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OFFICE OF THE
NEW YORK STATE COMPTROLLER

DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY

STATE UNIVERSITY OF NEW YORK

COMPLIANCE WITH THE CLERY ACT

Report 2007-S-121

AUDIT OBJECTIVES

The objectives of our audit were to determine whether the State University of New York's (SUNY's) 29 State-operated campuses are accurately reporting crime statistics and publishing other relevant security and safety-related information required by the Clery Act, and whether SUNY's System Administration provided the campuses with sufficient Clery-related guidance and training.

AUDIT RESULTS - SUMMARY

We found multiple problems related to compliance with the Clery Act (Act) at many SUNY campuses. For example, we found that three of the four colleges we visited published inaccurate crime statistics by either under-reporting or not properly categorizing this information. For 19 campuses, we found discrepancies between what was reported to the federal DOE for crimes and violations and what was found on the annual security report. Some of the differences were small, while others were significant. Sixteen campuses lacked four or more of the required disclosures on their annual security report. We concluded that SUNY's System Administration needs to improve the formal guidance and training that it provides to campus personnel to help ensure that they comply with the Act.

The purpose of the Clery Act is to provide important information about the safety and security of college communities to enable people to make informed decisions when choosing a college for educational or employment purposes. The Clery Act requires institutions of higher education to prepare, publish, and distribute an annual security report (ASR) disclosing information about campus safety policies and procedures and campus crime statistics for the three most recent calendar years. (Note: For Clery-reporting purposes, crime statistics can include certain violations of law that are not routinely considered "crimes" for traditional law enforcement purposes.) The federal Department of Education (DoE) can issue a civil fine for a substantial misrepresentation of the number, location or nature of reported crimes. DoE can also suspend violating colleges from participating in federal Title IV student financial aid programs.

We visited four SUNY campuses to evaluate their compliance with Clery Act requirements, particularly with regard to the reporting of accurate crime statistics. The four campuses included the University Centers at Buffalo and Stony Brook and the Colleges at Delhi and New Paltz. We found that three campuses (Buffalo and Stony Brook Centers and the college at Delhi) published inaccurate crime statistics by misreporting (primarily under-reporting) and/or not properly categorizing this information in accordance with the formal guidance provided by the DoE. Of these campuses, Stony Brook had the highest number of under-reported crimes/violations (56), which was 48 percent of the 117 total crimes/violations that Stony Brook should have reported.

According to the DoE guidance, certain forms of theft should be classified as burglaries (as opposed to larcenies) for Clery Act reporting purposes, when the element of lawful entry cannot be proven. However, contrary to the DoE guidance, Stony Brook routinely classified such incidents as larcenies (as opposed to burglaries) when lawful entry could not be proven. Because the Clery Act does not require larcenies to be reported, this misclassification accounted for most of Stony Brook's under-reported crime statistics during our audit period. Also, we found that Delhi reports crime statistics by academic year instead of calendar year, as required. Not adhering to reporting requirements impedes

the ability to make valid data comparisons among colleges.

The Clery Act mandates that institutions of higher education submit the crime statistics published in their ASR to DoE, which then makes this information available to the public via the internet. For the 29 State-operated colleges, we examined all available ASRs to determine whether the 2006 statistics disclosed on the reports were consistently reported on the DoE website. We found that Empire State College reported statistics to DoE, but did not produce an ASR. In addition, we found discrepancies at 19 of the remaining 28 schools. While the discrepancies at some campuses were relatively minor, others were significant including reporting for sexual offenses, burglaries, and liquor and drug law violations.

Another major requirement of Clery Act is the disclosure in the ASR of certain security policy and procedure statements, as well as other safety reporting requirements. The purpose of these disclosures is to provide college communities with important information about crime reporting procedures, campus accessibility and security, and rules governing campus law enforcement. Of SUNY's 29 State-operated campuses, only two colleges (Upstate Medical Center and Cortland) published all of the required security policy and procedure statements as well as other safety reporting requirements in substantial compliance with the Clery Act.

The Clery Act mandates that colleges create, maintain and make publicly available a daily police crime log of actual and alleged criminal incidents reported to and by campus police. We examined the daily police crime logs of the four colleges we visited. Our review of these logs revealed noncompliance at all four colleges. For example, at Stony Brook, we identified (based on our review and follow-up of incident reports) nine cases of on-campus forcible sexual offenses. However, the logs identified these matters as "investigations" and did not indicate that they pertained to alleged sexual offenses. Based on discussions with campus police, we learned that they routinely classified on-campus forcible sexual offenses as "investigations." Although all nine of the alleged sexual offenses should have been reported pursuant to the Act, four incidents were not included in the ASR or data submitted to the DoE.

We concluded that System Administration needs to provide additional guidance to the campuses to help ensure they comply fully with the Act. Specifically, System Administration should provide guidance to help SUNY colleges prepare, publish and distribute the ASR properly. In addition, System Administration guidance is needed to help campuses define the geographic boundaries within which crime statistics must be reported, so that consistent, meaningful comparisons can be made among campuses nationwide. We also determined that System Administration should provide periodically comprehensive training to campus officials in regard to compliance with Clery Act requirements.

Our report contains five recommendations to improve compliance with the Clery Act at SUNY campuses. SUNY officials agreed with our recommendations and indicated the steps that they have taken and will be taking to implement them.

SUNY officials acknowledged that our audit did not assess whether the University's campuses are safe. However, their response provided information to address public concern in this regard. SUNY officials also disagreed with certain of the audit report's findings about discrepancies between DoE

data and Annual Security Reports and about the reporting of burglaries as larcenies. SUNY's response is included in Appendix A of this report and our rejoinders to those comments are included in Appendix B.

