

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made by and between The University of North Carolina at Chapel Hill (OPE ID 00297400) (UNC or University), and the United States Department of Education (Department), Federal Student Aid (FSA), acting through the Director of the Administrative Actions and Appeals Service Group, and is effective as of the last date written below (the "Effective Date"). UNC and the Department are collectively referred to hereinafter as the "Parties," and individually as a "Party."

### RECITALS

A. On August 23, 2019, the Department issued a Final Program Review Determination (FPRD) (PRCN 201330328424), stating that UNC had failed to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "Clery Act") in §485(f) of the Higher Education Act of 1965, as amended (the "HEA"), and the Department's regulations. The FPRD identified specific violations of the Clery Act by UNC. Under the HEA, the Department may impose a fine on an institution that violates the Clery Act.

B. Since the issuance of the FPRD, UNC and the Department have engaged in discussions aimed at resolving issues identified in the FPRD and potential fines that could be imposed by the Department following completion of the review.

C. The Department acknowledges that, prior to the issuance of the FPRD, UNC had already taken a number of measures to improve its Clery Act compliance and campus safety program, including but not limited to:

1. Establishing fulltime, designated Clery Act compliance coordinator and police records management positions,
2. Engaging a nationally recognized campus safety consulting firm to assess and recommend best practices and policies for strengthening compliance regarding crime reporting and fire safety rules;
3. Accelerating plans to expand the use of campus security cameras;
4. Enhancing lightning in key pedestrian corridors across campus;
5. Developing an enhanced training schedule for UNC Police, including continued training with the Orange County Rape Crisis Center; and
6. Establishing a new Vice Chancellor for Institutional Integrity and Risk Management to coordinate critical safety compliance functions.

In furtherance of its commitment to improve its Clery Act compliance and campus safety program, the Parties continue to work together to address additional appropriate enhancements to UNC's Clery Act related policies and practices, and to identify further steps that UNC will undertake to ensure continued compliance in the future.

D. UNC and the Department have now agreed to resolve the FPRD without any further administrative procedures, other than those outlined in the Appendix to this Agreement.

E. The Parties have reached this Agreement in good faith and in furtherance of the shared belief that time, personnel, and other resource allocations are best served in fulfillment of the requirements set forth in the attached Appendix, all of which are intended to serve the UNC community, rather than on protracted and costly review and legal procedures.

TERMS AND CONDITIONS

In consideration of the mutual covenants and conditions contained in this Agreement, the sufficiency of which is hereby expressly acknowledged, and intending to be legally bound to the terms hereof, the Parties agree as follows:


1. UNC agrees that it will pay the Department a fine in the amount of \$1,500,000 (One Million Five Hundred Thousand Dollars and No Cents) (the "Fine") to resolve the potential fine that the Department believes it could impose as a result of the Review. UNC will pay the Fine through FEDWIRE on or before the expiration of three business days following the Effective Date of this Agreement. UNC should include the billing number AAA202002043 on the FEDWIRE form to ensure proper accounting of the Fine payment.
2. UNC agrees that it will implement the corrective actions specified in the Appendix to this Agreement.
3. The Department agrees not to initiate any administrative action against UNC based on the findings outlined in the August 23, 2019 FPRD. The agreed upon \$1,500,000 Fine is imposed in settlement of all findings set forth in the FPRD, as well as any other potential noncompliance with the Clery Act and fire safety requirements that may have occurred during the review period of 2009-2017, irrespective of whether such other potential noncompliance was noted in the FPRD or otherwise disclosed to the Department.
4. UNC acknowledges that by entering into this Agreement it is waiving its right to respond to the FPRD and its opportunity to appeal any potential fine that could be imposed by the Department based on the findings set forth in the FPRD. By entering into this Agreement, both Parties consider this matter resolved and no further action may be taken in regard to the FPRD except with regard to post-review monitoring activity set forth in Appendix A.
5. UNC affirms its intent to continue to comply with the requirements in the Clery Act, the HEA and the Department's implementing regulations.
6. Nothing in this Agreement constitutes an admission of liability or wrongdoing by UNC.
7. This Agreement does not waive, compromise, restrict, or settle:
  - a. Any past, present, or future violation of the criminal or civil fraud laws of the United States.

- b. Any presently pending or future action taken by the United States under the criminal laws or civil fraud laws of the United States.

