



MAR 12 2013

Dr. Benjamin Allen
President
University of Northern Iowa
1227 West 27th Street.
Cedar Falls, IA 50614-0002

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Dear Dr. Allen:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine University of Northern Iowa (UNI) a total of \$110,000 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any or all of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV, HEA programs). Under the Department's regulations, the Department may impose a fine of up to \$27,500 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on UNI's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), and the Department's regulations in 34 C.F.R. §§ 668.41 and 668.46.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). Specifically, the ASR must include: a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses; policies for preparing the annual disclosure of crime statistics; policies encouraging prompt reporting of crimes to the police; statements with a description of type and frequency of campus safety programs; a description of crime prevention programs; a statement explaining the importance of preserving evidence in cases of alleged sex crimes and an explanation of how to preserve the evidence; and a statement that describes procedures on voluntary, confidential reporting of crimes. 34 C.F.R. § 668.46(b)(2). In addition, the ASR must report statistics for the three most recent calendar years concerning the occurrence of certain crimes on campus, in or on certain non-campus buildings or property, and on public property. 34 C.F.R. § 668.46(c). An institution must compile and publish crime statistics for each separate campus. 34 C.F.R. § 668.46(d). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. The ASR must be distributed to current students and employees and must be made available to applicants for

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

Administrative Actions and Appeals Service Group
830 First St., N.E. Washington, D.C. 20002-8019
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admission and employment to provide them with accurate, complete and timely information about crime and safety on campus. 34 C.F.R. § 668.41(e). Institutions must submit the crime statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(e)(5).

The Department conducted a program review at UNI from April 21, 2009 to April 24, 2009. The focus of the review was UNI's compliance with the Clery Act. The review consisted of an examination of UNI's policies and procedures related to campus safety; records of the UNI Police Department (UNIPD); UNI's student disciplinary records; and interviews with appropriate UNI staff members.

On February 22, 2010, the Department issued a Program Review Report (PRR) to UNI. The review found that UNI had not complied with the Clery Act and the Department's implementing regulations. UNI responded to the report on March 22, 2010. After reviewing UNI's response, the Department issued its Final Program Review Determination (FPRD) letter to UNI on April 25, 2011. The FPRD is incorporated by reference into this fine action. (Enclosure 1).

The Department is taking this fine action based on the findings in the FPRD, which concluded that UNI did not accurately report its calendar year 2007 campus crime statistics to the Department for inclusion in the Campus Crime and Security Website. Additionally, UNI did not notify its students and employees regarding the availability of its 2006 and 2007 ASRs and the means of accessing them by the October 1 deadline. Further, UNI's ASR at the time of the review had an insufficient timely warning policy statement because it did not describe the mode of communication in which timely warnings would be made to the campus community. UNI's ASR at the time of the review did not include a clear statement that in a disciplinary proceeding involving an alleged sexual offense, the accuser and the accused are entitled to the same opportunities to have others present.

UNI FAILED TO PROPERLY COMPILE AND DISCLOSE ACCURATE CRIME STATISTICS TO THE DEPARTMENT FOR CALENDAR YEAR 2007

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must make available statistical information related to certain reported crimes and arrest/campus disciplinary referrals for alcohol, drug and illegal weapons possession violations. The statistical information must be disclosed by location – on campus (dormitories vs. residential facilities), in or on non-campus buildings or property, and on public property – and must be provided for the three most recent calendar years. C.F.R §§ 668.46(a), 668.46(c)(1) – (c)(4).

The statistical reporting must be disclosed and made available as part of the institution's ASR by October 1 of each year, and it must be electronically submitted to the Department for its inclusion in the Campus Crime and Security Website. The Department has established timeframes within which institutions must electronically submit information. C.F.R § 668.41(e)(1)-(e)(5).

