



SEP 26 2022

Dr. Beck A. Taylor
President
Samford University
800 Lakeshore Drive
Birmingham, AL 35229

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Dear Dr. Taylor:

This letter is to inform you that the U.S. Department of Education (“Department”) intends to fine Samford University (“SU”; “the University”) a total of \$111,000 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Department has established for assessing fines against institutions participating in any 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”). As applicable here, under the Department’s regulations, the Department may impose a maximum fine of \$62,689 for each violation that occurred after November 2, 2015. 34 C.F.R. § 668.84.¹ As detailed below, this fine action is based on SU’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), as reflected in 34 C.F.R. §§ 668.41 and 668.46, and the fire safety requirements in §485(i) of the HEA, 20 U.S.C. §1092(i) and 34 C.F.R. § 668.49.

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

¹ The maximum fine cited in 34 C.F.R. § 668.84(a) has increased according to the Federal Civil Penalties Inflation Adjustment Act. See 87 Fed. Reg. 23450 (April 20, 2022).

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specific areas. 34 C.F.R. § 668.46(b). 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 (rape, fondling, incest, statutory rape); 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 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).

Since October 1, 2010, an institution that maintains any on-campus student housing facility, has been required to prepare an Annual Fire Safety Report (“AFSR”). 34 C.F.R. § 668.49(b). An institution that maintains on-campus student housing facilities must maintain a written, easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. 34 C.F.R. § 668.49(d). The AFSR must be published and distributed through appropriate publications and mailings in the same manner as the ASR. The AFSR must be a comprehensive publication in the same manner as the ASR; however, if an institution chooses to combine the ASR and AFSR and publish them as a single document, then the title of both reports must conspicuously appear on the cover page. 34 C.F.R. § 668.41(e).

The Department conducted a program review at SU from December 5, 2017 through December 7, 2017. On February 22, 2018, the Department issued a Program Review Report (“PRR”) to SU. SU responded to the PRR on April 20, 2018.² After reviewing SU’s responses, the Department issued its Final Program Review Determination (“FPRD”) letter to SU on June 27, 2018. The FPRD is incorporated by reference into this fine action. (Enclosure 1).³

The Department is taking this fine action based on the following findings in the FPRD:

- Failure to timely distribute a complete ASR for calendar year 2017; and
- Failure to timely distribute a complete AFSR for calendar year 2017.

² The actual response to the PRR is dated March 22, 2018 and the Certification Statement is dated April 20, 2018.

³ The PRR and FPRD also included findings relating to SU’s failure to comply with Title IV financial aid requirements. As discussed in the FPRD, those violations have been addressed separately and will not be discussed further in this letter.

I. SU DID NOT TIMELY DISTRIBUTE A COMPLETE ASR FOR CALENDAR YEAR 2017

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 and must include 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). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b).

If an institution chooses to distribute its ASR to enrolled students or 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 students and 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(c)(2); 668.41(e)(2) and (e)(3).

SU did not timely distribute the calendar year 2017 ASR to its students and employees by October 1, 2017, as required by the Department's regulations. SU acknowledged this violation to the Department's reviewers, and in its March 22, 2018 response to the PRR that the University sent its notice to students about the availability of its 2017 ASR on December 7, 2017, and a notice to employees was sent thereafter on December 14, 2017. Thus, for about three months, SU's students and employees were not properly notified about the availability of the institution's 2017 ASR. Additionally, the institution's 2017 ASR was missing the following required policy statements:

1. A statement of policy that the institution would provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. 34 C.F.R. § 668.46(k)(2)(iii).
2. A statement that provides that disciplinary proceedings require simultaneous notification, in writing, to both the accuser and the accused, of the result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking. 34 C.F.R. § 668.46(k)(2)(v)(a).
3. A statement of policy regarding the institution's emergency response and evacuation procedures, specifically including a statement that the institution will, without delay, and taking into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional

judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency. 34 C.F.R. § 668.46(g)(3).

In its March 22, 2018 response to the PRR, SU stated that it took corrective actions after the program review. However, corrective actions taken after the Department alerted the University of its failure to meet its obligations do not excuse its earlier failure to comply with the law. The *Clery Act* and the Department's regulations require institutions to properly provide the ASR by October 1 each year. The date and methods are intended to ensure that all students and employees have the necessary crime and safety information on a timely basis so that they can make informed decisions about their personal safety. Students and employees cannot be expected to know about the contents of an ASR that has not been properly and timely distributed to them. SU failed to meet its legal obligation to properly and timely provide campus safety information to its students and employees.

II. SU DID NOT TIMELY DISTRIBUTE A COMPLETE 2017 AFSR

The HEA and the Department's regulations require that all institutions that participate in the Title IV, HEA programs and maintain an on-campus student housing facility must, by October 1 of each year, prepare, publish and distribute to its current students and employees through appropriate publications and mailings, an AFSR that contains, at a minimum, all of the statistical and policy elements described in 34 C.F.R. § 668.49(b). The first AFSR had to be provided to students and employees by October 1, 2010. In the AFSR, institutions must disclose fire statistics for each on-campus student residential facility for the three most-recent calendar years. An institution's statistics must accurately and completely identify the number of on-campus fires and the cause of each fire, the number of persons who sustained fire-related injuries that resulted in treatment at a medical facility (including on-campus health centers), the number of fire-related deaths, and the dollar value of property damage caused by such fires. 34 C.F.R. § 668.49(c).