This report, dated October 22, 2008, is available on our website at: http://www.osc.state.ny.us. Add or update your mailing list address by contacting us at: (518) 474-3271 or
Office of the State Comptroller
Division of State Government Accountability
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BACKGROUND

When choosing a college, the issue of campus security is important to students and their families. In 1990, Congress responded to this concern by enacting the Crime Awareness and Campus Security Act, which was later renamed the Clery Act (formally known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act). The federal statute is named for Jeanne Clery, a 19-year-old Lehigh University freshman who was raped and murdered in her campus residence hall in 1986. The purpose of the Clery Act (Act) is to provide important information about the safety and security of college communities to enable people to make informed decisions when choosing a college for educational or employment purposes.

The Clery Act requires all public and private colleges participating in federal Title IV student financial aid programs to prepare, publish and distribute an annual security report (ASR) disclosing information about campus safety policies and procedures and campus crime statistics for the three most recent calendar years, based on definitions from the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Handbook. (Note: For Clery-reporting purposes, crime statistics can include certain violations of law that are not routinely considered "crimes" for traditional law enforcement purposes.) These statistics include the following categories: criminal homicide, sexual offenses, robbery, aggravated assault, burglary, arson, motor vehicle theft, liquor law and drug law violations, and illegal weapons possession.

The Clery Act also mandates that colleges disclose statistics for crimes reported to college or local police committed in certain geographic locations associated with the college. Colleges are required to make available to current students and employees a copy of the ASR by October 1st of each year and to inform prospective students and employees of the availability of the report and provide them with a copy upon request. Additionally, colleges are required to maintain and make publicly available a daily crime log and submit crime statistics to the federal Department of Education (DoE) annually. The DoE provides the Handbook for Campus Crime Reporting (Clery Handbook) to assist campuses in complying with Clery Act requirements.

The State University of New York (SUNY), the largest public university system in the United States, consists of 64 autonomous campuses (29 State-operated colleges, 30 community colleges and 5 statutory colleges affiliated with private universities) located throughout the State and a central administrative office located in Albany (System Administration). During the fall 2006 semester, SUNY's 29 State-operated colleges provided higher education to more than 200,000 students. Our audit focused on compliance with the Clery Act by the 29 State-operated colleges. (We did not include the statutory and community colleges within the scope of our audit.)

System Administration provides general oversight of SUNY operations, and the individual SUNY colleges are primarily responsible for complying with applicable laws, including the Clery Act. System Administration's Office of University Police (University Police) is responsible for coordinating police operations throughout the SUNY system, and setting training, hiring and operational standards.

Additionally, SUNY System Administration's Office of the University Auditor (University Auditor) is responsible for assessing university-wide procedural and policy matters, and the various functions, programs, and control systems of the 29 State-operated SUNY colleges. The University Auditor conducts audits of college operations and has audited Clery Act activities of certain SUNY campuses.

AUDIT FINDINGS AND RECOMMENDATIONS

Reporting of Crime Statistics

Inaccurate Statistics

The Clery Act mandates that colleges, participating in federal Title IV student financial aid programs, annually prepare, publish and distribute an ASR disclosing crime statistics to the campus community no later than October 1st. DoE can issue civil fines of up to $27,500 per violation for a substantial misrepresentation of the number, location or nature of the reported crimes. (At the time of our review, no SUNY campus has been fined for non-compliance with the Clery Act.) DoE can also suspend violating colleges from participating in federal Title IV student financial aid programs, including Stafford, Perkins, and Parent (PLUS) loans as well as Pell and Supplemental Education Opportunity Grants. In addition, the Clery Act mandates that colleges annually submit their crime statistics, via a Web-based report, to DoE. The crime statistics for all participating colleges are available for public viewing on DoE's website. One of the purposes of providing this information to the public is to permit simple comparisons of crime statistics among colleges.

We visited four SUNY colleges to evaluate their compliance with Clery Act requirements, particularly with regard to the reporting of accurate crime statistics. The four colleges included the University Centers at Buffalo and Stony Brook and the Colleges at Delhi and New Paltz. These four colleges provide educational services to about 30 percent of the total student enrollment in SUNY's 29 State-operated colleges.

We found that Delhi reports crime statistics by academic year instead of calendar year, as required. In addition, Stony Brook reports crimes based on New York State Penal Law categories instead of the Clery Act required definitions from the Federal Uniform Crime Reporting (UCR) Handbook. Not adhering to such reporting requirements impedes the ability to make data comparisons among colleges.

At the four colleges, we reviewed the police incident reports for the 2006 calendar year. We compared the 2006 statistics reported by the campuses to 2006 police incident reports. We found that three of the four colleges published inaccurate crime statistics by either under-reporting or not properly categorizing this information. We identified under-reporting of crimes/violations at the three colleges, as follows: Stony Brook (56), Buffalo (20), and Delhi (3). Stony Brook's under-reporting included 33 burglaries, 9 drug arrests, 5 forcible sexual offenses, 4 motor vehicle thefts, 1 robbery, 1 arson, 1 liquor-related arrest, and 2 crimes occurring near the

campus involving illegal weapon possession. The 56 crimes/violations represented 48 percent of the total number of incidents (117) that Stony Brook should have reported. At Buffalo, 17 of the 20 crimes/violations that were not reported were for drug offenses, and the 20 crimes/violations represented 7.4 percent of the 269 total incidents that should have been reported. At Delhi, two of the three incidents that were not reported were also for drug violations, and the three crimes/ violations represented about 6 percent of the 47 incidents that Delhi should have reported.

Stony Brook's campus police are responsible for properly classifying crimes and accurately documenting the criminal elements of incidents. However, we found that a significant number of criminal incident reports prepared by Stony Brook's campus police (and formally approved by supervisors) were vague, lacking sufficient detail to accurately determine the elements of the specific crime in question. This was particularly the case for crimes classified (sometimes incorrectly) by campus police as "larcenies."

