input from the officers who responded to the initial complaint. Thirdly, the manner in which each of these cases was unfounded made it nearly impossible for complainants to secure the accommodations, protective measures, and support services guaranteed by the Clery Act and Title IX and to pursue redress through the campus disciplinary processes or the criminal justice system.

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<sup>41</sup> For ease of reference, the chart including in the text of the PRR has been moved to Appendix A.

<sup>42</sup> The type of exceptions noted in this chart affect the accuracy and completeness of the institution's statistical disclosures included in multiple ASRs. The carryover effects of these continuing reporting violations will be presented in the FPRD.

<sup>43</sup> The Department notes that case #21-008831, occurred in calendar year 2021 and therefore the Department did not include this incident in its testing of the institution's crime statics. It is referenced here solely because it is a disturbing example of the institution's improper use of the "unfounded" designation. In this case, the victim reported three separate sex crimes, one of which appears to have been properly unfounded based on communications the victim had with a third party.

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

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

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

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

**Required Action:**

As result of these violations, Liberty is required to take all necessary remedial actions to rectify this violation and all others identified in this PRR. The University must address each of the underreports noted in this finding. In addition, as discussed below, the University must conduct a full file review of records relating to crime statistics for calendar years 2016 to 2022, the parameters of which are discussed in this PRR and in conversation with the institution on March 3, 2023.

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

The specific requirements of the file review are as follows:

- Examine all institutional records<sup>44</sup> regarding incidents of crime reported to officials in offices that meet any part of the CSA definition, including any institutional officials to whom students and employees are directed to report incidents of crime or violations of the institution's codes of conduct, including but not limited to the LUPD, OEC, OCL, HR, and the Department of Intercollegiate Athletics. To the extent that it has already not done so, Liberty must contact all local enforcement agencies to request the records needed to identify incidents of Clery-reportable crimes that were required to be included in the University's crime statistics.<sup>45</sup> The University must search and review all CSA reporting systems, University websites, online portals used for collecting reports of crime or conduct and disciplinary matters, online report collection portals (including Gentry Locke) or incident report collection mechanisms utilized by the University or any third-party contractor, and any real estate or business incident management system. The Department of Intercollegiate Athletics' compliance reporting systems, Speak Up reporting system, Dean of Students reporting systems (emails, portals, and forms) and incident reporting email accounts. If systems, networks, or emails are unretrievable or were destroyed, then the University must indicate the system, office and individual impacted and the date ranges of the destroyed emails.
- Construct a clear audit trail to substantiate the accuracy and completeness of its revised crime statistics for calendar years 2016 to 2022. The audit trails must support the corrected crime statistics for all Clery-reportable crime classifications including Part I Offenses, hate crimes, drug law violations, liquor law violations, and illegal weapons possession arrests, VAWA offenses, unfounded crimes, and disciplinary referrals. The audit trails are required to ensure that revised statistics are supported with source materials. Each audit trail must provide incident report numbers associated with each crime classification, and crime statistics must separate incidents by category of Clery Geography for each calendar year. The University must prepare a short narrative that explains the findings of the file review and a summary report in spreadsheet format that includes the following fields: incident report number, date of the report, original classification, corrected classification, and the number of incidents associated with each classification.
- In accordance with the requirements of Finding #6, the summary report must indicate: if an Emergency Notification was issued (Y/N), pursuant to each report of an incident of crime, emergency, or other dangerous conditions that was brought to the attention of the institution and the institution's current position on whether an Emergency Notification

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<sup>44</sup> The Department respectfully requests that copies of any information regarding incidents of crime, Title IX violations, and/or or relevant student or employee conduct violations that was reported through the portal established and administered by Gentry Locke as part of the internal investigation be provided to the review team for examination under appropriate agreed-upon terms. The Department will work with Gentry Locke to ensure that such inspection can take place without the direct involvement of the University and that the confidentiality concerns expressed previously by the firm can be effectively addressed.

<sup>45</sup> The University is required to amend the requests for crime data filed with local law enforcement agencies if the institution's comprehensive real estate review results in changes to any Clery Geography boundary lines.

*was required based on the findings of the file review. If the institution determines that an Emergency Notification was not required to be issued in response to such an event, an explanation must be provided for the institution's rationale.*

- *In accordance with the requirements of Finding #7, the summary report must indicate: if a Timely Warning was issued (Y/N), in response to a Clery-reportable crime and the institution's current position on whether a Timely Warning was required based on findings of the file review. If the institution determines that a Timely Warning was not required to be issued in response to a Clery-reportable offense involving a crime of violence against a person or one or more property crimes that may have posed a significant or ongoing threat, an explanation must be provided for the institution's rationale.*
- *In accordance with the requirements of Finding #8, the summary report must indicate the type and number of reporting errors and omission associated with the daily crime log entries for each incident reported to the LUPD.*
- *Conduct a search of the Athletics email system for information regarding reports of Clery-reportable crimes and disciplinary matters. If emails are unretrievable or were destroyed, the University must identify the CSA whose emails are not retrievable and the date ranges of the deleted emails. The University must provide copies of the emails, a list of the incidents, to whom the report was sent, and the referring CSA. The list must identify the reports that went to LUPD and to OCL.*
- *Submit a list of all incidents of crime and conduct violations involving student athletes that were referred by Athletics to OCL by calendar year (2016 to 2022).*
- *Indicate if any notifications were issued in response to each report of a missing student that was brought to the attention of the institution during the review period. The University must then determine if one or more notifications were required to be issued in accordance with the Clery Act and the institution's published procedures. If Liberty determines that a notification was not required, an explanation must be provided for the University's rationale. This information should be presented in the narrative section of the institution's response to this Finding.*
- *In accordance with the requirements of Finding #9, Liberty must conduct a comprehensive real estate review<sup>46</sup> to identify and properly classify all buildings and properties owned or controlled for educational purposes that constitute the University's Clery Geography. The assessment must include an analysis of all properties, real estate holdings, real estate agreements, financial interest investments and any other relationships related to real estate. Liberty must also account for its immediately adjacent and accessible public property, including all walkways. Because of the University's admitted issues identifying all of*

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<sup>46</sup> On March 3, 2023, Liberty advised the Department that the institution had already commenced a new evaluation of its real estate holdings.

*Liberty's real estate that was purchased by the former Liberty President, and the intended use of those properties, the Department will require that the University certify that it has identified all the properties that should have been included within its Clery Geography during the review period. As part of the real estate analysis, the University must provide copies of any real estate arrangements or insurance contracts which provide reports of crimes, or conduct, and request and review those records to ensure that all incidents of Clery-reportable crimes were identified and correctly classified.*

- *As part of the comprehensive file review, Liberty must review all incident reports and/or other records and information related to the incidents of sexual violence that were alleged by the Jane Doe Plaintiffs, these records must be used to determine if these reported incidents were reflected in the institution's crime statistics in the year that the incident occurred or at any point prior to the filing of their lawsuit. The University has asserted that several of the Jane Doe victims did not report the offenses committed against them at any point prior to the filing of the litigation. If that is in fact true, then the University was required to treat the information in the lawsuit and any other information developed thereafter as a report of sexual violence. If any of these incidents met the criteria of one or more Clery crimes, then those incidents were required to be reflected in the University's campus crime statistics in the year the lawsuit was filed. Detailed information about any such cases must be presented in the narrative response and in the summary report.*
- *As part of the comprehensive file review, Liberty must review all incidents of crime that were unfounded by the LUPD to determine if this action was done in accordance with the regulatory requirements. Liberty must provide a list of all incidents that were referred to LUPD Investigations<sup>47</sup> for follow up as well as a list of all incidents that were unfounded by the LUPD. Copies of all initial reports and investigative supplements for each incident that was unfounded, regardless of whether the offense was a Clery crime, must accompany the institution's response.*
- *As part of the comprehensive file review, Liberty must consider all reports and other information sources regarding violations of the student and employee codes of conduct. For the record, the Department acknowledges that Liberty submitted lists of student and employee conduct cases; however, due to the University's delayed production of these records, the Department determined that it was impractical to select samples, request source documents from the institution, and conduct independent testing given the agency's timeframe for issuing this report. Therefore, this testing is included as a required element of the comprehensive file review.<sup>48</sup> This component of the file review must account for any conduct cases involving employees of third-party contractors.*

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<sup>47</sup> On August 15, 2022, Liberty provided the Department with 2016 to 2021 LUPD incident reports that went to Investigations.

<sup>48</sup> The Department requested these documents in November 2022, the documentation was not submitted to the Department until January 2023. Given the institution's timelines for production of requested records the Department determined that it would be more efficient to include a review of the cases on these lists as part of the required comprehensive file review.

- *Additionally, Liberty must submit copies of the incident reports and/or other records that substantiate the revised statistical tallies resulting from the comprehensive file review for calendar years 2016 to 2022. In addition, the University must review and improve its policies, procedures, internal controls, and training programs to ensure that all incidents of crime reported to CSAs and local law enforcement agencies are properly classified in accordance with the definitions in Appendix A to Subpart D of 34 C.F.R. Part 668 and are included in its ASR statistical disclosures and in the statistics provided to the Department.*

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

- 1. The file review was conducted by competent reviewing officials with the requisite knowledge and experience to complete the work;*
- 2. Liberty conducted a diligent search to identify all relevant records management systems, email systems, record depositories, and other information sources that include reports of crime and/or conduct violations;*
- 3. The University has not knowingly or purposely withheld any of the records that are or should have been included in the data sets referenced in #2 above;*
- 4. The institution has not knowingly or purposely altered, destroyed, or removed any reports or other information that are or should have been included in the systems of record referenced in #2 above;*
- 5. Liberty provided the reviewing officials with full access to the institution's systems of record referenced in #2 above;*
- 6. the University has ensured that the reviews were planned and conducted in accordance with the process steps set out in the statement of work/agreed-upon procedures between the institution and its consultants; and,*
- 7. The institution certifies that its narrative response, summary report, and supporting documentation fairly and accurately presents the findings of both reviews and, in all material respects, represents the institution's best efforts to compile accurate and complete crime statistics and an accurate and complete presentation of its real estate holdings.*

*Liberty's President must sign the certification statement and submit it as part of the institution's response. Once the University response is received and reviewed, the Department will assess and validate the University's revised crimes statistics analysis, the results of the comprehensive Clery Geography and real estate review, and all new and revised policies and procedures. Upon completion of this review Liberty will be required to incorporate this material into its 2023*



*ASR.<sup>49</sup> Once compiled, errors in past crime statistics disclosures must be corrected. Any corrections to the Department's online campus security database or to subsequent ASRs must contain a caveat explaining those corrections.*

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

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

### **Institutional Response:**

In its narrative response, Liberty concurred with the Department's finding that the University's published crime statistics were inaccurate and incomplete in various ways during the review period as reflected in the file review it conducted. The University also concurred that it improperly unfounded multiple incidents that did not meet the Department's standards for such unfounding.

The University noted that it has implemented steps to enhance its ability to compile and publish crime statistics. In addition, the University moved its *Clery Act* compliance management function to the OEC and has expanded staffing to ensure that it has sufficient personnel to review and reconcile *Clery Act* records in a timely manner. The additional staffing includes an Executive Director of Clery Compliance, two additional positions within the Clery compliance team to assist with the data and report review and a Clery liaison in LUPD, who is a direct report to OEC. Liberty noted that the expansion of OEC personnel and its expanded oversight and authority were designed to help facilitate the development of decision-making processes for the University.

The University also indicated that it is drafting the following policies and documents: policy for collecting, classifying, unfounding, and counting *Clery Act* crimes; daily crime log policy and protocols; Timely Warnings and Emergency Notifications policies; revision of law enforcement agency information request letter; and *Clery Act* geography/real estate policy and protocols.

To assist the University in reviewing and addressing the deficiencies identified in this report, Liberty has advised that it has established a Clery Compliance Committee (CCC) and Data Assurance Working Group (DAWG) sub-committee to review reports across the University systems for potential *Clery Act* crimes. In addition, Liberty advised that it established a *Clery Act* Geography Working Group to review all potential property to determine the appropriate status for the University's *Clery Act* reporting and is developing ongoing protocols to assess how future property transfers are evaluated for *Clery Act* purposes.

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<sup>49</sup> *The University will be required to include the accurate and complete crime statistics for the most recent five calendar years in its 2023 ASR.*

Liberty also described several steps that have been initiated to ensure that CSAs understand their reporting obligations. Specifically, the Department is advised that the University is currently engaged in the ongoing development of cross-functional CSA and *Clery Act* training of offices and individuals who are likely to receive reports. The University also advised the Department that it has conducted report writing training for LUPD to promote the gathering of relevant information for a CSA report. Liberty noted in its responses that training is planned for OCL and other relevant offices with CSAs, which will help reduce crime classification and counting errors. Liberty also highlighted a number of professional development initiatives for CCC and DAWG intended to reinforce University policies, processes, and protocols.

To address the deficiencies identified in the PRR, Liberty indicated that the University has invested in a records management system which will improve consistency and access to documentation. In an effort to address organizational weaknesses, the University claimed that it has established a new chain-of-command that links operations of several critical offices across the University, such as from the VP of OEC across critical University offices such as LUPD, OCL, and Athletics to ensure a thorough understanding of all University datasets and information systems that need frequent review.

