



An Analysis of the Department of Education's Clery Act Enforcement Action Against University of California Berkeley

On September 10th, 2020 the University of California Berkeley announced that it had reached a settlement with the United States Department of Education to resolve Clery Act non-compliance issues identified by ED during audits of UC Berkeley's Clery Act documentation.

In the settlement UC Berkeley agreed that in order to end the Department's Clery Act related Program Review process which had been ongoing since 2014, the institution would take a number of remedial actions and would pay the Department \$2.35 million.

This continues a recent trend of Clery Act compliance related penalties in excess of one million dollars and is the third largest Clery Act compliance related forfeiture in history, behind a \$2.4 million fine assessed against Penn State in 2016 and a \$4.5 million fine assessed against Michigan State in 2018.

The Department's program review covered Berkeley's Clery Act related documentation for 2009, 2010, 2011, 2012, and 2013. It revealed that the institution's Clery Act compliance program was substantially non-compliant with requirements of the Clery Act in several different areas, and details that Berkeley:

Failed to provide emergency notifications or timely warnings on a number of occasions.

- Where a UC Berkeley student who had been accused of sexual assault multiple times transferred to another UC Berkeley location, they failed to provide emergency notification to the students at that campus.
- When a demonstration on campus began to turn violent emergency notification was not sent to the campus community for nearly an hour.
- Five burglaries were reported over a two-month period, but no timely warning was issued until after the fifth incident.

THE AUTHOR

Drew Neckar, MBA, CPP



Drew is the President and Principal Consultant for Security Advisors Consulting Group a consulting firm which offers security assessment, training, and litigation support services.

He has served as the senior most security executive (CSO) for organizations in the healthcare, financial services, education, hospitality sectors, and as a Regional Security Director for Mayo Clinic.

As the Director of Enterprise Safety and Security for ECMC Group he was responsible for overseeing the redesign of the Clery Act compliance program for a non-profit career college system operating sixty-eight campuses located across twenty seven states, and as President of Security Advisors he has assisted institutions, including one of the top ten medical schools in the US, in optimizing their Clery Act compliance processes.



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Your trusted security management advisors

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Web
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Email

527 5th Ave N, Suite #2, Strum, WI
111 S Washington Ave, Suite #1111, Minneapolis, MN
www.SecurityAdvisorsConsulting.com
www.linkedin.com/company/security-advisors-consulting-group
612-325-9119
Info@SecurityAdvisorsConsulting.com



ED holds that a timely warning should have been issued for each incident and should have been issued in accordance with the University's policy of "within one business day" after the incident was reported (a policy which ED finds to not meet the requirements of "timeliness").

- In two incidents of reported sexual assault the University failed to issue timely warnings until four days after the incidents were reported.
- During 2014, 2015, and 2016 the University failed to issue timely warnings for thirty incidents that ED believes necessitated them.

Failed to comply with requirements mandating how investigations of sexual violence are conducted/

- In one case failed to notify the victim of the outcome of the investigation until three written requests had been made.
- Language in the ASR and policy regarding disclosure was unclear contributing to the failure to notify.

Failed to comply with Daily Crime Log requirements.

- During review of documentation filed from 2010 through 2013 ED identified that twelve entries in the Daily Crime Log were either incorrectly classified or were missing one or more the required elements.

Failed to comply with hate crime reporting requirements.

- Three incidents that should have been classified as hate crimes (one verbal intimidation via phone based on race, one written intimidation via e-mail based on race, and one vandalism based on sexual orientation) were not reported in the ASR or in reporting to ED.

Failed to meet crime reporting requirements.

- Between 2009 and 2017 the University consistently underreported counts of reported crimes and reported them in a way that was not clear to the reader. The majority of underreporting were for liquor and drug law violations, but more serious crimes were also under reported in most years.
- Documentation from UC Berkeley Police indicated a number of incidents that had been incorrectly classified based on the ED's definition of crimes, and were therefore mis-reported.
- For these same years many of the statistics reported to ED through the Campus Crime Reporting Tool were inconsistent with those published in the ASR and with the audits conducted by ED.

Failed to meet Annual Security Report (ASR) distribution requirements.

- The institution was unable to provide evidence that the 2010, 2011, and 2012 ASRs had been actively distributed to students prior to the October 1st deadline, although it was able to demonstrate that distribution to current employees had occurred.





- ED found that the link on the institution's website that was meant to provide access to the 2013 ASR was broken, and although all portions of the ASR were available separately on the website it did not meet the requirement of publishing the ASR "as a comprehensive document."
- The University could not provide evidence that it had provided "conspicuous notice" of the availability of the ASR to all perspective students and employees.

Failed to meet Annual Fire Safety Report (ASFR) distribution requirements.

- The institution did not distribute the ASFR to all students and employees, instead it was distributed to a select group of department heads.
- The ASFR was not distributed until after the October 1st deadline.
- The University could not provide evidence that it had provided "conspicuous notice" of the availability of the ASR to all perspective students and employees.

Failed to provide all required disclosures and policy statements in ASRs and AFSRs.

- The Department found that between one and five of the required policies or disclosures were missing from the institution's Annual Security Report and Annual Fire Safety Report.

Found that the Institution lacks "Administrative Capacity".

- Based on the compliance failures enumerated above and failures found during a review of Title IX related investigations the Department also found that UC Berkeley "lacks administrative capacity" and had not allocated sufficient resources to their Clery compliance program to ensure its success.

These missing compliance elements mirror other program reviews which are part of an increased emphasis on Clery Act compliance during the program review process. This has grown to a point where over thirty-one percent of program reviews conducted between 2017 and 2019 had at least one finding related to Clery Act compliance. This was a significant increase from earlier levels which saw only a few Clery related findings per year and is part of a trend beginning in 2013.

The full UC Berkeley Program Review can be found here: [UC Berkeley Program Review](#) , and a full analysis of all Clery related findings from 2013-2019 can be found in the "Resources" section of the Security Advisors website here: www.SecurityAdvisorCG.com



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Phone
Email

527 5th Ave N, Suite #2, Strum, WI
111 S Washington Ave, Suite #1111, Minneapolis, MN
www.SecurityAdvisorsConsulting.com
www.linkedin.com/company/security-advisors-consulting-group
612-325-9119
Info@SecurityAdvisorsConsulting.com