A larceny involves a theft from an area that is open to the general public and/or where the offender has legal access, and consequently, does not include the element of trespass. A burglary, in contrast, involves a theft from an area that is accessed unlawfully in order to commit the crime, and consequently, includes the element of trespass. Therefore, a burglary is a more severe crime than a larceny. In fact, the disclosure provisions of the Clery Act require campuses to report burglaries, but do not require the reporting of larcenies. According to DoE guidance provided by the Clery Handbook, colleges should classify and report thefts as burglaries if lawful entry cannot be proven. At Stony Brook, we identified a practice of not reporting such offenses as burglaries as would appear to be required under the Handbook, but instead, treated them as larcenies. This practice resulted in Stony Brook under-reporting 33 burglaries for Clery Act purposes for calendar year 2006.

In addition, we found that Buffalo Center under-reported a total of 75 disciplinary action referrals (violations of laws that did not result in arrests). These included 43 drug, 27 liquor and 5 illegal weapon incidents.

Inconsistent Statistical Reporting

The Clery Act mandates that institutions of higher education annually submit the crime statistics compiled in their ASR to DoE via a web-based data collection system. DoE makes this information available to the public via the internet. The DoE website allows the public to perform a variety of user-defined searches, such as comparisons among various campuses.

We examined all available ASRs to determine whether the 2006 statistics disclosed on the reports were consistently reported on the DoE website. We found that Empire State College reported statistics to the DoE, but has not produced an ASR. (Note: Although Empire State College generally uses non-traditional forms of instruction, instead of classrooms, it is required to comply with the provisions of the Clery Act.) We also found multiple discrepancies between what the ASR showed and what was identified on the DoE website at 19 of the remaining 28 schools (see Exhibit A for the listing of schools).

Although the discrepancies for some campuses were relatively minor, the discrepancies for others were significant, and included the categories of sexual offenses, burglaries, and liquor and drug law violations. Nine of the 19 schools had discrepancies of more than 20 crimes/violations. Three

campuses had discrepancies of more than 40 crimes/violations. For Oneonta, there were discrepancies totaling 82 crimes/violations. According to System Administration officials, this occurred because Oneonta used data from two different time periods. At Delhi, there were discrepancies of 53 crimes/violations, and at Cobleskill the discrepancies totaled 44 crimes/violations.

System-wide, we noted 103 discrepancies totaling 494 crimes and 30 discrepancies totaling 652 disciplinary action referrals (for violations of drug, liquor, and weapons possession laws). For example, Potsdam reported 9 on-campus sexual offenses to the DoE and 4 on-campus sexual offenses on its ASR. Regarding disciplinary action referrals, Oneonta reported 266 on-campus liquor referrals to the DoE, but made no indication of on-campus liquor referrals on its ASR. (Note: Because our site visits were limited to four campuses, we could not determine if either the ASR or DoE-reported statistics [for the campuses we did not visit] were correct. We simply noted the discrepancies between the two sets of data.)

Other ASR Deficiencies

In addition to the disclosure of crime statistics, the Clery Act requires college ASRs to disclose 22 security policy and procedure statements, as well as 22 safety reporting requirements. Thus, there were a total of 44 required disclosures, and as shown in Exhibit A, the ASRs of 16 colleges were lacking four or more of them. The purpose of disclosing the security policy and procedure statements is to provide college communities with important information about crime reporting procedures, access to campus facilities and grounds, campus security, and rules governing campus law enforcement. Colleges that do not have a policy or program addressing one or more of the statements and other requirements listed in the federal regulations must disclose this fact in their ASRs.

We examined the most recent ASRs submitted by the 28 State-operated colleges (that prepared them) to determine whether the 22 required security policy and procedure statements as well as the 22 safety reporting requirements were properly included. (Note: Our audit did not include assessments of the programmatic effectiveness of the security policies and procedures and other information submitted.) Two campuses (Upstate Medical Center and Cortland) reported the required security policy and procedure statements, as well as other safety reporting requirements, in substantial compliance with the Clery Act.

However, for most of the remaining 26 colleges, we identified multiple areas of noncompliance. Three colleges lacked 10 or more of the required security policy and procedure statements: Maritime (18 statements), Stony Brook (11 statements), and Albany (10 statements). Further, among a range of concerns, the security policy and procedure statements should address matters such as drug and liquor abuse, warning systems (to be used in the event of campus emergencies), criminal activity by students at off-campus locations, and guidance for victims of sexual assaults.

However, we determined that 16 colleges did not include information regarding drug and liquor abuse education programs, if any, and three colleges omitted the security statement pertaining to the warning system to be used in the event of a campus emergency. We further determined that six colleges lacked statements pertaining to criminal activity of students at off-campus locations of organizations (for example, fraternity or sorority houses) officially recognized by the campuses. In addition, two colleges lacked three or more of

the six required policy statements pertaining to victims of sexual assaults.

The Clery Act also mandates that colleges comply with other safety reporting requirements. These requirements are intended to help campuses accurately depict the safety and security of their communities and to provide mechanisms for colleges to report crimes. For example, the Clery Act mandates that colleges annually report hate crime statistics for all required geographic locations and by the crime categories detailed in the UCR Handbook. Additionally, the Clery Act mandates that colleges designate campus security authorities and annually disclose statistics for crimes reported to these authorities. Campus security authorities are college employees who have significant responsibilities for student and campus activities. They may include designated health services staff, residential life officials, security staff and campus police, and other officials. The Clery Act mandates that colleges incorporate all Clery-required content into one complete document.

When we examined the most recent (2006) ASRs of the 28 State-operated colleges (that prepared them), we determined that 19 colleges did not comply with one or more of the safety reporting requirements (see Exhibit A).

The following are examples of some of the more common reporting deficiencies.

- Four colleges (Albany, Stony Brook, Maritime and Environmental Science and Forestry) did not designate campus security authorities.

- Three colleges (Stony Brook, Maritime and Morrisville) did not report crime categories in accordance with UCR standards.

- Three colleges (Albany, Buffalo State and Binghamton) did not publish the ASR as a complete document.

- Two colleges (Oneonta and New Paltz) did not indicate whether any of the reported criminal offenses were hate crimes.

- Ten colleges (see Exhibit B) did not report crime statistics with respect to geographic location and/or whether the crime occurred in an academic setting or residential facility.