The University also engaged its consultants to conduct a full file review of all institutional records documenting incidents of crime during calendar years 2016 to 2022 and to construct an audit trail to substantiate the accuracy and completeness of its revised crime statistics for those calendar years. Liberty has asserted that all records, data, systems, and collection portals available to the University regarding crime, conduct, noncompliance, and disciplinary incident reporting to the University were examined as part of the file review. In addition, its consultants performed a file review to address the noncompliance deficiencies identified in Findings #2, #6, #7, #8 and #9 of the PRR.

Liberty's response included a certification statement, signed by the President, attesting to the accuracy and completeness of the comprehensive file reviews conducted in response to the PRR.

### **Final Determination:**

Based on the Department's review of all available information, this finding is sustained and closed for purposes of this program review. Liberty was cited for its failure to accurately compile and disclose crimes as required by the *Clery Act*. Liberty's failure to report crimes and adhere to the *Clery Act* requirements are noted throughout the PRR. The failure to properly classify and disclose crimes is a systemic problem for the University that persisted throughout the entirety of the review period and dates as far back as 2010 when the Department served notice to Liberty of its *Clery Act* compliance deficiencies in the 2010 FPRD. Specifically, in 2010 the Department identified serious violations related to the classification and counting of crimes, the compilation and disclosure of accurate and complete crime statistics, the issuance of Timely Warnings, the maintenance of a compliant daily crime log, the development and implementation of policies and procedures, and the production and distribution of the ASR.

As a result of these ongoing violations, Liberty was required to conduct a full-file review to identify and correct all errors in its crime statistics, including a comprehensive real estate review to

understand the University's true Clery Geography footprint and to review all institutional records regarding Clery-reportable crimes. Liberty was required to substantiate the accuracy and completeness of its revised crime statistics for calendar years 2016 to 2022 and to submit a summary report of its findings as part of its response to the PRR.

Regarding the audit trails, Liberty objected to the Department's characterization of the audit trails as problematic and inconclusive. It stated that it was under the impression that the audit trails were an interim step to identify Clery-reportable crimes before the University completed a full audit of this information. The Department recognizes that Liberty represented that the audit trails were Liberty's initial effort to identify Clery-reportable crimes. The University provided a file review of this information on June 30, 2023.

Liberty was also required to review and revise its policies, procedures, and internal controls regarding the classification and counting of incidents and the compilations and disclosure of crime statistics. A copy of all new and revised policies, procedures and internal guidance associated with the compilation and disclosure of crimes statistics were to be submitted with the University's response. The Department carefully examined Liberty's responses, file review documentation, supplemental documentation submitted after the institution's response and the University data ("audit trail data") submitted to the Department. Based on a review of this information, the Department determined that Liberty failed to disclose 165 crimes.<sup>50</sup> It is important to note that, although the Department has accepted all of the information Liberty provided for purposes of this FPRD, it is unlikely that this high level of underreported criminal incidences represents the actual number of unreported crime incidents that occurred on the University's Clery Geography.

The file review clearly establishes that Liberty failed to accurately compile and report crimes. Additional information regarding the institution's failure to disclose crime statistics is highlighted in the chart attached as Appendix B.<sup>51</sup>

Notwithstanding these serious and persistent failures, the review team's analysis of the response showed that the University has made some improvements to its policies and procedures regarding the collection and reporting of crime statistics. The remedial actions taken by the University will be subject to ongoing testing as part of the Department's post-review monitoring. The officers and directors of Liberty are put on notice that the University must continue to implement remedial actions as necessary to ensure that these violations do not recur.

Liberty is reminded that the exceptions identified in this finding constitute serious and persistent violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. The requirement to produce an ASR that includes all required

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<sup>50</sup> While the review team has settled on the presented data as the best available, the Department must make clear that its investigation leaves no doubt that multiple incidents of crime, many of them very serious, were never documented or responded to in a manner that would have resulted in the crimes being included and disclosed as part of the institution's compilation of its crimes statistics. The other findings and areas of concern noted throughout this FPRD support, and in many cases confirm, that victims of crime were not served in accordance with Federal law or the institution's own policies, procedures, and pronouncements, and as a result, those incidents are lost to history. The Department's ongoing concerns in that regard will be addressed through a program of post-review monitoring.

<sup>51</sup> For formatting purposes, the chart summarizing this Final Determination is attached as Appendix B.

statements of campus safety and crime prevention policy and procedure, and accurate and complete crime statistics, is fundamental to the campus safety and crime prevention goals of the *Clery Act*. Access to this information permits campus community members and their families to make well-informed decisions about where to study and work and empowers individuals to play a more active role in their own safety and security. Proper policy formation serves as a guide to institutional officials to help ensure that operations are carried out in a manner that will maintain the safety of the campus community to the greatest extent possible. Liberty has asserted that it has taken adequate remedial actions and, that by doing so, has brought its overall campus safety program into compliance with the *Clery Act* as required by the terms and conditions of its PPA. Notwithstanding these actions, the University is advised that its remedial actions cannot and do not diminish the seriousness of these violations.

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

#### ***Citation:***

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

#### ***Noncompliance:***

*Liberty knowingly and repeatedly failed to issue Emergency Notifications to advise the campus community about emergencies and other dangerous conditions that may have posed a threat to their health or safety. Violations persisted throughout the entirety of the review period, primarily as a result of the change in policy imposed on the LUPD and emergency managers following the reorganization explained below and in Finding #7.<sup>52</sup> This Finding is grounded in the information developed by the review team and the scope of the violations will be developed further through the comprehensive file review that is already underway.*

*Throughout the review period, although Emergency Notifications were necessary in numerous circumstances, Liberty issued few non-weather-related notices even in cases where emergencies or other dangerous conditions may have posed a threat to the health and safety of the campus community or a segment of it.<sup>53</sup> Until February of 2022, the LUPD was controlled by HR. The now former Executive Vice President of Human Resources intentionally suppressed the ability of the LUPD to issue such notices according to accounts provided by Liberty*

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<sup>52</sup> See Finding #2 for information on the policy and procedural deficiencies associated with these violations.

<sup>53</sup> Over the course of the review period, Liberty issued some alerts that it now represents as Emergency Notifications. Nearly all of those alerts appear to relate to dangerous weather conditions. While the law of Emergency Notifications clearly applies to severe weather, there were many other incidents and circumstances that are covered by the law and required the issuance of a notice during the review period. Only a few of those are listed here for illustrative purposes. The University will be required to reevaluate the need for such notices as part of the comprehensive file review required under Finding #5 and report its findings to the Department. The Department will test the validity of the file review and use the information that the review yields in the preparation of the FPRD.

employees in interviews with the Department.<sup>54</sup> The University did issue an Emergency Notification on March 30, 2016, in response to a credible on-campus bomb threat. At that time, the most senior officials were concerned about the attention that the notice generated and took steps to ensure that the issuance of Emergency Notifications did not become a common occurrence. At least one LUPD officer was subjected to disciplinary action for issuing the notice even though it was issued in conformity with Federal law and the institution's published policy at the time.<sup>55</sup> Following the disciplinary action, the University stopped issuing Emergency Notifications in response to crime-related threats.

The Timely Warning and Emergency Notification provisions of the law are intended to provide actionable information to affected individuals so they can make informed decisions about their own safety and security. Many current and former campus community members reported that they were aware of Liberty's stated policy and initially trusted the institution to issue warnings and notices when the need arose. This condition points to the importance of developing and implementing required policies and procedures, communicating them to the campus community, and, most importantly, following through when it counts. Liberty did not adhere to the policy statements in its ASR regarding the issuance of Emergency Notifications. An excerpt of the relevant portion of University's policy that were published in its 2019 ASR is presented in the paragraph below.

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

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

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

The Department further found that Liberty did not issue Emergency Notifications even after officials were notified and the nature of the condition had been reasonably confirmed. This lack of notifications occurred for on-campus incidents of credible bomb threats and gas leaks.

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<sup>54</sup> Based on interviews with multiple current and former Liberty officials, the Department found that the LUPD was unable to issue Emergency Notifications and Timely Warnings as a result of the change in policy imposed by the then EVP of HR.

<sup>55</sup> This disciplinary action is evidenced by HR conduct records.

Moreover, the University failed to issue Emergency Notifications that should have been considered for certain conditions involving dangerous individuals who were credibly accused of serious and repeated acts of sexual violence, notably a former Liberty football player and the current Executive Director of Student Health and Wellness. The continued, unchecked presence of a sexual predator on a campus creates a dangerous condition for many members of the campus community. Under the Clery Act, these community members have a right to information about such risks in their environment. In this context, the presence of a serial sexual offender on campus is no different than the risks created by other environmental contagions such as asbestos, lead paint, or toxic mold.

Despite serious concerns expressed by members of the campus community, especially victims of such offenses, Emergency Notifications were never issued for even the most serious acts where the perpetrator's<sup>56</sup> continued access to the campus<sup>57</sup> created a dangerous condition for the general public or some smaller segment of the campus community. One individual whose campus presence posed such a danger to the Liberty campus involved a former football player who attended the University from 2018 to 2022. That football player had been accused of multiple sex crimes dating back to at least 2020.

### **Timeline of the Football Player's Criminal Conduct**

- **Rape (2020):** In 2020, the football player was accused of raping a woman on Clery Geography, an incident that was not included in the University's 2020 crime statistics. The Department notes that this reported offense should have resulted in the issuance of a Timely Warning but did not.<sup>58</sup>
- **Stalking (2021):** In early 2021, the football player started to engage in a pattern of stalking behaviors directed at Victim A, who was both a Liberty student and an employee. This behavior continued for several months.
- **No Contact Directive (2022):** OEC issued a No Contact Directive (NCD) on August 17, 2022, against the football player on Victim A's behalf. Following the NCD's issuance, the football player continued to stalk Victim A.
- **Arrested for Stalking (2022):** On September 11, 2022, the football player was arrested for stalking. The football player was permitted to continue playing and practicing with the football team.

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<sup>56</sup> See the Department's Finding and Final Determination in the Pennsylvania State University case for an example where a person created a dangerous condition that required a notice or other immediate remediation. A copy of the FPRD can be found at <https://studentaid.gov/data-center/school/clery-act-reports/clery-by-school>.

<sup>57</sup> If Liberty wanted to avoid the need to issue an Emergency Notification in this case, it could have initiated remedial measures to eliminate the dangerous condition created by the football player's continued presence on campus.

<sup>58</sup> Please refer to Finding #5 for the underreported rape and Finding #7 for the failure to issue a Timely Warning. The requirement to issue a Timely Warning is driven by the report of an incident that may have posed a serious or ongoing threat. The requirement to issue an Emergency Notification resulted from the choice to allow the perpetrator to remain even after a pattern of dangerous conduct was established.

- **Convicted for Stalking (2022):** *On October 13, 2022, the football player was found guilty of stalking in Virginia court.<sup>59</sup> The football player was permitted to continue playing and practicing with the football team.*

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

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

- **LUPD Incident #18-01439 (Assault)** – *On July 10, 2018, at approximately 10:22 p.m., a 14-year-old girl reported that she was grabbed by a white male in a black hoodie. She told police that the attack occurred while she was walking on the lawn area behind the Vines Center, near the Falwell Library. The victim also reported that she screamed and then struggled with the assailant. She stated that during the struggle, she was able to strike the perpetrator in the groin at which time, he fled the scene. The perpetrator was never located.*

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

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

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<sup>59</sup> *The stalking conviction was later overturned by Lynchburg Circuit Court on January 27, 2023. The court ruled that there was insufficient proof that the football player's actions constituted stalking under Virginia law. However, his actions did fall under the Clery Act definition of "stalking," the standard that applies in this case.*

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

- **LUPD Incident #19-01185 (Bomb Threat)** – *On June 11, 2019, at approximately 11:25 a.m., the LUPD arrived at the Graves Mill location of Liberty University Online<sup>60</sup> in response to a report of a bomb planted on the facility’s grounds. No suspect was immediately determined, the building was not evacuated, and the case was not closed until the following day at 9:53 a.m. Until that time, the risks posed by this credible threat were ongoing.*

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

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

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<sup>60</sup> *As noted in Finding #9, Liberty has never properly categorized the Liberty University Online facility for Clery Geography purposes. This is true of many buildings, properties, and other parcels that are or were owned or controlled by the University and/or its affiliates. The University has already begun work on the comprehensive real estate review required under Findings #5 and #9.*



### **Timeline of Employee A's Sexual Misconduct**

- **Sexual Harassment (2012):** In 2012, one former female employee reported to both the Executive Vice President of Student Affairs and the Pastor of Thomas Road Baptist Church<sup>61</sup> that for at least three years, she continuously felt uncomfortable and afraid of Employee A due to his disturbing behavior and sexually charged comments.
- **Sexual Harassment (2013):** Another sexual harassment complaint against Employee A was made by a female employee on April 16, 2013.
- **Domestic Violence and Possible Sexual Assault (2013):** On October 13, 2013, Employee A showed up at one of his employee's houses and gave the woman what he referred to as "medicine," which caused her to fall asleep. When the woman woke up, Employee A was kissing her.
- **Inappropriate Behavior and Mistreatment of Employees (2014):** On April 23, 2014, another formal complaint against Employee A was sent to HR.
- **HR Investigation of October 13, 2013, Complaint (2014):** On April 29, 2014, HR wrote that Employee A's "final disposition will most likely have to be made on the fact that Employee A was at an employee's house and admitted to rubbing lotion on her back."
- **Threat Assessment (2014):** On May 7, 2014, HR conducted a threat assessment on Employee A and concluded that Employee A should be punished for his actions. Employee A was subsequently demoted to the newly created position of Director of Student Health Records. However, later that year, Employee A was once again promoted.