UNI reported to the Department that 40 persons were referred for disciplinary actions based on liquor law violations during the 2007 calendar year; however, UNI's website reported 491 referrals for liquor law violations for calendar year 2007. Statistical data posted on the Department's website must be accurate and reliable. The Department notes that in its March 22, 2010 response, UNI acknowledged that it reported 40 disciplinary actions to the Department rather than the 491 reported on its website. Records provided to the Department by UNI initially showed that the correct number of disciplinary actions for liquor law violations for calendar year 2007 was 491. However, after further discussions with UNI's officials, the Department determined that the correct number of disciplinary actions for liquor law violations for calendar year 2007 should have been 407. The 491 disciplinary actions for liquor law violations initially reported on the University's website erroneously included some cases that were double counted because they were reported to more than one office within UNI. As a result of these errors, UNI's calendar year 2007 crime statistics to the Department under-reported 367 disciplinary actions for liquor law violations. UNI's response noted that it corrected its calendar year 2007 crime statistics to the Department, and changed its reporting procedures to ensure compliance with the Clery Act in the future.

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the data when it is presented to students and employees who can use the data to make decisions affecting their personal safety. Students and employees must be able to rely on the institution's reported statistics. UNI's correction of the crime statistics only after the Department alerted the University of its obligations does not excuse its earlier failure to comply with its legal obligations. The correction of the crime statistics does not diminish the seriousness of not correctly reporting crime statistics to the Department.

UNI FAILED TO PROPERLY DISTRIBUTE ITS ASR FOR CALENDER YEARS 2006 AND 2007

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must distribute an ASR to all enrolled students and current employees, through appropriate publications and mailings. The distribution must occur by October 1 of each year. The ASR may be distributed through direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail; a publication or publications provided directly to each individual; or posting on an Internet website or an Intranet website. 34 C.F.R. § 668.41(e). If an institution chooses to distribute its ASR to enrolled students by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year, distribute to all enrolled students a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(c)(2) and (e)(2).

If an institution chooses to distribute its ASR to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year,

distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(e)(3).

The institution must also provide a notice to prospective students and employees that includes a statement of the report's availability, a description of its contents and an opportunity to request a copy. If the institution chooses to provide its ASR to prospective students and prospective employees by posting the disclosure on an Internet website, the notice must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(e)(4).

UNI did not properly or completely distribute its 2006 and 2007 ASRs in accordance with the Department's regulations. UNI met the requirement that it publish its ASRs by October 1, 2006 and October 1, 2007; however, UNI did not notify its students and employees regarding the availability of the reports and the means of accessing them by the October 1 deadline. In fact, the notification of the availability of the 2007 ASR was never sent to students and employees. UNI's failure to properly distribute its 2006 and 2007 ASRs deprived the campus community of critical information that they needed to make important decisions about their personal safety.

UNI'S ASR CONTAINED INSUFFICIENT INFORMATION REGARDING THE INSTITUTION'S TIMELY WARNING POLICIES

The Department's regulations require that participating institutions prepare an ASR that contains the institution's statement of current campus policies regarding: procedures for students and others to report criminal actions or other emergencies occurring on campus; policies for making timely warning reports to members of the campus community regarding the occurrence of crimes; policies for preparing the annual disclosure of crime statistics, and a list of the titles of each person or organization to whom students and employees should report criminal offenses for the purpose of making timely warning reports and annual statistical disclosure. 34 C.F.R. 668.46(b)(2).

UNI's ASR at the time of the review did not have a policy statement on how timely warning decisions would be made and communicated to the campus community. The Department notes that UNI has since updated its policy statements to reflect the mode of communication that will be used in the event a timely warning is necessary. However, the efforts do not excuse UNI's failure to have a policy for providing timely warning to students and employees at the time of the review, as required by the Clery Act and the Department's regulations.

UNI'S ASR OMITTED A REQUIRED SEXUAL ASSAULT POLICY STATEMENT

The Department's regulations require that an institution's ASR include a statement that, during a disciplinary hearing involving an alleged sexual offense, the accuser and the accused are entitled to the same opportunities to have others present. 34 C.F.R. § 668.46(b)(11)(vi)(a).