SUNY officials indicated that its colleges had most of the security and safety policies and statements in question, although such policies and statements were omitted from the colleges' ASRs. Officials should emphasize to the colleges that all Clery-required security and safety policies and statements must be included in the ASR document.

Maintenance of Crime Logs

The Clery Act mandates that colleges create, maintain and make publicly available a daily police crime log. The log must include the nature of the crime, the date reported, the date and time of occurrence, the general location of the crime, and the disposition of the complaint, if known. The intent of the crime log is to record alleged criminal incidents reported to campus police. The Clery Act mandates colleges make the most recent 60 days of log entries available for public inspection upon request during normal business hours; log entries older than 60 days must be made available within two business days of a request for inspection.

We examined the daily police crime logs of the four colleges we visited. Our review of these logs revealed areas of noncompliance

for all four colleges. For example, at Stony Brook, we determined that the log did not accurately reflect certain crimes identified by campus police. Specifically, we identified nine cases of on-campus forcible sexual offenses (based on our review of incident reports) which campus police reported as "investigations" on the crime logs. However, the logs did not indicate the specific nature of the "investigations" - alleged sexual offenses. Based on discussions with campus police, we determined that they routinely classified (on the crime logs and corresponding incident reports) on-campus forcible sexual offenses as "investigations." Although all nine of the incidents should have been reported pursuant to the Act, four incidents were not included in the ASR or data submitted to the DoE because they were classified only as "investigations".

At Buffalo, the crime logs did not accurately list the nature of crimes due to a computer program problem. For example, vandalism was reported as gambling, drug crimes were reported as forgery, and forgery was reported as weapons offenses. Campus police officials stated they are actively working with their computer vendor to correct the problem. At Delhi and New Paltz, the crime logs (that were available to the public on-line) were incomplete. We identified and reviewed incident reports (of crimes) that were not posted to the logs as they should have been. Specifically, the log at Delhi did not include 12 crimes (including two sexual assaults and two weapon possessions) that should have been posted to it. At New Paltz, the log did not include six drug arrests that should have posted.

Public Property Reporting

According to the Clery Handbook, "Public Property" is property near the campus that is not owned or controlled by the college and is not a private residence or business. Colleges are required to report offenses occurring on Public Property situated within the campus or bordering the campus (and easily accessible from the campus). Public Property is not intended to include the entire area surrounding the campus. The Clery Act requires colleges to report Public Property statistics to provide current and prospective students and employees with information about the safety and security of the surrounding campus community. Additionally, this information allows comparisons of the area where one college is located to the area of another college.

Therefore, it is important that all SUNY colleges be specific about the geographic parameters that constitute Public Property for Clery Act reporting purposes. Each campus is required to specifically define its Public Property, make a reasonable, good-faith effort to obtain the required local law enforcement statistics, and accurately report statistics for crimes occurring within those boundaries. Without clearly defined geographic locations, it is not possible to provide consistent and accurate information about campus safety, as intended by the Clery Act.

For the four SUNY colleges visited, we found that only one college (Buffalo Center) defined the geographic boundaries of their Public Property and requested crime statistics from local law enforcement authorities for Clery-reportable offenses occurring within those boundaries. While Buffalo received such statistics, officials did not report two motor vehicle thefts to the DoE or in their ASR. Another college (Delhi) did not define Public Property locations, and did not request or report local law enforcement crime statistics for Clery-reportable purposes.

The two remaining colleges (New Paltz and Stony Brook) did not define Public Property

locations. Instead, college officials requested local law enforcement agencies to provide crime statistics for Clery-reportable offenses occurring within the vicinity of the campus. However, they did not follow up on the requests. Therefore, New Paltz did not receive any crime statistics from local law enforcement agencies. While Stony Brook received such statistics from local law enforcement agencies, officials did not report certain information (including seven drug arrests, two arrests for weapons possession, one arrest for a liquor violation and one sexual offense) to either DoE or in their ASR.

Guidance, Training and Follow-Up

Based on our review, we concluded that officials at SUNY's 29 state-operated colleges did not adequately understand certain important aspects of the Clery Act's prescribed requirements. As detailed previously, some campuses did not classify and/or report crimes in compliance with the Act. In addition, the ASRs of most campuses lacked certain prescribed security policy and procedure statements as well as safety reporting requirements. Certain colleges were also either unaware of the need to (or unsure of how to) define their Public Property. Consequently, we conclude that SUNY needs to provide guidance and training to the campuses to help ensure they comply with the Act. In addition, after guidance and training have been provided, System Administration should follow-up, as appropriate, with the campuses to determine if sufficient corrective actions have been taken to address specific matters, as detailed in this report. For example, SUNY could use the University Police to assist campus security units with compliance with Clery Act program and reporting requirements.

In addition, given the technical nature of many of the Clery Act's requirements, it is important that campus personnel (responsible for compliance with the Act) receive adequate training on proper Clery-related policies and procedures. At the outset of our audit, we determined that System Administration provided formal Clery-related training to campus officials since the inception of the Clery Act and as recently as 2005. However, it was unclear who attended the training because officials could not provide us with the rosters of attendees. Consequently, there is significant risk that campus security personnel at certain campuses have not received the formal training that they need to comply with the Act. Moreover, some officials at the four colleges we visited told us they had not received any formal training in the Clery Act program in recent years. We believe that the lack of formal training also likely contributed to the deficiencies that we identified in this report.

In response to our preliminary audit observations, SUNY officials advised us that they planned to initiate system-wide training on compliance with the Clery Act beginning in April 2008. Officials subsequently advised us that training seminars were held in Syracuse, Albany, and Stony Brook, and they were attended by numerous representatives from campuses throughout the SUNY system.

We conclude that SUNY should periodically provide a formal training program addressing Clery Act requirements. Further, System Administration officials should make training available to representatives from all campuses.