At no point did these events cause senior Liberty officials to take any action to warn the campus community about the potential risk posed by Employee A's continued presence on campus. Furthermore, there is no evidence that the University made any significant effort to limit his access to campus facilities. In fact, in 2014, Employee A became the first Executive Director of the Office of Student Health and Wellness.<sup>62</sup>

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

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<sup>61</sup> The Pastor of Thomas Road Baptist Church, who has close connection to the University, notified the then- President of Liberty of the report.

<sup>62</sup> The Department notes that this individual has access to highly sensitive student information.

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

**Required Action:**

*As a result of these violations and as part of the comprehensive file review described in Finding #5, the University must evaluate each incident report or other relevant record to determine if the event documented therein created or resulted in an emergency or dangerous condition that required the issuance of an Emergency Notification. This requirement applies to the entirety of the review period (calendar years 2016 to Present). The file review summary report must include fields that indicate if a notice was required and whether or not an Emergency Notification was in fact issued. If a notification was issued, the timing of the Emergency Notification and the mode of communication must also be identified.*

*If a notification was not issued, Liberty must indicate whether or not the University now believes that a notification was required. If Liberty determines that a notification was not required, it must briefly explain its reasoning and provide documentation in support of its determination.<sup>63</sup> In this context, the University is reminded that the mere fact that a subsequent dangerous occurrence of the same or similar type did not actually occur is not a justification for failing to issue an Emergency Notification in response to an initial dangerous situation that posed such a threat. Liberty must prepare a summary report containing this information and submit it with its official response to this PRR. Copies of any Emergency Notifications that have not already been provided to the Department must accompany the University's summary report.*

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

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

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<sup>63</sup> Explanations can be displayed using a dropdown menu of codes so long as a detailed legend of codes is provided.

### **Institutional Response:**

In its narrative response, Liberty stated that it generally concurred that the University routinely failed to issue required Emergency Notifications and conceded that the University did not follow its own public-facing statements of policy and procedures that were published in its ASRs. The University also acknowledged that the former EVP of HR discouraged University personnel from issuing Emergency Notifications. Liberty registered its disagreement with the component of the finding that found that a police official was disciplined specifically for issuing an Emergency Notification and asserted that the disciplinary action was based on the language that the officer used on the heading of the notice. Additionally, Liberty did not agree that it was required to issue an Emergency Notification in response to multiple credible reports of sexual harassment, violence, and other impropriety committed by an official identified in the PRR as Employee A. The University made a similar argument regarding a former member of its football team. In both cases, the institution claimed that neither individual created a dangerous condition by their continued presence on campus. Liberty argued that it took remedial action by limiting the football player's access to all buildings except those controlled by Athletics after it became aware of the allegations. Liberty also stated that the complaints against both individuals were investigated and adjudicated in accordance with University policy and appropriate sanctions were imposed following a finding of responsibility.

Liberty also described several steps it initiated to address the deficiencies identified in this finding. Specifically, the University asserted that it has engaged in significant efforts to review and revise its Emergency Notification policies, procedures, and practices starting in November 2022. As part of this process, Liberty stated that it has conducted outreach with key stakeholders to emphasize the current administration's commitment to full compliance with the Emergency Notification requirements. The University submitted a draft of its revised Emergency Notifications and Timely Warning Policy and asserted that Liberty leaderships has directed the VP of OEC to work with the LUPD, Emergency Management, Communications, and other relevant offices "to develop a streamlined, compliant process." Liberty asserted that, under the direction of OEC, training on the new and revised policies and procedures was provided to officials with responsibility for issuing Emergency Notifications. Finally, the University claimed that it is developing standardized record retention policies and practices and building appropriate redundancies into the oversight process.

### **Final Determination:**

Based on the Department's review of all available information, this finding is sustained and closed for purposes of this program review. In Finding #6, Liberty was cited for a systemic failure to issue Emergency Notifications to advise the campus community about emergencies and other dangerous conditions that may have posed a threat to their health or safety. As noted in the PRR, these violations persisted throughout the entirety of the review period, primarily as a result of the policy imposed on the LUPD and emergency managers following a reorganization that resulted in the former EVP of HR taking control of campus safety functions at the University. Given the nature and extent of this non-compliance, the Department focused its finding on five specific cases where an Emergency Notification was clearly required but not issued.

As a result of these violations and as part of the comprehensive file review described in Finding #5, Liberty was required to evaluate incident reports and other relevant documentation to determine if the event identified therein created or resulted in an emergency or dangerous condition that required the issuance of an Emergency Notification. The University was also required to report its findings in the summary report provided in response to Finding #5. The institution was also required to develop and implement policies and procedures to ensure and facilitate the issuance of Emergency Notifications in accordance with *34 C.F.R. § 668.46(g)* and to submit all new and revised public-facing and internal guidance to the Department as part of its official response.

In its response, Liberty generally concurred with the finding, with two exceptions, and claimed that work on new and revised policies and procedures was underway that would address these violations going forward. Liberty submitted the summary report documenting the results of the file review, which identified 17 incidents<sup>64</sup> that required the issuance of an Emergency Notification, including three of the five events that the Department identified in the PRR. The list included the attempted abduction of a young girl, numerous credible bomb threats, and a range of other emergency circumstances and dangerous conditions.

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<sup>64</sup> It must be noted here that while the Department has accepted this presentation of incidents and events that required the issuance of an Emergency Notification as the best available, the information submitted to the Department does not provide reasonable assurance that all reported incidents were identified during the University's file review. The Department's investigation leaves no doubt that multiple incidents of crime, many of them serious, were never documented or responded to in a manner that would have resulted in the issuance of an Emergency Notification. These ongoing areas of concern noted throughout this FPRD will be addressed through the Department's post-review monitoring program.

Limited information<sup>65</sup> about these incidents and circumstances are identified in this chart:

<b>Incident Report Number</b>	<b>Incident Classification</b>
2016-LUPD-INT-0230	N/A
16-2321	Suspicious Circumstance
17-0072	Fire Alarm - No Fire
17-1899	Assist Other Department
18-00271	Suspicious Circumstance
18-00370	Suspicious Circumstance
18-00466	Suspicious Circumstance
18-01439	Assault / Assault/Kidnapping
18-02274	Informational
18-02284	Safety Hazard
19-01110	Fire - Accidental
19-01185	Bomb Threat
19-01424	Bomb Threat / Assist Other Department
20-01305	Safety Hazard
20-00638	Safety Hazard
21-01426	Bomb Threat
21-01485	Bomb Threat

Based on a review of all available information, including Liberty’s response and supporting documentation, this finding is sustained in its entirety. This includes the components of the finding related to Employee A and the former member of the University’s football team detailed in the PRR. In upholding the initial finding as to the contested case involving the former football player cases, the Department rejects the University’s argument that the issuance of a No Contact Directive on August 17, 2022, to the accused, an individual who had been credibly accused of stalking, other crimes, and violations of the institution’s code of conduct, eliminated the need to issue an Emergency Notification notice to the segment of the campus population who were foreseeably at risk. In this case, the segment of the campus community that had to be warned may have been as small as one person, namely the victim of multiple acts of violence committed by the former football player. The argument that the University attempted to limit the football player’s access to specific athletic buildings is similarly unpersuasive, especially because one of his victims had to be present in many of the same buildings. While the requirement to issue a notice is never contingent on a subsequent violent act or emergency, or the creation of another dangerous condition, it is notable here that the perpetrator did in fact continue to offend and was eventually removed from campus.

Similarly, the risk posed by Employee A’s continued presence on the campus was not mitigated by the eventual “investigation and resolution” of numerous complaints and statements of concern by

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<sup>65</sup> Certain known facts and case details about some incidents are being withheld intentionally given the sensitivity of the matters.

victims. In essence, the University argues that any danger posed by the employee's continued presence on campus was adequately addressed by the imposition of "disciplinary consequences" that resulted only in what appears to be a demotion by the University. Liberty argued that the conduct processes, which take time and were largely focused on holding violators accountable in a manner that would not be known to others, were enough to ameliorate the risk of permitting Employee A to remain on campus without the need to warn affected parties.

While it is entirely possible that the fact-finding processes of an investigation or hearing may expose a need to issue a notice, the University's argument that the Emergency Notification requirements are somehow superseded by the initiation of a disciplinary action incorrectly conflates the institution's Title IX processes<sup>66</sup> with the requirements of the *Clery Act*. The outcome of a case investigated and adjudicated under an institution's sexual misconduct policies and procedures may comply with the Department's Title IX regulations, and still require the issuance of an Emergency Notification. This is especially true in cases when an institution deviates in some manner from the strictures of its own policies and procedures. Under the standard proffered by the institution, in a case of alleged sexual violence where the victim invokes their rights under the *Clery Act* to specifically request that an investigation not be conducted there would be no requirement to consider the issuance of an Emergency Notification. Moreover, the University's implied claim that the presence of a person on campus cannot constitute or create an emergency or dangerous condition is simply not true. The Department has made similar findings in other cases where an individual caused or created an unsafe condition consistent with the regulatory requirements. In this context, it is imperative to keep in mind that the *Clery Act* does not dictate removal or even the method of remediation of an emergency or dangerous condition; rather, the only requirement is to warn the campus community or an affected segment about the risk.

The Department recognizes that the University has made some progress toward reviewing and revising its Emergency Notification policies and procedures. Nevertheless, the University's remedial actions will be subject to ongoing testing as part of the Department's post-review monitoring. The University must continue to implement remedial measures to ensure that these violations do not recur.

Liberty is reminded that the exceptions identified here constitute serious and persistent violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly "correct" violations of this type once they occur. Any failure to issue notices in response to emergencies or other dangerous conditions on campus constitutes a serious violation of Federal law and serves to negate a key component of the *Clery Act*, namely, to keep campus community members and other stakeholders informed about matters that may affect their health and safety or other changes in

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<sup>66</sup> During the investigation, the Department learned through interviews that multiple officials who were involved in the employee conduct process at the time recommended that Employee A be dismissed. Some of these individuals stated that their understanding was that the former President chose to retain Employee A in contravention of the recommendation that came out of the Title IX investigative and adjudicative process. So, in essence, the University now argues that an Emergency Notification was not required and cannot be required because a flawed conduct process led to the retention of the employee, meaning that he could not have posed a threat. The Department learned in November 2023 that Employee A was terminated at least in part due to the filing of two new credible complaints of sexual misconduct against him.

conditions that may pose a threat to them or their property. Accurate, complete, and timely information that builds awareness allows campus community members and their families to make well-informed decisions about where to study and work and empowers them to play an active role in their own safety and security on an ongoing basis. It appears that Liberty has taken some steps to address these violations going forward and that it is in the process of bringing its campus safety, crime prevention, and Clery compliance programs into alignment with the HEA and the *Clery Act*, as required by its PPA. Nevertheless, Liberty is advised that such actions cannot and do not diminish the seriousness of the violations that occurred throughout the review period.

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

#### ***Citation:***

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

#### ***Noncompliance:***

*Liberty failed to issue Timely Warnings in response to Clery-reportable crimes that may have posed a significant or ongoing threat to the campus community. A review of the University's documentation and admissions made by Liberty officials establish that there was a general failure to warn campus community members about these serious crimes. This condition persisted through the entirety of the review period and likely existed long before 2016.<sup>67</sup>*

*As noted in Finding #6, the most senior leaders at Liberty reorganized the LUPD to manage and monitor its operations. The primary feature and intent of the reorganization was to move all law enforcement and emergency operations under the authority and control of the EVP of HR.<sup>68</sup>*

*During this time, the LUPD command staff, line officers, and other officials<sup>69</sup> with related responsibilities were directed to not issue Timely Warnings and Emergency Notifications. These officials were advised that violations of this directive would result in disciplinary action.*

*This edict, which stood in stark contradiction to the University's publicly facing policy, applied to even the most serious crimes against persons and property including rapes and other sexually based offenses, robberies, physical assaults, and motor vehicle thefts. Records examined by the review team indicate that employees complied with the order, notwithstanding their serious*

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<sup>67</sup> See Finding #2 for information on the policy and procedural deficiencies associated with these violations.

<sup>68</sup> The long-time former EVP of HR is a member of the Falwell family and was regarded by many to be the second most powerful official at the institution at the time.

<sup>69</sup> Multiple current and former Liberty officials explained the change in policy of issuance of Emergency Notifications and Timely Warnings during interviews with the review team.

concerns about the negative impact on campus safety and the resultant violations of federal law. Compliance with the internal policy was so complete that the Department has only identified two warnings<sup>70</sup> that were issued during the review period, one of which was not issued until 24 days after the incident was first reported.<sup>71</sup> Several officials from offices across the institution, including the Title IX office, reported to the review team that they raised concerns about cases on their dockets that they believed could have posed serious or ongoing safety risks and recommended that warnings be issued. Based on the policy statements in the ASRs, the LUPD Chief had the sole authority to issue such warnings; however, the Chief did not have the actual authority to issue the Timely Warnings under the directive issued by the EVP of HR.