The Department is not aware of any such actions pending against UNC based on the issues addressed in the FPRD.

- 8. This Agreement does not address or resolve any complaints filed with, or any investigations undertaken by, the Department's Office for Civil Rights under any applicable law or regulation.
- 9. The persons executing this Agreement on behalf of the Parties hereto warrant that they are fully authorized to do so on behalf of the Party for which they are signing this Agreement and to bind such Party to the terms hereof.
- 10. This Agreement and any documents referenced herein constitute the entire contract between the Parties with respect to the subject matter hereof.
- 11. Each Party has cooperated in the drafting of this Agreement, hence, if any construction is to be made of this Agreement, the same shall not be construed against any Party.
- 12. This Agreement may be executed in two or more duplicate counterparts, each of which shall be treated as an original, but all of which together shall constitute one and the same instrument. The counterparts of this Agreement and any amendments hereto may be executed and delivered by facsimile, .pdf attachment, or other electronic signature by either Party to the other Party, and the receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic method as if the original had been received.

**FOR THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL:**

  
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Jonathan Pruitt  
Vice Chancellor for Finance and Operations  
The University of North Carolina at Chapel Hill

Dated: 6/24/20

**FOR THE UNITED STATES DEPARTMENT OF EDUCATION:**

**Susan Crim**  
Digitally signed by Susan Crim  
Date: 2020.06.26 13:52:40 -04'00'  
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Susan D. Crim  
Director, Administrative Actions and Appeals Service Group  
Federal Student Aid/Enforcement  
U.S. Department of Education

Dated: \_\_\_\_\_

## Appendix A

### **The University of North Carolina at Chapel Hill Campus Crime Program Review Programmatic Improvements and Post-Review Monitoring**

The United States Department of Education (Department) and The University of North Carolina at Chapel Hill (UNC; the University) (OPEID: 002974000) have entered into the accompanying Settlement Agreement (the “Agreement”) to resolve the Department’s Final Program Review Determination (FPRD) (PRCN 201330328424) and the findings associated with that review. The Department notes that the University has either already resolved or has committed to fully address all violations and other areas of concern. The Department is equally committed to assisting the University’s efforts and will provide appropriate advice and oversight. This plan is intentionally flexible to allow the parties to collaborate on operational details throughout the monitoring period. UNC has retained a well-respected campus safety consultant. The consultant has designed a Clery Act Program Support Plan for the University. As part of this plan, the consultant will: 1) provide training to executives and practitioners; 2) coordinate the conduct of a self-study; 3) conduct a data audit to assess the accuracy and completeness of the institution’s crime statistics and compliance with the timely warning and emergency notification provisions; 4) assess the adequacy of existing campus safety and crime prevention policies, procedures, and programs; and 5) assist the institution to identify and notify Campus Security Authorities (CSAs) and identify and classify its Clery Geography.

Section C of the Agreement requires the University to modify its organizational structure and existing campus safety and crime practices, policies, procedures, training programs, and systems and to design and implement new policies, procedures, training programs, and systems, as needed, to address deficiencies and other areas of concern identified by the Department. These changes will be made in consultation with the Department. This Appendix sets out the basic requirements and terms for such changes and the Department’s role in monitoring the University’s efforts to comply with the provisions of this Appendix (“Post-Review Monitoring”).

The purpose of Post-Review Monitoring is to ensure that adequate remedial measures are developed, fully implemented and sustained. Any violations, weaknesses, or other areas of concern that cannot be addressed completely through this Settlement Agreement will be addressed through the Post-Review Monitoring program. Post-Review Monitoring will remain in place until all significant deficiencies and other areas of serious concerns are addressed to the Department’s reasonable satisfaction. The Department anticipates that all Post-Review Monitoring activities will be completed in approximately three (3) years from the effective date of this Agreement. Information gathered during Post-Review Monitoring will inform the Department’s determinations about UNC’s Clery Act compliance and Title IV eligibility going forward. Any serious lapses in Clery Act compliance in the future could negatively affect the terms of the University’s participation in the Title IV, student financial assistance programs.<sup>1</sup>

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<sup>1</sup> The University is currently fully certified to participate in the Title IV, student financial assistance programs. The current Program Participation Agreement is scheduled to expire on December 31, 2021.