One of the functions of the University Police is to conduct periodic on-site reviews of the application of SUNY-wide police policies and procedures. In addition, SUNY's University Auditor assesses university-wide procedural and policy matters, and the various functions, programs, and control systems of SUNY's

campuses. In recent years, the University Auditor has reviewed compliance with certain aspects of the Clery Act at various campuses. Given the significance of the Clery program and the matters detailed in this report, we recommend that the University Police and/or University Auditor follow-up with campus security personnel to help ensure that they are in compliance with the Act after sufficient formal guidance and training have been provided to them.

Recommendations

1. Adopt practices to help ensure colleges are complying with Clery requirements each year. Periodically confirm the accuracy and completeness of campus ASR's and DOE data.

2. Reiterate the need for SUNY college police departments to prepare incident reports to document the elements of a crime, in an appropriate, clear and comprehensive manner.

3. Provide guidance and assistance to SUNY colleges on (a) preparing ASRs, (b) defining Public Property and (c) maintaining daily crime logs.

4. Periodically provide comprehensive training to officials at all SUNY colleges to ensure officials understand and comply with Clery Act requirements as well as any related guidance established by System Administration. Encourage each campus within the SUNY system to send representatives to the training.

5. After formal guidance and training have been provided to campus security personnel, the University should follow-up with the campuses to address the matters detailed in this report and to help ensure that the campuses are in compliance with the Act.

AUDIT SCOPE AND METHODOLOGY

We conducted our performance audit in accordance with generally accepted government auditing standards. For the period from January 1, 2006 through December 31, 2006, we determined whether SUNY's 29 State-operated campuses accurately reported crime statistics and security policies and procedures in accordance with the requirements of the Clery Act.

To accomplish our audit objectives, we reviewed the applicable federal statutes and regulations, the Clery Handbook and the UCR Handbook. We also interviewed System Administration officials, and we contacted officials at each of SUNY's 29 State-operated colleges to obtain ASRs. We visited four SUNY campuses (the University Centers at Buffalo and Stony Brook and the Colleges at New Paltz and Delhi). At these campuses, we interviewed key campus personnel and audited the police incident reports and crime logs that supported the campuses' reported crime statistics for the 2006 calendar year. We reviewed documentation supporting the reported crime statistics obtained from local police departments. Additionally, for 28 of the 29 State operated colleges, we compared the crime statistics listed in their 2006 ASRs to those listed on DoE's Office of Postsecondary Education website, and we assessed the completeness and accuracy of the colleges' ASRs.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York

State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

REPORTING REQUIREMENTS

We provided draft copies of this report to SUNY officials for their review and formal comment. We considered SUNY's comments in preparing this report and have included them as Appendix A. Our rejoinders to SUNY's comments are presented in Appendix B, State Comptroller's Comments. SUNY officials generally agreed with our report's recommendations and indicated the steps that they have taken and will be taking to implement them.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Chancellor of the State University of New York shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include Steve Sossei, Brian Mason, William Clynes, Danielle Rancy, Nicole Van Hoesen, Laurie Burns, Cindy Herubin and Paul Bachman.

Exhibit A

SUNY State-Operated Campuses
Completeness of Annual Security Reports

Campus*	ASR Statistics Differ From DoE Website	Requirements Lacking ** Security Policies	Safety Policies	Total
University at Albany		10	4	14
University at Binghamton	XX	5	3	8
University at Buffalo	XX	1	0	1
University at Stony Brook	XX	11	7	18
Upstate Health Science Center		0	0	0
Downstate Health Science Center	X	3	0	3
College at Brockport	X	3	2	5
Buffalo State College	X	4	2	6
College at Cortland		0	0	0
College at Fredonia	X	2	0	2
College at Geneseo	X	2	0	2
College at New Paltz	XX	3	1	4
College at Old Westbury	X	3	0	3
College of Optometry		2	1	3
College at Oneonta	XX	1	4	5
College at Oswego		3	1	4
College at Plattsburgh		2	2	4
College at Potsdam	XX	1	2	3
College at Purchase		3	1	4
Alfred State Technology College	X	2	0	2
Canton Technology College	X	0	2	2
Cobleskill Technology College	XX	2	2	4
Delhi Technology College	XX	3	2	5
Col. of Env. Science and Forestry		4	11	15
Farmingdale Technology College	X	3	0	3
Maritime College	X	18	4	22
Morrisville Technology College		1	4	5
SUNY Institute of Technology	XX	1	8	9

Note: X - indicates that there were discrepancies of less than 20 crimes/violations between the data included in the campus' ASR and the data reported to the DoE.

XX - indicates discrepancies of more than 20 crimes/violations.

* Excludes Empire State College which, as noted in report, had not prepared ASRs.

** In certain instances, the campuses might have published statements related to one or more requirements. However, the statements did not sufficiently address the requirements.

Exhibit B

SUNY State-Operated Campuses
Deficiencies with Annual Security Reports

Campuses that did not report crime statistics properly with respect to geographic locations and/or whether the crime occurred in an academic setting or residential facility:

1. College at Oneonta
2. Delhi Technology College
3. College of Environmental Science and Forestry
4. University at Stony Brook
5. Maritime College
6. University at Albany
7. College at Plattsburgh
8. College at Potsdam
9. Canton Technology College
10. Cobleskill Technology College

APPENDIX A - AUDITEE RESPONSE

THE STATE UNIVERSITY *of* NEW YORK

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September 15, 2008

Mr. Steven Sossei
Audit Director
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Dear Mr. Sossei:

In accordance with Section 170 of the Executive Law, we are providing our comments to the draft report "State University of New York Compliance with the Clery Act, Report 2007-S-121 ("Draft Report"). The Clery Act is a reporting statute. It requires universities to provide the Federal Department of Education with statistics about the numbers of specific crimes. In addition, it requires universities to distribute an annual report ("Annual Security Report") that, in addition to statistics, contains safety policies and procedures.