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

### **Failure to Issue Timely Warnings**

The Department has determined that Liberty did not issue Timely Warnings in response to incidents of crime reported that may have posed a serious or continuing threat to members of its campus community. These notification failures often occurred even after repeated incidents were reported involving similar methodology and suspect descriptions.

During calendar years 2016 to 2021, Liberty disclosed 284 Clery-reportable crimes (not including drug and alcohol disciplinary referrals and arrests).<sup>72</sup> During this time, the University only issued one Timely Warning, which was deficient as noted above.

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

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

In this example, Liberty violated timely warning provisions of the Clery Act when it did not issue a

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<sup>70</sup> The deficiencies associated with the second warning notification are described in Example #5.

<sup>71</sup> Liberty identified a notice about a "nationwide TikTok challenge" encouraging campus violence that was sent to the campus community on December 16, 2021, as a Timely Warning. This alert was actually an Emergency Notification as defined by the Clery Act.

<sup>72</sup> As detailed in Finding #5 and throughout this report, the crime statistics published in the University's ASRs and submitted to the Department were seriously flawed so as to be unreliable for consumer protection and compliance monitoring purposes. This data is presented here for contextual purposes only and in full knowledge that many incidents were improperly classified, counted, and disclosed.



*timely warning for a robbery and assault and battery that took place on its campus. It constituted both a serious and an ongoing threat to students due to the nature of the incident and the unknown whereabouts of the suspects.*

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

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

- 3. Beacon Incident #837985, #838027** – *In December of 2020 in an Orlando, Florida hotel being used by the Liberty football team,<sup>73</sup> the complainant was allegedly intoxicated from alcohol consumption when a football player forced her into performing oral sex on him.<sup>74</sup> The University's own Title IX file, while thin and not well organized, documented that an alleged rape of a vulnerable victim was committed by an offender who could have continued to commit similar crimes. The football player should have been considered a dangerous threat to the Liberty community.*

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

- 4. LUPD Incident #19-02750 (Rape)** – *On September 13, 2019, at approximately 12:00 a.m., a Liberty employee was allegedly raped. She also allegedly had her hair pulled and was slapped by her perpetrator. The victim claimed that she “gave in”<sup>75</sup> to sex because she was afraid of her attacker.*

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

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<sup>73</sup> The hotel constituted Clery Geography because it was being used to house Liberty athletes before their college football bowl game.

<sup>74</sup> Nonconsensual oral sex that occurs on Clery Geography constitutes a rape.

<sup>75</sup> Although the victim used the phrase “gave in,” the violence of the situation prevented her from giving voluntary and genuine actual consent.

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

This incident was one of five reported incidents of fondling that occurred during the two days of October 11 and October 12, 2019. No Timely Warning was issued to the campus community even though the information compiled in the LUPD’s own incident report noted that the perpetrator remained at large and could continue to offend. In this example, Liberty failed to issue a Timely Warning for an on-campus fondling incident,<sup>76</sup> which was classified as a sexual battery.

### **Warnings Not Issued in a Timely Manner**

The Department also found that in the rare instances where Liberty issued warnings, the warnings were not issued in a timely manner. The most recent noncompliant notification was issued in response to a series of motorized scooter thefts<sup>77</sup> that occurred on-campus:

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

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

- 2. LUPD Incident #21-008358 (Sexual Battery)** – On November 19, 2021, at approximately 5:35 p.m., a woman reported that she was allegedly fondled, choked, and prevented from leaving a vehicle that was on-campus by a University professor.

Liberty issued a warning notification on December 13, 2021, which was approximately three weeks after the incident occurred. The professor who committed the alleged crimes was arrested but bonded out, and therefore, could return to campus. As such, this offender continued to pose an ongoing and serious threat to the community. Had the University issued a Timely Warning weeks earlier upon realization that there was an ongoing and serious threat of a potential assailant who could have sexually assaulted additional victims,

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<sup>76</sup> As detailed in Finding #5, this incident of fondling was not included in the University’s crime statistics.

<sup>77</sup> Under the NIBRS, motorized scooters constitute motor vehicle thefts, which are crimes if they occur on Clery Geography.

*then it potentially could have prevented the victimization of several members of the campus community.*

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

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

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

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

*Liberty's policy states that a Timely Warning will be issued in response to reports of certain serious crimes that may constitute an ongoing threat to the University community. These crimes include homicide, robbery, and arson. The policy goes on to state that warnings maybe issued in response to other serious offenses including sex crimes. However, in nearly every case, Liberty failed to issue Timely Warnings to the community<sup>78</sup> as required by its own policies and procedures. Additionally, the Department must call attention to the fact Liberty's own policy goes above and beyond the requirements of the Clery Act by stating that warnings will be issued in response to crimes that occur at off-campus locations. By voluntarily committing to a higher standard of disclosure and communicating that position to the campus community through its ASRs, this is the compliance threshold to which the Department will hold the institution.*

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<sup>78</sup> *In this context, it must be noted that the LUPD would sporadically issue BOLO and “LUPD Intel Bulletins” internally to advise officials with an apparent need to know about matters that may have posed some sort of threat to campus property and/or campus community members, or that required additional investigation or other follow-up.*

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

**Required Action:**

*As a result of these violations and as part of the comprehensive file review required under Finding #5, Liberty is required to identify all Clery-reportable crimes<sup>79</sup> that required the issuance of a Timely Warning during calendar years 2016-2022. The file review summary report must indicate if a Timely Warning was issued. If a warning was issued, the timing of the warning and the mode of communication must also be ascertained and identified in the summary report.<sup>80</sup>*

*If a Timely Warning was not issued, Liberty must indicate whether the University now believes that a warning was required. If Liberty determines that a warning was not required, it must explain its reasoning and provide documentation in support of its determination. In this context, the University is reminded that the mere fact that a subsequent crime of the same or similar type did not actually occur is not a justification for failing to issue a warning in response to an initial Clery-reportable offense that reasonably posed such a threat. The University must prepare a summary report containing this information and submit it with its official response to this PRR. Copies of any Timely Warnings that have not already been provided to the Department must accompany Liberty's summary report.*

*Additionally, Liberty must review and revise its Timely Warning policies and procedures<sup>81</sup> as part of the comprehensive file review required under Findings #2 and #5. Procedures must be put in place to ensure and facilitate the timely issuance of warnings for all Clery-reportable crimes that pose an ongoing threat to the campus community in accordance with 34 C.F.R. § 668.46(e).*

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

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

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<sup>79</sup> The Department notes that Liberty's policy states that Timely Warnings will be issued for crimes that occur on or off campus. To simplify the file review process, Liberty is not required to evaluate whether Timely Warnings should have been issued in response to certain crimes that did not occur on Clery Geography. However, the policy violations stemming from the representation that Timely Warnings would be issued in response to certain off campus crimes will be sustained in the FPRD unless the institution can show that the policy statements were in fact accurate.

<sup>80</sup> Based on available documents and information, the Department does not anticipate that any incidents will fall into this category other than the two cases already noted.

<sup>81</sup> The Department is in receipt of the VP of OEC's letters dated January 25, 2023, and March 21, 2023, that discuss Liberty's enhancements to its Clery Act compliance program.

### **Institutional Response:**

In its narrative response, Liberty concurred with the Department's finding that the University persistently and systemically failed to issue Timely Warnings in response to Clery-reportable crimes that may have posed a significant or ongoing threat to the campus community. The University also conceded that it did not follow the statements of policy and procedures in its ASRs regarding the issuance of Timely Warnings and acknowledged that the former EVP of HR actively prevented the issuance of such warnings in contravention of the public-facing policy statements. Additionally, the University acknowledged that certain officials with responsibility for campus safety, crime prevention, emergency management, and Clery compliance raised concerns internally about these failures and the need to issue Timely Warnings in cases that may have posed a significant or ongoing threat.

Liberty also described several steps it has taken to address these deficiencies. Specifically, the University asserted that it has engaged in significant efforts to review and revise its Timely Warning policies, procedures, and practices on a parallel track with the changes to the Emergency Notification processes described in the response to Finding #6. Under the new process, decision-making with respect to issuance of a Timely Warning will no longer be controlled by a single official or department. Multiple officials, including representatives from the LUPD and Emergency Management will collaborate and will do so under the leadership and input of the VP of OEC. This process was presented as a means of implementing checks and balances and addressing the internal control failures that contributed to this deficiency. The University stated that it has also created a Timely Warning decision matrix that will guide the process, help to ensure consistency, and document the factors that were considered during internal deliberations about the issuance of Timely Warnings.

In addition, Liberty stated that it has conducted outreach with key stakeholders to emphasize the current administration's commitment to full compliance with the Timely Warning and Emergency Notifications requirements. In support of this commitment, the University submitted a draft of its revised Emergency Notification and Timely Warning Policy to the Department. As noted in its response, Liberty leadership has directed the VP of OEC to work with the LUPD, Emergency Management, Communications, and other relevant offices "to develop a streamlined, compliant process." The University advises that, under the direction of OEC, training on the new and revised policies and procedures was provided to officials with responsibility for issuing Timely Warnings. As it has been explained to the Department, this training reinforced the University's stated commitment that employees will not be questioned or admonished for issuing compliant warnings and notices. Finally, the University stated that it is developing standardized record retention policies and practices and building appropriate redundancies into the oversight program. The University also stated that it continues to consult with its external advisors to review and improve its processes to ensure competent and reliable operations going forward.

### **Final Determination:**

Based on the Department's review of all available information, this finding is sustained and closed for purposes of this program review. In Finding #7, Liberty was cited for a persistent and systemic

failure to issue Timely Warnings to advise the campus community about Clery-reportable crimes that may have posed a significant or ongoing threat to persons on the University's Clery Geography. As noted in the PRR, these violations persisted throughout the entirety of the review period, primarily as a result of the policy imposed on LUPD and emergency managers following a reorganization that resulted in the former EVP of HR taking control of campus safety functions at the University. Given the nature and scope of this non-compliance, the Department focused its finding on specific examples where Timely Warnings were clearly required and were not issued.

As a result of these violations and as part of the comprehensive file review described in Finding #5, Liberty was required to evaluate incident reports and other relevant documentation to determine if the criminal activity identified therein created or resulted in a significant or ongoing threat that required the issuance of a Timely Warning. The University was required to report its findings in the summary report created in response to Finding #5. Additionally, the institution was required to develop and implement policies and procedures to ensure and facilitate the issuance of Timely Warnings in accordance with 34 C.F.R. § 668.46(e) and to submit all new and revised public-facing and internal guidance to the Department as part of its response to the PRR.

In its response, Liberty concurred with the finding and stated that substantive work on new and revised policies and procedures that would address these violations going forward was underway. Liberty submitted the summary report documenting the results of the file review. The Department also required the University to supplement its response to this finding to address questions that emerged during testing of the response. Based on a detailed examination of the file review and supplemental information, 47 incidents were identified that clearly required the issuance of a Timely Warning, including the 7 incidents referenced in the Department's PRR for which a Timely Warning was not issued.<sup>82</sup> The list of incidents that required a Timely Warning are attached as Appendix C.<sup>83</sup> The list includes multiple sex crimes, robberies, and home invasions, among other offenses. Please note that warnings were issued in two of these cases, 21-08358 and 22-014158, but were sent long after each of these serious offenses was reported to a CSA, 109 and 24 days respectively.

The Department recognizes that the University has made some progress towards remediating the underlying factors that led to this finding. However, the Department will continue to review Liberty's progress through the Department's post-review monitoring. Liberty officials and directors are put on notice that they must continue to implement necessary remedial measures to ensure that these violations do not recur.

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<sup>82</sup> Again, it must be noted here that while the Department has accepted this presentation of incidents and events that required the issuance of a Timely Warning as the best available, the information submitted to the Department does not provide reasonable assurance that all reported incidents were identified during the University's file review. The Department's investigation leaves no doubt that multiple incidents of crime, many of them serious, were never documented or responded to in a manner that would have resulted in the issuance of a Timely Warning. These ongoing areas of concern noted throughout this FPRD will be addressed through the Department's post-review monitoring.

<sup>83</sup> Limited information about these incidents and circumstances are identified in this chart. For formatting purposes, the chart summarizing this Final Determination is attached as Appendix C.

Liberty is reminded that the exceptions identified here constitute serious and persistent violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly “correct” violations of this type once they occur. The failure to issue Timely Warnings in response to Clery-reportable crimes that may have posed a significant or ongoing threat resulted in a serious violation of Federal law and served to negate a key intention of the *Clery Act*, namely, to keep campus community members and other stakeholders informed about matters that may affect their health and safety or that may pose some tangible threat to their well-being or their property. Accurate, complete, and timely information that builds awareness allows campus community members, their families, and other stakeholders to make well-informed decisions about where to study and work and empowers them to play an active role in their own safety and security on an ongoing basis. Although Liberty has asserted that it has taken action to address these violations going forward, such actions cannot and do not diminish the seriousness of these violations.