- I. In consultation with the Department, UNC will form a new Clery Compliance Committee (CCC). The Clery Compliance Coordinator will serve as the Chair of the CCC. The CCC will include representation from all offices that are substantially involved in any aspect of the University's campus safety, crime prevention, emergency management, environmental health and safety, student and employee conduct, and Title IX programs, including but not limited to, the following departments, offices, and/or functional area: 1) The University of North Carolina at Chapel Hill Police (UNC Police); 2) Campus Safety and Risk Management; 3) Housing and Residential Education; 4) Campus Health Services and UNC Medical Center; 5) UNC Athletics Department; 6) Equal Opportunity and Compliance; 7) Student Affairs (Student Conduct and all other principal offices and departments); 8) Counseling and Psychological Services; 9) Dean of Students; 10) Office of Human Resources; 11) Facilities Services and Land Management; 12) Office of the University Ombuds; 13) Office of Internal Audit; 14) International Student and Scholar Services; 15) the Office of University Development; 16) The Honor Court; 17) the primary office responsible for administering the "Protection of Minors on Campus" policy and any other any youth programs or community events; 18) the primary office responsible for continuing education programs; 19) the Office of Undergraduate Admissions; 20) UNC Hospitals Police; 21) Office of Fraternity and Sorority Life; and, 22) any office responsible for sexual violence advocacy, prevention, and response for student and employee survivors.
- II. UNC and the Department will jointly assess the University's existing crisis intervention and/or behavioral threat assessment teams and to determine the proper composition, functions, and core duties of the team(s) and their specific roles in supporting the University's Clery Act compliance program.
- III. With the assistance of its consultant, UNC will review and, as appropriate, revise its process to identify and notify all CSAs of UNC's obligations to report certain crimes under the Clery Act. The University will continue to deliver mandatory CSA training to all persons who meet the CSA criteria as well as all senior campus executives and board members. UNC will also continue to provide training to all UNC Police officers and supervisors on incident report writing, review, and approval. The University will also continue to ensure all officials involved in the investigation and/or adjudication of any case involving an alleged act of sexual violence continue to receive updated, specialized training in such matters each year. The specialized training for investigators and hearing officials must include training on understanding the trauma typically experienced by victims of violent crime, especially sexual violence. The Department will review and approve all training materials and will monitor the University's delivery of the training and the tracking of participation. UNC will be required to advise the Department about the number of officials that were trained in each semiannual report. The University must also disclose any issues in reaching certain offices or groups of employees.<sup>2</sup>

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<sup>2</sup> For example, UNC would have to disclose if the coaches of a certain athletic team refused to participate in training or if an individual or block of employees disagree with the institution's determination that they are CSAs and refused to participate in training on that basis.

- IV. In consultation with the Department, the University will review the current design of its “Clery Incident Report Form” to ensure that it is adequate and that it will facilitate the accurate and complete compilation of crime statistics and other Clery Act compliance requirements. The University has revised its policies to eliminate the use of any “Declination to Prosecute Forms (DTP)”. Nevertheless, copies of all such DTP forms that have previously been executed and copies of all incident reports associated with these cases must be submitted as part of the semiannual reports.
- V. With the assistance of its consultant, UNC’s Office of Human Resources (HR) will:
- Continue to assist the CCC in the identification and the notification of CSAs at the main campus and all other campuses or properties associated with UNC-CH;
  - Continue to incorporate into position descriptions, as needed, Clery Act-related duties;
  - Send a communication to all University employees at the beginning of each academic term that encourages the reporting of suspected criminal activity and misconduct with a clear description of the options to report either directly or anonymously and an explanation of the University’s whistleblower protection policies and its efforts to protect employees from retaliation or intimidation; and
  - Continue to ensure that agreements with third parties sponsoring or hosting non-UNC affiliated programs and/or events for minors on UNC properties contain terms requiring background checks on any adults participating in such program as an employee, contractor, or volunteer, prior to such adult’s participation therein. All such third-party agreements will continue to require that such adults be provided and briefed on UNC’s policies, procedures, conduct standards, and reporting protocols with respect to minors on campus.
- VI. In consultation with its consultant, UNC’s Facilities Services and/or other offices and officials that are responsible for management of real estate will engage in an institution-wide process to identify all buildings, properties, or other parcels of land that UNC owns or controls and uses for educational purposes, in order to assist UNC in verifying that such buildings or parcels have been classified properly for Clery Act compliance purposes, in accordance with the definitions of “on campus,” “non-campus building or property,” and “public property,” as those terms are defined under the Clery Act (“Clery Geography”). The University will use this information to confirm that it maintains a set of maps that clearly identify all categories of Clery Geography, including buildings and properties that are owned or controlled by recognized student organizations, including any foundations, holding companies, affiliates, etc. that are part of the University. A map must exist for each of the University’s separate campuses and its properties that are on the campuses of other institutions of higher education. The maps will also show the regular patrol zones of UNC Police officers. Copies of all maps will be provided to the Department. Due to the changing nature of leased property, these maps will be updated on a semiannual basis.