The Clery Act and guidance documents issued by the Federal Department of Education ("DoE") set out technical requirements that universities must follow in reporting Clery statistics and preparing their Annual Security Reports. The Draft Report catalogues the instances where the campuses of the State University of New York ("the University") did not follow the specific requirements of the Clery Act and the DoE Handbook ("Handbook"). The University is committed to complying fully with the Clery Act and has already taken steps to address the issues raised in the Draft Report.

The University generally agrees with the findings and recommendations in the Draft Report. However, we are concerned that the Draft Report's summary does not accurately portray the University's overall compliance with the Clery Act, overstates the number of reported discrepancies between the DoE data and the Annual Security Reports, and does not adequately address the classification of burglaries and larcenies. The Final Audit Report should clarify these issues so as to put the findings in the proper context. Our specific concerns related to these items are addressed in Part I of our response.

The University recognizes that, in performing the audit, the Office of the State Comptroller did not seek to assess -- and did not assess -- whether the University's campuses are safe. Nevertheless, any report that relates to the topic of campus security can cause the public concern unless the public can put the report in context. Parts II and III provide the information that will allow the public to do this. Part II addresses what Clery statistics tell the public about campus safety. Part III sets out additional ways to assess campus safety and describes how the University's campuses excel in keeping students and members of the campus community safe.

In the 17 years since the passage of the Clery Act, the DoE has never cited the University for non-compliance. The University is committed to maintaining this record. Part IV includes our response to the recommendations in the Draft Report and describes the steps the University has already taken to ensure future compliance.

*** Comment 1**

I. University Concerns Related to the Overall Summary, Reported Discrepancies in Statistics, and Classification of Burglaries and Larcenies

The Office of State Comptroller (OSC) should clarify certain statements in the Draft Report to put them in the proper context. Specifically, OSC should clarify portions of the Draft Report's summary and disclose the methodology used to arrive at the number of reported discrepancies between campuses' Annual Security Reports and the DoE data. In addition, OSC should disclose that, in assessing the accuracy of a campus's categorization of thefts as burglaries, it relied on an old standard that has been clarified by more recent Federal guidance.

*** Comment 2**

A. Draft Report's Summary

The Draft Report states that many of the University's campuses had "... multiple problems related to compliance with the Clery Act..." This is misleading. The facts, as set out in the Draft Report, demonstrate that most campuses have materially complied with the Act's requirements. In 2006, the year that the Draft Report analyzed, every single one of the 29 campuses the auditors assessed filed the required statistics with the DoE. Further, 28 of the 29 campuses prepared and distributed Annual Security Reports, and 24 of these Annual Security Reports contained at least 80 percent, often more, of the policies the Clery Act requires to be included in the Annual Security Report. While the University could improve its Clery Act reporting, and has done so, the fact is that in 2006, it was – and remains -- in material compliance.

*** Comment 3**

*See State Comptroller Comments on p. 24

B. Discrepancies between Annual Security Reports and DoE Data

The Draft Report claims there were 562 discrepancies related to crime categories and 652 discrepancies related to disciplinary action referrals (for drug, liquor and weapons violations). When the Draft Report uses the term "discrepancy," it is referring to differences between the numbers reported to the DoE and those on campuses' Annual Security Reports. These may include differences in the total number reported as well as the locations of the incidents.

* **Comment 4**

Because of OSC's methodology, the numbers appear to be inflated. For example, 266 of the total 652 discrepancies related to one mistake made by one campus. Specifically, Oneonta reported 266 student disciplinary referrals to the DoE (and this number was available on the DoE website), but did not mention these disciplinary referrals in its Annual Security Report. Oneonta did not provide a lower number in its Annual Security Report; it simply did not include any reference to – or number of -- disciplinary referrals.

* **Comment 5**

Accordingly, there were not 266 discrepancies, but rather one deficiency in reporting the data required on the Annual Security Report. Furthermore, the Campus made no attempt to hide the information from the public; it provided it to the DoE and it was publicly available on the DoE website.

Because the auditors used this same methodology (multiplied the deficiency times the number of crimes or disciplinary referrals) to calculate the total, many of the other discrepancies are similarly mischaracterized. To give a more accurate perspective of the number of discrepancies, the Draft Report should have, at a minimum, described the methodology in full.

* **Comment 6**

C. Classification of Burglaries

The Draft Report criticizes Stony Brook for classifying certain thefts as larcenies instead of burglaries. Specifically, the Draft Report states the auditors "identified a practice of not reporting such offenses as burglaries as would appear to be required under the Handbook, but instead treating them as larcenies" (Draft Report at 6). However, the Draft Report does not acknowledge that the part of the Handbook on which the auditors rely for this statement may no longer be valid or simply was in error.

* **Comment 2**

The portion of the Handbook on which the auditors rely contains the statement, "[r]emember, if lawful entry cannot be proven, classify the crime as a burglary" (Handbook at 34). The Handbook's source for this comment is a March 10,

*See State Comptroller Comments on p. 24

2000 letter from the Federal Bureau of Investigation that states, "if an item is missing from a structure and it is unknown who took the item, the proper classification would be Burglary."

A theft, however, can only be classified as a burglary if an item was taken from someplace that was not open to the public. In other words, a theft from the student union can never be a burglary but only a larceny. But in many campus communities, it often is not clear whether the police should consider certain structures, such as classrooms, locker rooms and common areas in residence halls, as open to the public.

Further complicating this question is the fact that campus thefts are frequently from unlocked residence hall rooms. Oftentimes the police have no way to determine whether a stranger or a roommate took (or borrowed) the item, or if the student who reported the theft merely misplaced it. Describing every such theft as a burglary simply because the police cannot prove who took the item (i.e., whether that person had lawful entry) clearly would exaggerate the number of burglaries and result in inaccurate statistics.

*** Comment 7**

In May 2008, the FBI further clarified the difference between a larceny and burglary and emphasized the important role that police discretion plays in classifying a theft. In regard to how the police should classify a theft from various types of structures, such as a residence hall room, or a locker room, when the police did not know if a stranger or someone with lawful access to the area, such as a roommate, had taken the item, the FBI corrected its earlier letter. The FBI indicated that if unlawful entry cannot be proven, the theft must be classified as a larceny.