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

#### ***Citation:***

*Institutions with a police or campus security department must maintain “a written, easily understood daily crime log” listing all crimes that occurred 1) on campus including residence halls; 2) in non-campus buildings or on non-campus property; 3) on public property within the campus or immediately adjacent to and accessible from the campus; or 4) within the boundaries of the campus police or security department’s patrol zone. This reporting requirement applies to all crimes, not merely those crimes identified as Clery crimes and listed in 34 C.F.R. § 668.46(c)(1) and (3).*

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

#### ***Noncompliance:***

*The Department found that Liberty failed to maintain accurate and complete daily crime logs throughout the review period, as follows:*

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

**LUPD Incident #16-1301 (Rape)**<sup>84</sup> – The crime associated with this report constituted a rape that occurred in the LUPD’s patrol zone and was omitted from the daily crime log.

**LUPD Incident #17-0500 (Stalking)**<sup>85</sup> – The crime associated with this report constituted an incident of stalking that occurred in the LUPD’s patrol zone and was omitted from the daily crime log.

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

**LUPD Incident #16-0174 (Fondling, Dating Violence)**<sup>86</sup> – The crimes associated with this report constituted a fondling incident as well as dating violence. Liberty should have entered the two distinct crimes of fondling and dating violence. While the reference to sexual battery is acceptable, in that this description can include the act of fondling as defined under Federal law, Liberty failed to include an entry for dating violence.

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

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

- 3. Improper Use of the “Informational” Classification** – The Department has found that the LUPD failed to include crimes that were filed as “Informational.” On numerous

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<sup>84</sup> As detailed in Finding #5, this incident also constituted an underreported rape.

<sup>85</sup> As detailed in Finding #5, this incident also constituted an underreported incident of stalking.

<sup>86</sup> As detailed in Finding #5, this incident also constituted an underreported crime of dating violence.



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

**LUPD Incident #16-1382 (Informational)**<sup>87</sup> – The incident associated with this report constituted a motor vehicle theft that occurred in the LUPD’s patrol zone. The crime is not entered in the daily crime log.

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

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

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

### **Required Action:**

As a result of these violations and as part of the comprehensive file review described in Finding #5, Liberty must conduct a review of daily crime log data from 2016 to Present to identify errors and omissions in the information in the logs regarding incidents of crime reported as occurring on the University’s Clery Geography, including the patrol zone. To accomplish this testing, the University must trace a random sample of 20% of all LUPD incident reports as part of the file review to the daily crime log for the purpose of identifying deficiencies in the log.<sup>88</sup> Errors and omissions must be categorized into the following categories of noncompliance: 1) omission of crime; 2) misclassification of crime; 3) failure to list all crimes associated with a reported incident; 4)

<sup>87</sup> As detailed in Finding #5, this crime also constituted an underreported motor vehicle theft.

<sup>88</sup> If it so chooses, the institution may utilize dropdown menus in its summary report to present these deficiencies.

*inaccurate counts of crime; 5) disposition errors; 6) date errors; 7) location errors<sup>89</sup>; 8) failure to update entries; and, 9) any other deficiencies.<sup>90</sup> The University must prepare a summary report containing this information and submit it with its official response to this PRR. The Department will review Liberty's response and if additional testing is required, the University will be notified.*

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

*Additionally, Liberty must ensure that the log is made readily available for review by members of the campus community as well as the general public. A copy of the revised policies and procedures must be submitted with the University's response to this PRR.*

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

### **Institutional Response:**

In its narrative response, Liberty concurred with the Department's finding that the University did not maintain accurate and complete daily crime logs throughout the review period. The University also acknowledged that numerous offenses were omitted from the logs in their entirety and that the University frequently failed to enter all offenses associated with a reported incident as required by the *Clery Act*. Liberty also conceded that improper and nonspecific incident classifications, such as "Informational," were used in the place of actual crime classifications. Further, the University admitted that responsible officials systematically failed to update daily crime log entries and that these and other failures to comply were largely attributable to a lack of adequate internal controls. Some of these deficiencies in recent years were attributed to the attempted implementation of a new records management system for the LUPD.

To address these deficiencies going forward, Liberty management asserted that the University has significantly strengthened its processes for maintaining the required logs. Several process improvements were described, including an enhanced training program. The University has advised

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<sup>89</sup> As noted in the Required Action sections of Findings #5 and #9, the University is required to conduct a comprehensive geography review. As part of this process, Liberty must classify each building, property, or other parcel, and determine if it is part of the University's Clery Geography. These determinations must be used to assess the accuracy of the locations referenced in the 20% sample. All errors must be reported in this field. Liberty is also required to disclose any omissions of daily crime log entries that resulted from its failure to properly identify and classify its Clery Geography at any point in the review period.

<sup>90</sup> Any entry in the "Other" field must include an explanation of the daily crime log deficiency.

that it provided report writing training and instruction on consistent documentation practices to responsible officials. As with other areas of *Clery Act* compliance, the University claimed that the leadership of OEC will perform key oversight functions to ensure proper maintenance of the daily crime log.

### **Final Determination:**

Based on the Department's review of all available information, this finding is sustained and closed for purposes of this program review. In Finding #8, Liberty was cited for its longstanding failure to maintain accurate and complete daily crime logs, as summarized in the Noncompliance section above. As noted in the PRR, these violations persisted throughout the entire review period. Given the nature and extent of this noncompliance, the Department chose to only highlight in the PRR seven examples of three specific types of deficiencies that were repeatedly identified in the review of the initial file samples. During this component of the review, incident reports were tested for various compliance attributes. A sub-sample of these incident reports were then traced through to the daily crime log. During the early stages of this testing, it became obvious that nearly every aspect of the crime log process was defective or simply absent.

As a result of these violations, Liberty was required to conduct a review of daily crime log data from calendar year 2016 through the majority of calendar year 2023 to identify errors and omissions related to incidents of crime that were reported as occurring on the University's Clery Geography, including its patrol zone. To make the process more manageable, the Department allowed the University to conduct the file review based on a sample of 20% of LUPD incident reports that were examined as part of the comprehensive file review required under Finding #5. Liberty was directed to categorize errors, omissions, and other deficiencies into nine types of noncompliance and to submit a summary report of its findings as part of its official response to the PRR.

Liberty was also required to review and revise its policies, procedures, and internal controls to ensure that all incidents of crime that are reported as occurring on the institution's Clery Geography are entered on the daily crime log, as required. The Department emphasized that these process improvements must provide for the designation of a capable official to ensure that all incidents are logged properly, that all fields are updated within two business days as new information becomes available for at least the first 60 days, and that the log is readily available for inspection by members of the campus community and the general public. A copy of all new and revised policies and procedures were to be submitted with the University's response to the PRR.

Liberty concurred with all aspects of the Department's finding, asserted that certain remedial actions were initiated and are ongoing, and submitted supporting documents and information. The University submitted the file review required by the PRR. Liberty representatives also advised the Department that it was not practical to conduct the daily crime log component of the file review or to prepare the summary report in the manner set out in the Department's PRR, principally due to the nature and extent of the errors and omissions identified during testing. Among other problems, the institution determined that it was not possible to account for incidents that were omitted from the logs in their entirety when selecting a statistically valid sample for testing of compliance attributes.

As a result of these and other factors, the Department conducted additional testing of its own and requested supplemental information from the University. After multiple rounds of document requests and analyses, the Department was able to make determinations concerning the daily crime log violations during the review period.<sup>91</sup> The following chart summarizes the identified violations:

Calendar Year	Total Daily Crime Log Entries	Omitted Daily Crime Log Entries <sup>92</sup>	Entries Containing One or More Errors/Omissions
2016	497	101	242
2017	529	226	228
2018	451	121	318
2019	381	30	336
2020	420	104	305
2021	502	295	205
2022	664	571	92
2023	228	4	223
<b>Totals</b>	<b>3,672</b>	<b>1,452</b>	<b>1,949</b>

In summary, this data shows that **93%** of the required line items in Liberty’s daily crime logs were deficient or missing during the review period. These exceptions demonstrate Liberty’s failure to comply with the daily crime log requirements and serve to further document the University’s administrative impairments set out in Finding #1. The Department takes note that some of these errors and omissions can be attributed to the retirement of the institution’s prior records management system and attempts to implement a new one. It is concerning that responsible officials either failed to realize that these system issues were causing a complete failure to produce the required logs or realized that there was an issue and took no action to implement a temporary fix until the system issues were remedied. As a result, in calendar year 2022 alone, 571 incidents of crime that were required to be entered on the log were omitted in their entirety.

It is important to understand that these errors and omissions were not merely administrative or technical in nature. For example, Liberty identified numerous reports of serious crime as

<sup>91</sup> While the review team has settled on the presented data as the best available, the Department must make clear that its investigation leaves no doubt that multiple incidents of crime, many of them serious, were never documented or responded to in a manner that would have resulted in these crimes being entered into the log in the required manner. The other violations and areas of concern noted throughout this FPRD support that victims of crime were not served in accordance with Federal law or the institution’s own policies, procedures, and pronouncements, and as a result, those incidents are lost to history, almost guaranteeing that even with all the additional work performed by the University to reconstruct its crime reporting that there are incidents that should have been reported that have not been. The Department’s ongoing concerns in this regard will be addressed through a program of post-review monitoring.

<sup>92</sup> Omitted Daily Crime Logs Entries means that the incident was never entered onto the daily crime log. Obviously, there is no way to select an omitted entry for testing of compliance attributes. This is one of the factors that further complicated the selection of a reliable sample for the file review thereby necessitating a review of all log entries. It also made it impractical to produce a summary report at the time that the file review was conducted. The likely contents of such a report were extracted over time through subsequent data requests and further analysis.

“Informational” in its daily crime logs. This innocuous label for a report is most often used by campus police departments when, in the course of normal operations, a determination is made that some follow-up or consultation is needed, usually with a non-law enforcement entity about a non-emergency such as a facilities repair, insurance claim, or communication with civilian or institutional authorities. At Liberty, such vague classifications were used to document serious felonies and violent crimes, including sexual assaults. Furthermore, the review shows and Liberty concedes that inadequate policies, procedures, and oversight contributed to this condition as did a failure to adhere to internal processes that were in place at various points of the review period. Institutional officials, including the Clery Compliance Officer and staff in the LUPD records section, raised concerns about the daily crime log over many years. However, Liberty failed to address these concerns, even after the Department opened the program review in 2022.

In upholding this finding, the Department notes that these violations<sup>93</sup> are and were inextricably connected to the longstanding and systemic deficiencies<sup>94</sup> noted throughout this FPRD, especially Findings #1, #3, #5, #6, #7, #9, and #10, all of which in several material respects relate to the compilation and reporting of crime statistics. The University’s failure to comply with the daily crime log requirements is significant because it essentially guaranteed that the institution’s crime statistics would be neither complete nor accurate throughout the review period.

The Department acknowledges that the University has represented that substantive steps have been taken to address the deficiencies in this finding. However, the University’s remedial actions will be subject to ongoing testing as part of the Department’s post-review monitoring. The University must continue to evaluate the deficiencies identified in this finding and take appropriate remedial actions to ensure that these or similar violations do not recur.

Liberty is reminded that the exceptions identified here constitute serious and persistent violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly “correct” violations of this type once they occur. Any failure to maintain an accurate, complete, updated, and accessible daily crime log constitutes a serious violation of Federal law and serves to negate a key intention of the *Clery Act*, namely, to allow campus community members and other stakeholders to stay informed on an ongoing basis about matters that may affect their safety and security. The maintenance and availability of the log is an essential part of a compliant *Clery Act* program and

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<sup>93</sup> Because of the nature, number, and extent of the violations in this area, the Department continues to be concerned about the accuracy and completeness of the University’s daily crime log. For example, the Department points to 28 incidents between calendar years 2019-2023 where more than one criminal act was reported but only one offense was documented in the daily crime log summaries provided to the review team.

<sup>94</sup> Again, it must be noted that while the Department has accepted the presentation of facts in the file review as the best available, the Department does not believe that such presentation is materially complete. The Department has identified anomalies and variances in the data indicative of a substantial likelihood that at least some reported incidents simply were never documented and/or classified in a manner that would have resulted in those crimes being included in the annual compilations of crime statistics or in the daily crime logs or in the file review required by the Department in the PRR. For example, the Department notes the low levels of VAWA offenses disclosed in calendar years 2016 and 2017. These ongoing areas of concern noted throughout this FPRD will be addressed through the Department’s post-review monitoring.

serves the transparency goals of the law. Accurate, complete, and timely information that builds awareness allows campus community members and their families to make well-informed decisions about where to study and work and empowers them to play an active role in their own safety and security and to adjust their activities in light of safety considerations and changed circumstances. Although Liberty has stated that it has taken steps to address this finding going forward, it is advised that such actions cannot and do not diminish the seriousness of the violations that occurred throughout the review period.<sup>95</sup>

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

#### ***Citation:***

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

*On-campus I: any building or property owned or controlled by the institution within the same reasonably contiguous geographical area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls;*

*On-campus II: any building or property owned by the institution that is within or reasonably contiguous to the area identified above, but is controlled by another person or entity;*

*Non-campus Property: any building or property owned or controlled by a student organization that is officially recognized by the institution or any building or property owned and controlled by the institution that is used in direct support of, or in relation to, the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution; and,*

*Public Property: all public property that is within the boundaries of the campus or that is immediately adjacent to or accessible from the campus.*

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

#### ***Noncompliance:***

*Liberty failed to properly apply the geographical definitions of the Clery Act. The review team*

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<sup>95</sup> Because of the nature, number, and extent of the violations in this area, new violations continue to come to the fore. For example, the Department points to 28 incidents between 2019-2023 where more than one criminal act was reported but only one offense was entered on the daily crime log.