UNI's ASR at the time of the review did not have all the required procedures for campus disciplinary actions in the case of an alleged sexual offense. Specifically, UNI's procedures for disciplinary action involving an alleged sexual offense did not include a statement that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding. UNI has since revised its procedures for disciplinary actions involving an alleged sexual offense to include the previously omitted statement. However, the efforts do not excuse UNI's failure to have a required policy statement at the time of review, as required by the Clery Act and the Department's regulations.

In determining the amount of fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R § 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates. The latest year for which complete funding data is available for UNI is 2010-2011 award year. According to the Department records, UNI received approximately \$12,191,057 in Federal Pell Grant (Pell) funds, \$75,994,201 in Federal Direct Loan funds and \$2,689,377 in Campus-Based funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,831,456, for institutions participating in the Federal Direct Loan programs, the median funding level is \$3,415,923, and for institutions participating in the Campus-Based programs, the median funding level is \$272,450. Accordingly, UNI is a large institution because its funding levels for Federal Pell Grant, Federal Direct Loan, and Campus-Based funds exceeds the median funding levels for those Title IV, HEA programs.

As detailed in this letter, the Clery Act violations identified at UNI are serious and numerous. These failures endangered UNI's students and employees who must be able to rely on the disclosures of campus crime statistics, policies and statements, and the accurate reporting of crime and statistics in order to take precautions for their safety. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and UNI's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

After considering the gravity of the violations and size of the institution, I have assessed \$27,500 for failure to report to the Department 367 disciplinary actions for liquor law violations for calendar year 2007. This is a serious violation because current, prospective students/employees, and the public must be able to rely on accurate and complete campus crime information posted on the Department's Campus Crime and Security Website. We impose a fine of \$5,000 for each

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disciplinary action not included in the statistics up to a maximum of \$27,500. In this case, UNI failed to include 367 disciplinary actions so we are assessing the maximum amount.

I have assessed \$27,500 for failure to notify students and employees regarding the availability of the 2006 and 2007 ASRs. Students and employees cannot take advantage of the information available in the ASR unless they are told it is available. UNI's failure to provide such a notice meant that students and employees were not informed of information that would help them take steps to ensure their safety. In this situation, the maximum fine is appropriate.

I have assessed \$27,500 for UNI's failure to include in its ASR a policy statement on how timely warning decisions would be made and communicated. UNI's failure to have this policy statement is a serious violation of the Clery Act because it is essential that the campus community be informed on how they will receive timely warnings of potentially dangerous situations. Recent experiences have demonstrated that timely warning policies are a vital part of an institution's campus crime and security policies and procedures.

I have assessed \$27,500 for UNI's failure to include a clear statement in its ASR that, in a disciplinary proceeding involving an alleged sexual offense, the accuser and the accused are entitled to the same opportunities to have others present. This is a serious violation because by failing to include this required statement in its ASR, UNI implicitly denied the campus community important information regarding due process and fundamental fairness in disciplinary proceedings. Students and employees cannot take advantage of information that has not been provided to them. The maximum fine is appropriate in this case.

The fine of \$110,000 will be imposed on April 2, 2013, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. UNI may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If UNI chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/Program Compliance
830 First Street, NE – UCP-3, Room 84F2
Washington, DC 20002-8019

Upon receipt of such a request, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of UNI's case to a hearing official who will conduct an independent hearing. UNI is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If UNI does not request a hearing but submits written material instead, I will consider that material and notify UNI of the amount of fine, if any, that will be imposed.

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**ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT UNI SUBMITS
MUST BE RECEIVED BY APRIL 2, 2013; OTHERWISE, THE \$110,000 FINE WILL BE
EFFECTIVE ON THAT DATE.**

If you have any questions or desire any additional explanation of UNI's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684

Sincerely,

A handwritten signature in blue ink, appearing to read "Mary E. Gust". The signature is fluid and cursive, with a large initial "M" and "G".

Mary E. Gust, Director
Administrative Actions and Appeals Service Group
Federal Student Aid/Program Compliance
U.S. Department of Education

Enclosure