*** Comment 8**

The University provided this revised guidance to OSC. In addition, it provided OSC with a lengthy guidance document on classifying burglaries and larcenies that the University subsequently distributed to all of its police departments and to the DoE. The FBI's 2008 guidance distinguishing larcenies from burglaries should be acknowledged in the Final Audit Report.

*** Comment 2**

II. The Scope of the Clery Act

The Clery Act, among other things, requires the DoE to gather and provide the public statistical compilations of the numbers and types of crimes that occur on college campuses throughout the country. Universities provide the DoE with the data for these compilations. As with any statistical compilation, the public should use Clery statistics to supplement, not replace, a careful evaluation of any university's overall security.

*See State Comptroller Comments on p. 24 and 25

Clery statistics show numbers of crimes reported for a campus during a one-year period; they do not provide any information about the crimes, beyond the general category of the crime committed. For example, a parent looking at Clery statistics for Stony Brook in 2006 would see only a number in the arson column. From the Clery statistics, the parent would not know that one of the arsons only involved the police finding a slightly burned toy teddy bear outside the student union. Stony Brook did not initially classify this as arson, but subsequently did so based on the recommendations of the auditors.

As the Draft Report recognized, the Clery Act requirements are technical. For example, under the "Handbook, if a person breaks in and takes items from four different faculty offices in an academic building during the course of an hour, the police are to report it as only one burglary. However, if that same person, during the course of an hour, breaks into and takes items from four different residence hall rooms, the police must report it as four burglaries.

The Handbook also imposes technical requirements on the way campuses format their Annual Security Reports. These reports must be complete documents in themselves and not contain references to other publications or websites. OSC faulted some campuses for placing links to policies, instead of including the actual text of the policies, in their Annual Security Reports. Others were cited for having included information on their websites or in student handbooks instead of in their Annual Security Reports. It bears emphasizing that many of the campuses cited for non-compliance had the requisite policies and they were available to the campus community and the public, but simply had not included them in their Annual Security Reports.

*** Comment 9**

The DoE recognizes the complexity of complying with the Clery Act and in 2005, fourteen years after the law's enactment, published a 200-page handbook to provide guidance to universities. In addition, there are numerous seminars and specialized software systems offered by private organizations to assist universities in complying. While training programs are beneficial, their existence underscores that compliance with the Clery Act requires a significant commitment of time and resources by police departments.

The University has and will continue to make the commitment to comply with the Clery Act; it is an important component of the University's campus security program. However, as set forth in the next section, complying with the Clery Act is only one component of a much larger security program.

*See State Comptroller Comments on p. 25

III. The University has a Dynamic Campus Security Program

In assessing campus security, a prospective student should consider a university's entire security program, including the size, experience, and legal status of the police department, and the campus's commitment to safety.

The University has a police force of over 570 sworn police officers with years of invaluable and diverse crime-fighting experience. In addition to their campus experience, many officers have served on police forces throughout the State, including large cities like Buffalo and New York City. The University has used their experiences to build a safety program that analyzes and addresses the multiple issues facing its campuses in a wide variety of ways.

University law enforcement personnel have police officer status and regularly participate in training in areas including firearms, emergency response, anxiety indicators in campus environments, active shooter-reactive containment, and ballistic shield instruction. In addition, University Police officers work closely with local and State police; this improves their effectiveness in emergency situations. The response time of a University Police Officer to a report of a crime is one of the fastest in New York State. Due in part to the high ratio of officers to students and the consistent safety training and community policing programs, a student, faculty, or staff member on a SUNY campus is many times safer than they would be in the surrounding area.

The University's campuses have the majority of the safety policies required by the Clery Act and make them available to the campus community and the public (even if they did not report them in specified ways on their Annual Security Reports). More importantly, the University actively seeks to ensure that students know how to protect themselves. When students arrive at a University campus, they participate in safety and crime prevention orientations and rape prevention trainings. University police chiefs and assistant chiefs talk to students and parents at summer orientations, both in large groups and individually. Students receive lists of resources to promote and ensure their safety. Further, students are encouraged to come forward and report any suspicious activity to University police officers, by name or anonymously.

Alerting the campus community to danger is an integral part of the University's campus safety plan. In the wake of Virginia Tech, the University, working with the New York State Emergency Management Office, implemented a University-wide alert and notification system, known as SUNY Alert. This system, the largest of its kind in the nation, allows campus leadership to warn the campus community of danger and hazards in ways that will reach students: by email, reverse voicemail, and text messaging.

The University's commitment to campus safety is also evidenced by the commitment that its leadership has given to keeping campuses safe. The University's leadership has established task forces to address campus safety, including the University-wide Critical Incident Management Task Force, the Chancellor's University-wide Committee on Campus Safety, and the University-wide Emergency Management Committee.

The University is committed to ensuring that its policies are effective and its campuses are safe and continually will look for ways to further improve the safety of its campuses.

IV. University Has Taken Many Steps to Improve Compliance with the Clery Act

The University agrees with the recommendations and has already has taken steps to ensure future compliance with the Clery Act. Our comments and the actions taken for each of the recommendations follow.

Recommendation 1: Adopt practices to help ensure colleges are complying with Clery requirements each year. Periodically confirm the accuracy and completeness of campus ASR's and DOE data.

The University agrees with the recommendation and will continue to provide guidance and assistance to the campuses to help ensure compliance with the Clery Act.

Recommendation 2: Reiterate the need for SUNY college police departments to prepare incident reports to document the elements of a crime, in an appropriate, clear and comprehensive manner.

The University agrees with the recommendation and will remind campuses of the need to prepare clear and comprehensive incident reports. However, the emphasis will be on ensuring that incident reports are appropriate, clear, and comprehensive, since the University is not aware of any campus that did not routinely prepare incident reports.