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

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

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

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

Liberty failed to identify the Center for Engineering Research and Education (CERE) as a non-campus building. The Department found that from 2019, when the facility was opened, until the beginning of this program review, the CERE should have been categorized as being part of the University's Clery Geography.<sup>96</sup>

Based on representations by the University as well as interviews with institutional officials, Liberty did not designate this building as being a part of its Clery Geography until at least February of 2022. Under the University's policy, the LUPD is responsible for designating buildings and properties that are part of the University's Clery Geography, including its patrol zone.<sup>97</sup> In the March 21, 2022, response to the program review announcement letter, Liberty produced a map of its building and properties used for educational purposes, entitled "Clery Geography Map." The map clearly indicates that the CERE is part of the LUPD's patrol zone but not identify it as a non-campus building. The Clery Compliance Officer, who is one of the key individuals involved in the designation of the University's Clery Geography, stated that he was not aware that the CERE had ever been designated as Clery Geography prior to the beginning of the program review. On March 21, 2022, Liberty produced a property list to the Department. This was the first time that the CERE was correctly designated as a non-campus building.

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<sup>96</sup> The CERE was purchased by Liberty in 2017 but was not used for research and academic purposes until 2019.

<sup>97</sup> The Department is aware of Liberty's currently proposed – but not yet approved – Clery Geography policy, which consists of a committee that designates buildings and properties as being a part of the University's Clery Geography.

*University officials responsible for real estate management conceded that the institution has experienced difficulties in defining its campuses and identifying all of its real estate holdings.<sup>98</sup> A former Liberty President purchased many parcels of real estate where the purpose of the purchase is yet to be determined. Accordingly, the University has not been able to accurately classify those buildings and properties that are part of its Clery Geography and as a result, has not be able to establish its public property boundaries accurately.*

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

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

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

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

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<sup>98</sup> *The Department recognizes that some of Liberty's real estate holdings were purchased solely for investment purposes.*



#### 4. **Failure to Recognize On-campus Residences:**

*The Liberty Godparent Home (LGH) is an on-campus building that houses pregnant women who are unmarried. Over the course of this review period, numerous Liberty students were forced to live at the LGH as a condition of their continued enrollment at the University.<sup>99</sup>*

*By housing Liberty students in the on-campus LGH, the University should have recognized the LGH as being an on-campus residence building, and it has never done so. This also means that Liberty was fully obligated to comply with the HEA fire safety provisions with respect to the LGH and has not done so since LGH's inception.<sup>100</sup>*

#### 5. **Failure to Recognize Separate Campuses:**

**a) Liberty University Online Facility** – *From May of 2016 to Present, the Liberty University Online business facility has been located on Graves Mill Road in Lynchburg, Virginia. Right before that, the facility was located in the River Ridge Mall complex.<sup>101</sup> Liberty has never properly recognized either of the two Liberty University Online locations as being separate campuses.*

**b) Liberty Mountain Medical Group (LMMG) Facilities** – *The LMMG operates out of two distinct buildings – one on Wards Road in Lynchburg, Virginia and the other on Lakeside Drive in Lynchburg, Virginia. Both LMMG buildings operate as medical facilities and academic medical practices for Liberty University College of Osteopathic Medicine (LUCOM) students. The Wards Road location has been in service since 2015 and the Lakeside Drive location since 2021. From 2015 to Present, Liberty has never properly recognized the Wards Road location of LMMG as being a separate campus. Additionally, from 2021 to Present, the University has never recognized the Lakeside Drive location of LMMG as being a separate campus.*

#### 6. **Failure to Accurately Define Clery Geography:**

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

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<sup>99</sup> As part of its response to this PRR, Liberty must provide a list of all students who were required to live at the LGH and/or were required to seek counseling or spiritual guidance from LGH staff during the review period.

<sup>100</sup> The LGH was established in 1982.

<sup>101</sup> The review period starts at January 1, 2016, so the Liberty University Online facility was located at the River Ridge Mall for approximately the first five months of the review period.

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

**Required Action:**

*As a result of these violations and as part of the comprehensive file review described in Finding #5, Liberty must conduct a comprehensive review to identify and properly classify all buildings and properties that constitute its Clery Geography. During a meeting between the Department and the University that occurred on March 3, 2023, the Department notified Liberty that it must conduct a comprehensive review of all the buildings and properties owned or controlled for educational purposes. As part of this reassessment of all properties, Liberty must also account for its immediately adjacent and accessible public property, including all walkways.*

*Liberty has advised the Department that the University has already begun work on this analysis. Because of the University's admitted issues identifying all of Liberty's real estate<sup>102</sup> that was purchased by the former Liberty President, and the intended use of those properties, the Department will require that the University certify that it has identified all of the properties that should have been included within its Clery Geography.*

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

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

**Institutional Response:**

In its narrative response, Liberty concurred that it failed to properly define its Clery Geography as campus land holdings grew and operations changed. Specifically, it concurred that it failed to designate the following categories as Clery Geography: 1) "on-campus" buildings and properties; 2) non-campus buildings and properties; 3) immediately adjacent and accessible public property; 4) all on-campus residences; and 5) separate campuses. The University generally acknowledged that it failed to accurately define much of its Clery Geography.

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<sup>102</sup> This reference to "Liberty's real estate" includes all buildings, properties, and other parcels that are owned by corporate entities created or controlled by the University including foundations, holding companies, partnerships, related parties, and other affiliates.

## **Final Determination:**

The Department sustains the finding in its entirety and considers it closed for purposes of this program review. The Department acknowledges the University commissioned a comprehensive review of all real estate holdings and asserted that it has made significant progress in identifying and classifying its Clery Geography. The University's efforts in this regard will be subject to ongoing testing as part of the Department's post-review monitoring. Liberty must continue to develop its Clery Geography policies and procedures and effectively communicate with the campus community and other stakeholders on these vitally important issues. Moreover, Liberty must continue to assess the issues identified in this finding and take necessary remedial measures to ensure that these violations do not recur.

Liberty is reminded that the noncompliance identified here constitute serious and persistent violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly "correct" violations of this type once they occur. The failure to appropriately identify Clery Geography negatively impacts an institution's ability to properly compile and disclose accurate and complete crime statistics and negates a key component of the *Clery Act*, namely, to ensure that campus community members and other stakeholders have access to reliable crime data. Although Liberty states that it is implementing remedial measures to address the deficiencies identified in this finding going forward, it is advised that such actions cannot and do not diminish the seriousness of the violations that occurred throughout the review period.

## **Finding #10: Failure to Comply with Title IV Record Retention Requirements**

### ***Citation:***

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

### ***Noncompliance:***

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

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

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

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

*Prior to the Department's initial compliance assessment which started in May 2021, until the present, Liberty could not produce reliable documentation to substantiate the accuracy and completeness of its crime statistics. University officials have openly conceded this point to the Department since the earliest days of the review process.<sup>103</sup> The Department has worked diligently to develop an understanding of whatever work was done at the time to compile and disclose required information, even though that task has been complicated by lack of available records and the unreliability of others. What is known is that Liberty's crime statistics were seriously flawed throughout the review period and that the lack of reliable source documents has made the process of determining the full extent of the deficiencies nearly impossible.*

*It is now evident that multiple offices that had campus safety and student and employee conduct-related functions failed to produce and retain required records and, in some cases, selectively destroyed or otherwise removed or expunged records that needed to be retained. In some cases, the only existing student-level records were destroyed. For example, several of the Jane Doe plaintiffs and their legal counsel as well as several University-affiliated persons reported that they were unable to access key records, even as other records from the same data sets, such as email messages, were made available. The fact that many of those records were retained while some of the most relevant ones were destroyed raises a special concern for the Department.*

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<sup>103</sup> In a letter dated March 21, 2022, Liberty stated that its production of an "audit trail" represented the "University's crime statistics as they appeared in the original version of each ASR for each year and a separate accounting for any revisions that were made at any point thereafter, with a brief explanation for why those incidents were not reflected in the initial compilation."

Individuals reported that they were unable to acquire certain records, including but not limited to email messages,<sup>104</sup> that were needed to advance their cases or for other lawful and legitimate purposes related to their educational or career pursuits. The Jane Doe plaintiffs' counsel told the Department that Liberty was unable to produce his clients' email records for litigation purposes. Additionally, one of the Jane Does provided the Department with a video and an audio recording of her virtual conversation with University Information Technology (IT) in an attempt to retrieve her old student emails. IT was unable to fulfill her request and failed to explain why it would not provide her with the messages.

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

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

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

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

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<sup>104</sup> In Liberty's rudimentary record retention environment, the email platform essentially served as a system of record for certain aspects of the campus safety programs, especially with regard to reports of sexual violence. This inability of persons to gain access to key communications was noted in the Jane Doe litigation, but it was also raised by current and former students and employees who were victims of crime during the review period.

*records and information (including the records and information requested in your review), being available for interviews and meetings, providing accurate, complete, and reasonably prompt responses to all requests made by the Department, and by otherwise cooperating with this review.”*

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

*In regard to the April 26, 2022, hard drive incident, HR’s hard drives that were allegedly wiped included those once held by the current Executive Vice President (EVP) of HR and his predecessor, as well as other HR department leaders. Based on interviews with a former Liberty dean and a University IT support specialist, this event occurred within just a few hours after the Department formally interviewed the EVP of HR and his Executive Director, a discussion that dealt with the subjects of conduct and disciplinary investigations and the importance of maintaining records. During the interview, the review team reminded these individuals of the mandates to maintain records that were specified in the announcement letter. As illustrated later in this Finding, the document destruction happened within a few hours after the Department had reminded the EVP of HR and his Executive Director to preserve all records for the duration of the program review process. Furthermore, there had been very specific orders given by both the current President of Liberty and the University’s outside counsel and consultants.<sup>105</sup> Per the review team’s discussion with the University IT support specialist, the request for IT to wipe an HR hard drive was atypical according to IT protocol.*

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

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

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<sup>105</sup> See letter from Liberty’s President dated March 3, 2022.

*advised the Department that it would create new audit trails in an attempt to identify the incidents that were used to compile the crime statistics included in its ASRs during the review period.<sup>106</sup> A condition of this type could easily and legitimately be taken as evidence that the institution simply estimated its crime statistics or otherwise made them up to serve the longstanding narrative as discussed in Finding #6 that it was the safest college in Virginia.<sup>107</sup>*

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

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

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

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<sup>106</sup> These issues were discussed between Liberty officials and the Department on several occasions including a May 16, 2022, meeting.

<sup>107</sup> As discussed in Finding #6, Liberty had long represented that it was the “safest college in Virginia” and one of the safest in the nation.

*document destruction was truly routine and appropriate, it seems implausible that the LUPD command staff would find it necessary to initiate an investigation.*

*The Department's concerns in this regard are heightened precisely because of the occurrences throughout the program review process that indicate Liberty does not understand or simply does not respect the Title IV record retention and production requirements that apply to all participating institutions. On at least four occasions, the University, through its Office of Legal Affairs, has characterized the production of basic records to the Department as "voluntary," which implies a lack of legal obligation. The production of records in response to a request from the Department is not voluntary and the regulations are clear that production of program review data is an obligation of Title IV participation.<sup>108</sup>*

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

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

**Required Action:**

*As a result of these violations, Liberty must develop policies and procedures to ensure that all records of Clery-reportable offenses and other matters related to the University's efforts to comply with the Clery Act requirements are retained and effectively managed going forward. As part of this process, the institution must ensure that adequate information on all Clery-reportable crimes is produced and retained in a manner that allows the documents and information to be*

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<sup>108</sup> See four letters from Liberty's Office of Legal Affairs to the Department dated June 13, 2022, August 15, 2022, September 2, 2022, and February 15, 2023.



*identified and retrieved as needed and that supporting information that substantiates the accuracy and completeness of all crime statistics is available for review by the Department. Copies of these additional policies and procedures must accompany the University's response to this PRR. In addition, the University must produce the destruction orders for the 2016 incident referenced above and all other Clery Act-related records that are covered during the review period.*

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

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

### **Institutional Response:**

In its narrative response, Liberty concurred that it did not consistently retain all required records necessary to establish its compliance with the *Clery Act*. The University also concurred that it did not establish a specific institution-wide record retention program and that policies were not consistent across the University. The University also acknowledged that the gaps in records retention have affected the Department's ability to conduct required oversight and monitoring activities. However, the University disagreed that the state of the records was so deficient as to compromise effective review by the Department or that the gaps in its records retention caused actual harm to individuals who have tried to access their own educational and employment records. Liberty also disagreed with the statement that "Liberty does not understand or simply does not respect the Title IV record retention and production requirements that apply to all participating institutions."

In addition, the University did not concur that it selectively destroyed or otherwise removed or expunged records that needed to be retained. Specifically, the University disagreed with the Department's conclusions with respect to two incidents cited by the Department in support of its findings regarding records retention. The first incident relates to the Department's assertion that "senior officials in HR sought the assistance of IT staff to wipe certain computer hard drives on April 26, 2022, the very week that the review team first visited the campus." With regard to this issue, Liberty stated that it conducted a forensic analysis of the deletion of this data and found that only six records were unaccounted for out of 12,326 folders. The second incident relates to the Department's assertion that potentially significant LUPD records were shredded in 2016.