- VII. UNC will engage in a complete reassessment of if its procedures and protocols related to campus safety, crime prevention, fire safety, and substance abuse prevention policies to ensure compliance with all Federal regulations governing UNC's Title IV program participation. The University must review and revise all statistical and informational disclosures that will be included in its 2020 Annual Security Report (ASR), 2020 Annual Fire Safety Report (or a combined ASR/AFSR publication), and its Drug and Alcohol Abuse Prevention program materials for 2020. As part of this process, the University will carefully review, and if necessary, revise and enhance policies, procedures, and programs required by the Violence Against Women Reauthorization Act of 2013 (VAWA). UNC will ensure that the revised guidance continues to clearly codify the right of any student or employee to be notified of all meetings and proceedings, to be permitted to attend all such meetings and proceedings, and to be accompanied by an advisor of their choice. The revised guidance must also continue to explain the steps that the University will take to ensure that its disciplinary processes are not used to retaliate against original complainants.
- VIII. A copy of all new and revised policies and procedures and a revised audit trail that substantiates the accuracy and completeness of the University's crime statistics for calendar years 2017-2019 must be submitted to the Department for review prior to publication. In addition, for each year of the monitoring program, the University must submit a draft of its ASR for review by the Department no later than 30 days prior to the required distribution date. The Department agrees to provide its feedback within 15 days of receipt of the draft ASR.
- IX. The University will conduct up to three (3) limited scope assessments over the course of the post-review monitoring process to identify potential Clery Act violations and to examine other areas of concern related to the review period. The Department will identify the areas and issues to be assessed. At the conclusion of each assessment, the University will provide information about its findings to the Department. The information from these assessments will be used to diagnose and remediate deficiencies and weaknesses in the University's campus safety, crime prevention, and compliance programs.
- X. UNC will continue to engage its current Clery Act consultant<sup>3</sup> or another with equal knowledge, skills, and abilities to act as a facilitator and to independently monitor the University's remedial actions. The consultant must report any significant violations of the Clery Act, the HEA fire safety rules, or the DFSCA to the Department within three days of identifying or otherwise becoming aware of the infraction. Additionally, the consultant will participate in periodic phone conferences to provide general updates to the Department and, with the assistance of the Clery Act Coordinator, produce a report every six (6) months on the University's progress on reforms and enhancements to its compliance program. The report must include a section on new and ongoing violations,

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<sup>3</sup> If UNC chooses to terminate its engagement with its current consultant, the University must notify the Department of its intentions in advance and advise the Department of the individual or entity that will assume the consultant role.

challenges and obstacles to progress, an assessment of the adequacy of resources committed to the remedial action program, and recommendations for the next phase of the program. This report must be issued to the Department every six months for the duration of the Post-Review Monitoring Program, and the University's Chancellor and Board of Trustees must be sufficiently informed as to the contents of the report. The first report is due on September 1, 2020. Other details regarding information to be included in the semiannual reports will be determined during the first phone conference. The first phone conference will take place within 30 days of the effective date of this Agreement. During this call, the Department will request specific documents and information to establish a baseline for next steps.

- XI. The University will fully cooperate with the Department in its conduct of at least one (1) and no more than two (2) on-site compliance assessments to be conducted within three (3) years of the effective date of this Settlement Agreement.

The Department will monitor UNC's remedial action efforts and will remain engaged with the University until the agreed-upon reforms are designed and implemented fully. The Department anticipates that violations and additional areas of concern will be identified during the monitoring period. Any additional violations, weaknesses, or other areas of concern that are not yet known and therefore, cannot be resolved through this Settlement Agreement will be addressed through the post-review monitoring process. The parties agree that violations, exceptions, areas of concern, and weaknesses that are identified during the Post-Review Monitoring period will not result in additional civil penalties and will be addressed through a collaborative process.