Recommendation 3: Provide guidance and assistance to SUNY colleges on (a) preparing ASRs, (b) defining Public Property and (c) maintaining daily crime logs.

The University agrees with the recommendation and has, and will continue to, provide guidance and assistance to campuses. The University will also

maintain its Clery Act ListServ to assist campus professionals in performing their duties.

Recommendation 4: Periodically provide comprehensive training to officials at all SUNY colleges to ensure officials understand and comply with Clery Act requirements as well as any related guidance established by System Administration. Encourage each campus within the SUNY system to send representatives to the training.

The University agrees with the recommendation and has, and will continue to, provide guidance and assistance to campuses. The University will also encourage participation in training by representatives of all campus, as appropriate. Furthermore, the University will maintain its Clery Act ListServ to assist campus professionals in performing their duties.

Recommendation 5: After formal guidance and training have been provided to campus security personnel, the University should follow-up with the campuses to address the matters detailed in this report and to help ensure that the campuses are in compliance with the Act.

The University agrees with the recommendation and will continue to promote compliance with the Clery Act requirements. The University will work with campuses to address the matters in the report and to help ensure the completeness and accuracy of the ASR's and DOE reports.

Since the inception of the audit, the University has taken numerous steps to improve its campuses' compliance with the Clery Act:

- The University hosted a full-day Clery Act Workshop at which the national head of a major organization that focuses on security on campuses spoke and answered questions on Clery Act compliance. Approximately 86 people from 42 State-operated and community colleges attended. All attendees received copies of the Clery Act Handbook and other training material.

- The Office of University Counsel issued a document to all campuses, providing guidance on how to classify larcenies and burglaries.

- The Office of University Counsel issued a document to all campuses, providing guidance on the 2008 changes to the Clery Act created by Congress' August 2008 passage of the Higher Education Reauthorization Act.

- The University developed an electronic Clery Act ListServ to give campus officials a venue to ask Clery-related questions and receive Clery-related guidance. To date, almost 90 campus officials are members of the ListServ. The Office of University Counsel is responsible for the ListServ; it shares its answers to queries with all ListServ participants to ensure that campuses apply the Clery Act uniformly.

- Individual campuses have taken additional measures to ensure compliance. For example, Stony Brook has provided training sessions not only to officers but to other university officials. In addition, Stony Brook purchased a computer software program (Police Pro) that assists in documenting and 'capturing' criminal incidents based on Clery and UCR guidelines.

- Campus officials have attended professional conferences, such as the International Association of Campus Law Enforcement (IACLEA), where speakers have addressed the Clery Act in detail.

The University will continue to work with our campuses and provide training and other guidance to ensure that campus officials understand and comply with the Clery Act.

Thank you for the opportunity to respond to the Draft Report. If you have any questions, please contact me.

Sincerely,

James R. Van Voorst

Interim Vice Chancellor
for Finance and Business

Copy: J. Clark, Interim Chancellor

APPENDIX B - STATE COMPTROLLER COMMENTS ON AUDITEE RESPONSE

1. This statement is not accurate. The U.S. Department of Education found SUNY's College at Cortland to be in non-compliance with Clery Act requirements in a report that was issued on September 3, 2002.

2. SUNY's comments are inaccurate. We applied the correct guidance when conducting the audit. The standards that we applied for our audit were prescribed by the U.S. Department of Education's Office of Postsecondary Education (DoE) in "The Handbook for Campus Crime Reporting," which is the official guidance for Clery Act reporting. Our audit addressed SUNY's compliance with Clery Act reporting requirements through 2006. In May, 2008, subsequent to our audit fieldwork, SUNY obtained guidance from the FBI which conflicts with the Handbook with regard to the classifications of and distinctions between larcenies and burglaries. However, the DoE has not amended the Handbook's guidance on this matter. SUNY should have complied with the official guidance (from the Handbook) in affect for the period of our audit, yet the Stony Brook campus did not comply.

3. The term "material" compliance is SUNY's conclusion not OSC's. It is unclear that SUNY is in material compliance with the reporting requirements of the Act. Although SUNY's campuses generally had 80 percent or more of the required safety and security statements in their ASRs, 19 campuses had discrepancies between the data they included in their ASRs and the data they reported to the DoE. For nine campuses, there were discrepancies of 20 or more crimes/violations, which could have been material to the data reported. In addition, there were significant errors in the numbers of crimes/violations reported by the Stony Brook and Buffalo University Centers (two of four campuses we visited) in their ASRs. Consequently, we were unable to conclude that SUNY was in material compliance system-wide with the Act's major reporting requirements.

4. Based upon SUNY's response, we have revised our report to show the number of incidents (103 and 30) associated with the total number of differences we found. Many times a particular incident will touch upon several categories for reporting purposes. We also, reduced the total number of crimes from 562 to 494 based on SUNY's response.

5. We have amended our report to make the presentation of this matter more descriptive.

6. We did not mischaracterize this matter in our report. We simply accumulated the discrepancies between the numbers of crimes and referrals the campuses reported in their ASRs and the numbers of crimes and referrals the campuses reported to the DoE. Also, see Comptroller's Comment Number 4.

7. SUNY officials are incorrect in their statements. According to DoE guidance provided by the Clery Handbook, "… if an item is missing from a structure and it is unknown who took the item, the proper

classification would be a Burglary." Such events should be reported as a burglary for Clery Act purposes.

8. Many (if not most) of the incidents in question should have been classified as burglaries because it could reasonably be concluded that unlawful entry occurred. Even if this were not so, it would be inappropriate for the audit to retroactively apply "new" guidance to old numbers rather than apply the correct guidance to the old numbers. This would be inaccurate and misleading.

9. This comment is not true. In fact, we did not fault campuses for placing electronic links to certain policies instead of placing the actual texts of those policies in campuses' ASRs. In addition, we acknowledge in our report that campuses likely published certain required Clery policies, although these policies were not included in the campuses' ASRs. The Act requires the prescribed policies to be included in the ASRs.