### **Final Determination:**

Based on all the facts and circumstances, the Department sustains this finding and considers it to be closed for purposes of the program review. As a general matter, the Department's regulations

provide that a participating institution “shall establish and maintain, on a current basis, ... program records that document... (3) Its administration of the title IV, HEA programs in accordance with all applicable requirements.” 34 C.F.R. § 668.24(a). In its response, the University does not disagree with the finding as a whole. Rather, it disagrees with certain aspects and characterizations in the finding. None of the aspects or characterizations disputed by the University are necessary to sustain the finding. As a threshold matter, the Department notes that Liberty’s claim that the records were not so deficient as to compromise the Department’s review is not a determination for the University to make. To support its assertion, Liberty references its file review and document production stating that it reviewed more than 350,000 individual records and that it produced more than 31,000 pages of documents to the Department. The number of pages reviewed or produced is irrelevant to the analysis with respect to this finding. The only issue is whether the records produced fully document actions required for compliance purposes. The Department has determined that the University did not maintain or retain required documentation during the review period.

The University also objected to the characterization that its failure to maintain records resulted in actual harm to students. It is the Department’s position that any institution’s inability to substantiate its crime statistics or to develop and implement required policies, procedures, and programs and demonstrate the ability to retain and produce required records does result in harm to campus community members. Any failure to do so results in a violation of Federal law. Furthermore, as noted in the PRR, on the basis of interviews with various stakeholders and the direct observations of the review team, the Department has concluded that some of these failures did in fact cause harm to students as a result of the University’s inability to fulfill appropriate requests made by current and former students.

As part of this Final Determination, the Department wishes to clarify two matters referenced in the initial finding. First, regarding the destruction of certain LUPD incident reports, the University was able to produce destruction orders showing that LUPD records were regularly destroyed in accordance with established internal policies and procedures and that certain of these records were maintained in an electronic form as part of a file migration. Second, the Department wishes to clarify the language in the PRR concerning the erasure of data on certain computer hard drives. The report used the terms “wipe” and “wiped,” which could be read to indicate that the University removed all material from the drives with the intent to withhold it from the Department. In its response, the University provided credible evidence showing that information that was stored on these drives was uploaded to the institution’s OneDrive, a cloud-based data storage system. Based on this new information, the Department recognizes that references suggesting that the University deleted the data from the hard drive with ill intent is not supported by the current record.

The University also objected to the Department’s statement that Liberty estimated its crime statistics or made them up to support its claim as the safest college campus in Virginia. The Department recognizes that this could be read to imply that the University acted in bad faith by reporting crime statistics that it could not support. The Department acknowledges that certain staff who are no longer employed at the University contributed to some of the University’s initial inability to substantiate the crime statistics it reported in its ASRs and to the Department.

The University has claimed that it has implemented remedial measures to ensure this does not recur in the future. The Department will ensure that these remedial measures have been implemented through post-review monitoring.

In the PRR, the Department also noted that no aspect of Clery compliance nor any part of an institution's cooperation with the program review process is voluntary. In various discussions and in certain correspondence, institutional officials and external counsel referred to certain "voluntary" actions or intentions related to the program review process. Based on subsequent discussions with these officials and representatives, it became clear that the Department's concern was largely owing to differences in terminology used by both sides. In response to questioning by the Department, Liberty's external counsel clarified and confirmed that the references to "voluntary" actions merely expressed the client's interest in pursuing resolution of the program review, if possible, in a manner similar to the "voluntary resolution process" commonly used by the Department's Office for Civil Rights.

The Department acknowledges that the University has developed a plan for ensuring the retention of required records to document in compliance with the *Clery Act*. The Department will continue to review the University's progress in this area through post-review monitoring. Liberty must continue to assess the deficiencies identified in this finding and implement necessary remedial action to ensure that these violations do not recur.

Liberty is reminded that the exceptions identified here constitute serious and persistent violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly "correct" violations of this type once they occur. Liberty stated that it has taken steps to address these violations going forward, but the University is advised that such actions cannot and do not diminish the seriousness of the violations that occurred throughout the review period.

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

#### ***Citation:***

*The Clery Act and the Department's regulations require that all institutions participating in the Title IV, HEA financial aid programs must prepare a comprehensive ASR that contains, at a minimum, all of the statistical and policy disclosures identified in 34 C.F.R. § 668.46 (b). The ASR must be prepared and distributed as a single document. The only exception to this requirement is that the ASR may cross-reference information regarding the institution's alcohol and other drug abuse prevention programs required by §120 (a)-(d) of the HEA. 34 C.F.R. § 668.46(a)(10). Federal regulations also require institutions to actively distribute the ASR to all enrolled students and current employees through appropriate publications and mailings. Acceptable means of delivery include regular U.S. Mail, hand delivery, or campus mail distribution to the individual, or posting on the institution's website. If an institution chooses to distribute its report by posting to an Internet or Intranet site, the institution must, by October 1 of each year, distribute a notice to all students and employees that includes a statement of the report's availability and its exact electronic address, a description of its contents and a statement*

that a paper copy will be provided upon request. 34 C.F.R. § 668.41(e)(1).

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

### **Noncompliance:**

Liberty failed to actively distribute accurate and complete Annual Security Reports to its enrolled students and current employees during the review period. Overall, as this report shows, the University's reports were riddled with deficient policy statements and inaccurate, incomplete, and unreconciled crime statistics disclosures; however, in four of those years, the institution did distribute a report to required recipients by the regulatory due date. Upon inspection of the original and revised reports, the review team found that the University never distributed the revised version of the report, known as the Annual Campus Safety & Fire Safety Report, for 2018, 2019, 2020, and 2021.

Liberty distributed the original 2018 ASR on September 29, 2018, the original 2019 ASR on September 30, 2019, the original 2020 ASR on December 22, 2020,<sup>109</sup> and the original 2021 ASR on September 29, 2021, all by the regulatory due date. However, the University subsequently made substantive changes to the required content of each of these reports but never sent the revised reports to required recipients. Instead, the revised reports were simply posted to the website without any notification to the Liberty community.

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

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

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<sup>109</sup> The Department extended the due date for institutions to issue their ASRs to December 31, 2020, due to the disruptions caused during the COVID-19 pandemic.

**Required Action:**

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

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

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

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

**Institutional Response:**

In its narrative response, Liberty concurred that it failed to distribute accurate and complete ASRs in accordance with 34 C.F.R. § 668.41 on four occasions during the review period.

**Final Determination:**

Based on the Department's review of all available information, this finding is sustained and closed for purposes of this program review. The Department acknowledges the remedial actions Liberty outlined in its response, including moving the responsibilities of ASR production and distribution under the newly created position of VP of OEC and the Executive Director of OSPS in accordance with the University's newly created "Umbrella Clery Act Compliance Policy." Furthermore, the Department recognizes that the institution has drafted an ASR Preparation, Distribution and

Disclosure Policy to ensure compliance moving forward. The University's remedial actions will be subject to ongoing testing as part of the Department's post-review monitoring. The Department also notes that Liberty distributed the 2023 ASR by the statutory deadline of October 1, 2023.

Liberty is reminded that the exceptions identified here constitute serious and persistent violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly "correct" violations of this type once they occur. The failure to distribute an accurate and complete ASR results in serious violations of Federal law that undermine the most foundational requirements of the *Clery Act*. Although Liberty has claimed that it has implemented remedial actions to address the issues identified in this finding going forward, such actions cannot and do not diminish the seriousness of the violations that occurred throughout the review period.

### **Finding #12: Failure to Protect Whistleblower from Retaliation**

#### ***Citation:***

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

#### ***Noncompliance:***

*In the course of the program review, the Department interviewed a former Liberty employee (Senior VP of Communications and Public Engagement) who alleged that Liberty had retaliated against him based in part on his attempts to address serious violations of the Clery Act.<sup>110</sup> The issues raised by this example are strikingly similar to concerns raised by several individuals who are currently or were formerly affiliated with the University. In this specific case, the review team has identified factors that evidence that the former employee's attempts to see that the law was followed coincided closely with the termination of his employment. The Department specifically notes that the action to terminate in October 2021 occurred abruptly even as the employee was promoted to one of the highest-level positions at the University and recognized as a high performer. The former President of the University also spoke highly of this individual.*

*During multiple interviews with the review team, the employee explained that during this period he expressed serious disagreement with how the University had responded to the lawsuits filed by the original Jane Doe plaintiffs.<sup>111</sup> The employee also participated in the internal investigation conducted by Gentry Locke, which were characterized as inquiries into Liberty's business*

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<sup>110</sup> This Finding is based on the Department's own interviews, document examination, and application of the regulatory standard to the available facts and information. The Finding does not rely, in any regard, on any actions of the parties or the Court, in any of the suits filed by the official referenced in this Finding or the University.

<sup>111</sup> As the Senior VP of Communication and Public Engagement, he was the foremost official to relay communication to the campus community. It would be expected for such an individual to communicate the truth and to be concerned about communicating misleading or false information.

operations and other related matters.<sup>112</sup> From at least April 2021 to October 2021, the employee expressed concern about the University's possible cover-up of sex crimes and other Clery Act violations. In addition to providing information to the internal investigators, the employee communicated these same concerns directly to the Interim President and other senior executives on several occasions, including at an executive leadership meeting on October 2, 2021. The employee was fired just two days later on October 4, 2021. The University maintains that the reason for the firing was that the employee's office was being "restructured." In this context, it is important to note that the Department has identified several cases where the pretext of restructuring a position or office has been used as a basis to terminate employees who raised campus safety concerns during the review period.<sup>113</sup> The employee was offered a severance package conditioned on signing a nondisclosure agreement, but the employee declined to sign the agreement.<sup>114</sup>

The Clery Act is, first and foremost, a public safety and consumer protection law based on the premise that access to accurate, complete, and timely information about campus safety and crime prevention will make campuses safer. To achieve the goal of making campuses safer, everyone must play a part. Members of a campus community must be vigilant and responsible to help ensure their own safety and that of others as well. The Department depends on concerned students, parents, employees, the media, and other stakeholders to inform us of concerns regarding dangerous conditions on campus, or whenever they have good reason to believe that an institution is not in compliance. To protect employees and students from mistreatment as a result of reporting compliance concerns to the Department, the Clery Act specifically prohibits any act by an institution to "retaliate, intimidate, threaten, coerce, or otherwise discriminate against any individual" for acting in accordance with the Clery Act or in response to a person's efforts to see that the Clery Act is effectively enforced on campus. 34 C.F.R. § 668.46(m). 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 these reasons, the Department makes an initial finding that the actions taken against the employee constituted a violation of the anti-intimidation/retaliation provision of the Clery Act. This statutory provision is specifically intended to prohibit the types of actions that were alleged to have been taken against the employee. The information further indicates that the disciplinary action taken against this individual was the result, at least in significant part, of his attempts to ensure that the Clery Act was followed by the University and enforced by the Department. For obvious reasons, any detrimental impact that befalls any person affiliated with Liberty in response to the submission of a good-faith complaint to the Department triggers a special regulatory concern as it can have a chilling effect on the willingness of others to come forward.

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<sup>112</sup> Numerous current and former employees raised serious concerns about the supposedly anonymous nature of the process used in the Gentry Locke investigations. Employees were advised that they could enter the secure portal anonymously and that all reported concerns would be investigated thoroughly.

<sup>113</sup> Similar tactics have been used against students who have raised concerns about various aspects of campus life.

<sup>114</sup> Liberty often offers its terminated employees severance packages contingent upon signing nondisclosure agreements. The Department has found that this practice has been used as a tactic to intimidate individuals who may have knowledge about the University's potential areas of noncompliance and other wrongdoings.

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

**Required Action:**

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

**Institutional Response:**

In its narrative response, Liberty disagreed that the former Senior VP of Communications and Public Engagement attempted to address any violations of the *Clery Act* and that the University retaliated against him as a result. Rather, the University argued that it had legitimate, non-discriminatory reasons for terminating the employee, including mismanagement of University funds, poor leadership of the Standing for Freedom Center,<sup>115</sup> and insubordination. The University also argued that the employee had been cited for being deceptive and for making misrepresentations in civil proceedings, the implication being that any information provided by this employee to the Department during the site work must be suspect. In addition, the University objected to the Department's statement that Liberty used non-disclosure agreements to intimidate recently separated employees who might otherwise have spoken up about possible wrongdoing.

**Final Determination:**

The Department has evaluated the information Liberty provided in response to the PRR and finds that on balance Liberty's response to this finding is persuasive. Therefore, the Department does not sustain the finding and considers it closed.

The Department reminds the University that an institution may not retaliate against anyone who reports a *Clery Act* concern or failure, and the Department will examine the school's non-

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<sup>115</sup> Previously known as the Falkirk Center.



retaliation policies and procedures as part of post-review monitoring.

**F. Summation:**

As noted throughout this FPRD, the findings documented by the Department constitute serious violations of the *Clery Act* that, by their nature, cannot be cured. There is no way to truly “correct” violations of these important campus safety and crime prevention laws once they occur. The University must bring its programs and operations into compliance with all requirements of the *Clery Act* and do so in a manner that will provide reasonable assurance that these violations will not continue or recur. Notwithstanding any remedial efforts that Liberty has undertaken related to these findings or for any other purpose, it is advised that such remedial measures cannot and do not diminish the seriousness of these violations. As a result of the serious and persistent violations documented in Findings #1 through 11, the Department has imposed a significant civil monetary penalty and the University will be subject to a period of post-review monitoring, during which the Department will oversee the institution’s remedial efforts and will require additional process improvements to address continuing deficiencies and other areas of concerns.

**G. Appendices:**

**Appendix A**

**Underreported Criminal  
 Offenses from PRR**

<b>Calendar Year</b>	<b>Incident Report #</b>	<b>Crime Classification</b>	<b>Date of Initial Report</b>
2020	836599	Domestic Violence	12/14/2020
	834107	Sexual Violence	12/3/2020
	20-02840	Stalking	11/25/2020
	20-02770	Stalking	11/18/2020
	828417	Domestic Violence	11/10/2020
	837985	Sexual Assault	10/30/2020
	824637	Stalking	10/24/2020
	801324	Rape	9/1/2020
	740067	Stalking	2/13/2020
2019	19-02750	Rape	12/2/2019
	709443	Rape	10/24/2019
	19-02530	Stalking	10/24/2019
	706509	Fondling	10/15/2019
	706513	Fondling	10/15/2019
	714005	Fondling	10/15/2019
	19-02172	Fondling	10/11/2019
	700265	Dating Violence	9/21/2019
	697447	Stalking and Dating Violence	9/13/2019
	663181	Fondling	4/4/2019
	657462	Stalking	3/27/2019
	642261	Stalking	2/26/2019

	641971	Stalking	2/20/2019
	638734	Sexual Assault	2/4/2019
	636891	Stalking	1/20/2019
	637459	Stalking	1/19/2019
	636421	Sexual Assault	1/17/2019
2018	629893	Fondling	11/14/2018
	629894	Fondling	11/14/2018
	628592	Stalking	11/5/2018
	628154	Stalking	10/31/2018
	627103	Stalking	10/24/2018
	625872	Stalking	10/16/2018
	625380	Sexual Assault	10/11/2018
	625208	Stalking	10/10/2018
	624590	Stalking <sup>116</sup>	10/2/2018
	624433	Stalking	9/29/2018
	18-01981	Stalking	9/29/2018
	18-01832	Motor Vehicle Theft	9/14/2018
	620396	Stalking	9/6/2018
	619227	Stalking	8/30/2018
	619278	Stalking	8/30/2018
	619280	Stalking	8/30/2018
	618912	Stalking	8/26/2018
	618109	Stalking	8/24/2018
	620428	Stalking	8/22/2018

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<sup>116</sup> For OEC Incident Report #624590, the crime of fondling was included in the statistical disclosures, but the crime of stalking was omitted.

	589787	Fondling	5/3/2018
	568666	Stalking	3/15/2018
	568005	Stalking	3/14/2018
	562084	Stalking	3/9/2018
	561564	Sexual Assault	3/1/2018
	557088	Stalking	2/23/2018
	535883	Stalking	2/14/2018
	547824 <sup>117</sup>	Domestic Violence	2/13/2018
	547824	Domestic Violence	2/13/2018
	547824	Domestic Violence	2/13/2018
	547824	Domestic Violence	2/13/2018
	547564	Dating Violence	2/8/2018
	18-00179	Fondling	1/29/2018
	540063	Fondling	1/25/2018
	539264	Dating Violence	1/23/2018
	538843	Dating Violence	1/22/2018
	538843	Stalking	1/22/2018
2017	532996	Dating Violence	12/14/2017
	17-0500	Stalking	2/22/2017
2016	16-3078	Dating Violence/Fondling	12/10/2016
	16-2806	Alcohol Referral	11/11/2016
	16-2399	Drug Law Violation	10/1/2016
	16-1666	Drug Law Violation	7/4/2016

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<sup>117</sup> This incident report indicates that four domestic violence crimes were underreported.

	16-1382	Motor Vehicle Theft	5/8/2016
	16-1371	Drug Law Violation	5/7/2016
	16-1301	Rape	5/2/2016
	2016-011413 <sup>118</sup>	Drug Law Violation	3/8/2016
	16-0174	Dating Violence (underreported) <sup>119</sup>	1/24/2016
	653003	Sexual Assaults and Dating Violence	7/7/1905 <sup>120</sup>

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<sup>118</sup> This LPD incident report documents a Clery reportable crime that occurred at Liberty's s 1900 12<sup>th</sup> Street storage facility. The LPD provided this report to the Department. This crime was not included in the statistical disclosures in any of the institution's ASRs.

<sup>119</sup> For incident #16-0174 the crime of fondling was reported for statistical disclosure. However, the offense of dating violence was not reported. The daily crime log indicates crimes of sexual assault and suspicious circumstances.

<sup>120</sup> The report date of this incident is clearly an error. Liberty University was not in existence in 1905.

**Appendix B**

**Final Determination: Clery-Reportable Crimes Omitted from Liberty's Crime Statistics**

<b>Calendar Year</b>	<b>Crime Classification</b>	<b>Unreported Crimes</b>	<b>Incident Report Numbers</b>
2016	Aggravated Assault	2	275516
			275776
	Rape	2	349538
			384017
	Fondling	3	236577
			356777
			16-3078
	Dating Violence	3	285236
16-0174 Unknown			
Stalking	7	267218	
		270277	
		274856	
		276145	
		324402	
		332101 Unknown	
Drug Law Arrest	2	NA	
Weapons Law Arrest	1	NA	
2017	Aggravated Assault	1	507463
	Burglary	1	429859
	Rape	2	491703 Women's Lacrosse 2016-2017 Anonymous Student Report
	Fondling	1	403257
	Statutory Rape	1	508145
	Dating Violence	5	440069
			489328
			17-0273
			17-1140
	Domestic Violence	1	532996 507570
Stalking	2	417661	
		446601	
Hate Crime Intimidation – Race	2	435822	
		510477	
Unfounded	2	17-01176	

Calendar Year	Crime Classification	Unreported Crimes	Incident Report Numbers
			507024
	Liquor Law Arrest	1	NA
2018	Robbery	1	18-00368
	Burglary	15	596046 600905 [2] 600096 [3] 600095 [3] 603758 [3] 603758 [2] 18-01950
	Motor Vehicle Theft	4	18-00153 18-00216 566884 18-01832
	Rape	4	597367 [2] 544985 537084
	Fondling	6	529367 18-00179 597549 607032 564064 540063
	Dating Violence	5	586705 601351 607744 565746 538843
	Domestic Violence	5	547824 [4] 572332
	Stalking	22	595946 625208 591548 601068 607179 614719 606568 18-00530 [2] 535883 538843 624433 557088 562084 618109 618912

Calendar Year	Crime Classification	Unreported Crimes	Incident Report Numbers
			619227 619278 625872 628154 628592 18-02144
	Hate Crime Intimidation – Race	2	541366 [2]
	Weapons Violation – Disciplinary Referrals	2	601890 610417
2019	Arson	1	687878
	Rape	4	709443 19-02750 19-02690 691764
	Fondling	6	19-02172 748132 663181 709953 714005 [2]
	Dating Violence	2	19-02690 691764
	Domestic Violence	2	618523 19-02456
	Stalking	9	637563 637459 632139 [2] 661982 663822 [2] 668754 19-02412
	Burglary	1	19-00465
	Motor Vehicle Theft	2	617296 667767
	Weapons Violation – Disciplinary Referral	1	NA
2020	Arson	1	781350
	Rape	4	837985/838027 830700 810076 824349
	Domestic	5	20-00800



Calendar Year	Crime Classification	Unreported Crimes	Incident Report Numbers
	Violence		20-01035 20-01239 [2] 757117
	Burglary	2	20-00793 20-00163
	Motor Vehicle Theft	1	20-01627
	Liquor Law Arrest	4	20-01517 20-01817 747992 733948
	Weapons Violation – Disciplinary Referral	1	NA
2021	Aggravated Assault	3	21-003930 908559 21-008548
	Statutory Rape	1	21-01705
	Robbery	2	21-00821 21-07446
	Unfounded (Rape)	1	21-06564
	Motor Vehicle Theft	4	21-002407 21-002982 21-004427 21-005381
	Unfounded (Motor Vehicle Theft)	1	21-008924
	Hate Crimes Intimidation- Race	1	21-004384
	Hate Crime Intimidation- Religion	1	837019

## Appendix C

### Final Determination – Timely Warning Violations

<b>Date Reported</b>	<b>Incident Report Number</b>	<b>Crime</b>	<b>Location</b>	<b>Clery Geography Category</b>
10/16/16	16-2538	Robbery	Scaremare	Non-Campus Property
5/13/2017	17-1237	Burglary	DeMoss Hall	On-Campus
10/10/17	17-02233	Fondling	Dining Hall	On-Campus
10/21/17	17-02345	Fondling	Scaremare	Non-Campus Property
9/27/17	17-02097	Rape	Zone 4 Parking Lot	On-Campus
4/30/17	467574	VAWA Stalking	Vine Center	On-Campus
9/11/18	600096	Burglary	Dorm 029	On-Campus Student Housing
10/16/18	624590	Fondling	"Dorm Room"	On-Campus
9/1/18	18-01709	Hate Crime Simple Assault - Race	Doc's Diner	On-Campus
10/20/18	18-02162	Robbery - Assault & Battery	BLDG 045	On-Campus Student Housing
9/13/19	19-02750	Rape	Unknown	On-Campus
10/11/19	19-02172	Fondling	Scaremare	Non-Campus Property
10/13/19	19-02188	Fondling	Scaremare	No-Campus Property
1/30/19	19-00189	Motor Vehicle Theft	Liberty University Transportation	On-Campus
12/2/19	19-02750 19-02690 691764	Rape	LU Parking Garage	On-Campus

<b>Date Reported</b>	<b>Incident Report Number</b>	<b>Crime</b>	<b>Location</b>	<b>Clery Geography Category</b>
8/19/19	690037	VAWA Stalking	Various locations on campus	On-Campus
12/30/20	837985/838027	Rape	Orlando FL	Non-Campus Property
10/6/20	816880	VAWA Stalking	Various places on campus	On-Campus
12/6/21	21-008792	Burglary	Green Hall	On-Campus
8/30/2021	21-04291	Motor Vehicle Theft	LaHaye Rec Center	On-Campus
10/6/21	21-006193	Motor Vehicle Theft	In front of Freedom Tower	On-Campus
10/24/21	21-007088	Motor Vehicle Theft	Runk and Pratt Garage	On-Campus
12/12/2021	21-09293	Rape	Gwin Lot	On-Campus
3/30/2021	21-00821	Robbery	Paintball Road	On-Campus
10/31/2021	21-07446	Robbery	Regents Parkway	On-Campus
9/3/21	880919	VAWA Stalking	Common 2	On-Campus Student Housing
9/4/21	881234	VAWA Stalking	Common 2	On-Campus Student Housing
10/28/21	21-007275	VAWA Stalking	Multiple Locations, including illegal contacts by electronic means	On-Campus
11/19/2021	21-08358	Fondling	DeMoss Hall	On-Campus
10/1/22	1225598	Fondling	Tilley Student Center	On-Campus
3/4/22	22-003237	Motor Vehicle Theft	100 Reber-Thomas Dr (Motorcycle Parking Area)	On-Campus
3/5/22	22-003275	Motor Vehicle Theft	2144 Liberty Mountain Dr (Runk and Pratt)	On-Campus
3/7/22	22-003353	Motor Vehicle Theft	1606 Regents Pkwy (RH-003 Parking Lot)	On-Campus

<b>Date Reported</b>	<b>Incident Report Number</b>	<b>Crime</b>	<b>Location</b>	<b>Clery Geography Category</b>
3/10/22	22-003562	Motor Vehicle Theft	Reber Thomas Drive	On-Campus
3/14/22	22-003727	Motor Vehicle Theft	104 Towns Ct	On-Campus Student Housing
9/7/22	22-011650	Motor Vehicle Theft	LaHaye Center	On-Campus
9/9/22	22-011830	Motor Vehicle Theft	RH-001	On-Campus
9/20/22	22-012593	Motor Vehicle Theft	205 Arthur S Demoss Drive	On-Campus
9/25/22	22-013003	Motor Vehicle Theft	135 East Campus; RH-154	On-Campus Student Housing
10/10/2022	22-014158	Motor Vehicle Theft	1701 University Blvd	On-Campus
12/2/22	22-017730	Motor Vehicle Theft	Demoss Hall	On-Campus
12/4/22	22-017842	Motor Vehicle Theft	Reber Thomas Dinning Hall	On-Campus
12/6/22	22-017983	Motor Vehicle Theft	Demoss Hall	On-Campus
12/7/22	22-018082	Motor Vehicle Theft	RH 145	On-Campus Student Housing
12/9/22	22-018202	Motor Vehicle Theft	Demoss Stairs	On-Campus
2/14/22	1033387	VAWA Stalking	various on campus locations	On-Campus
11/15/22	22-016842	VAWA Stalking	Unknown	On-Campus