The AFSR must include several fire safety information disclosures covering topics such as the type(s) of fire safety systems that are used in each student housing facility, the number of fire drills that were conducted during the previous calendar year, and any institutional policies, procedures, and programs regarding: 1) the use and/or possession of portable electrical appliances; 2) smoking and the use or presence of open flames in student housing facilities; 3) evacuation procedures to be followed in the case of a fire; 4) fire safety education and training programs; 5) the institutional official(s) and departments to whom students and employees should report the occurrence of fires so that those incidents can be included in the institution's annual fire statistics; and 6) any plans for future improvements to the institution's fire safety program. 34 C.F.R. § 668.49(b).

The AFSR must be published and distributed through appropriate publications and mailings in the same manner as the ASR. The AFSR must be a comprehensive publication in the same manner as the ASR; however, if an institution chooses to combine the ASR and AFSR and

publish them as a single document, then the title of both reports must conspicuously appear on the cover page. 34 C.F.R. § 668.41(e).

SU did not timely distribute the calendar year 2017 AFSR to its students and employees by October 1, 2017, as required by the Department's regulations. SU acknowledged to the Department's reviewers, and in its March 22, 2018 response to the PRR that the University sent its notice to students about the availability of its 2017 AFSR on December 7, 2017. The institution then later sent a notice to employees on December 14, 2017. Thus, for three months SU's students and employees were not properly provided with the 2017 AFSR.

In its March 22, 2018 response to the PRR, SU stated that it took corrective actions after the program review. However, corrective actions taken after the Department alerted the University of its failure to meet its obligations do not excuse its earlier failure to comply with the law. The HEA and the Department's regulations require institutions to timely and properly provide the AFSR by October 1 each year. The date and methods are intended to ensure that all students and employees have the necessary fire safety information on a timely basis so that they can make informed decisions about their personal safety. Students and employees cannot be expected to know about the contents of an AFSR that has not been properly and timely distributed to them.

INITIATED FINES

In determining the amount of a 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 SU is the 2020-2021 award year. According to the Department's records, SU received approximately \$1,783,979 in Federal Pell Grant funds, \$69,841,493 in Federal Direct Loan funds and \$820,122 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 \$1,582,746; for institutions participating in the Federal Direct Loan programs, the median funding level is \$2,294,028; and for institutions participating in the Campus-Based programs, the median funding level is \$255,810. Accordingly, SU is a large institution because its funding levels for Federal Pell Grant, Federal Direct Loan funds and Campus-Based funds exceed the median funding levels for those Title IV, HEA programs.

As detailed in this letter, SU's violations of the HEA, the *Clery Act* and the Department's regulations are very serious. SU's current and prospective students and employees must be properly and timely provided with accurate disclosures of campus crime and policy statements. SU's failure to timely and properly distribute its 2017 ASR denied its students and employees of important crime and security information that could have impacted on their ability to make important personal safety decisions. Additionally, the omission of three (3) required policy statements from the 2017 ASR resulted in the ASR being incomplete and unable to properly

assist students and employees. Students and employees cannot accurately report crime on campus and understand their rights when important policy statements are not provided in the ASR. Additionally, the University failed to properly and timely distribute its 2017 AFSR to its students and employees. Thus, current students and employees were denied required fire statistics and policy statements.

I.

I have assessed \$45,000 for SU's failure to properly and timely distribute the 2018 ASR to its students and employees by October 1, 2017, as required by the *Clery Act* and the Department's regulations. I have also assessed a fine of \$21,000 for SU's failure to include three (3) required policy statements in its 2017 ASR. I have determined a fine amount of \$7,000 each for omitted policy statements listed above; SU acknowledged to the Department's reviewers, and in its March 22, 2018 response to the PRR that the University sent its notice to students about the availability of its 2017 ASR on December 7, 2017, and a notice to employees was sent thereafter on December 14, 2017. Thus, for about three months, SU's students and employees were not properly notified about the availability of the institution's 2017 ASR. Additionally, SU's 2017 ASR omitted three required policy statements. The goal of the *Clery Act* and the Department's regulations is to allow current students and employees, as well as prospective students and employees, to use the ASR to assess an institution's campus crime, procedures and environment. The policy statements in the ASR are intended for use by the campus community to understand the institution's campus safety, policies and procedures. By failing to properly and timely distribute a complete 2017 ASR, SU denied its students and employees accurate and timely crime statistics and policy statements, which would have helped them to make important personal safety decisions.

II.

I have assessed \$45,000 for SU's failure to properly and timely distribute the 2017 AFSR to its students and employees by October 1, 2017, as required by the HEA and the Department's regulations. SU acknowledged to the Department's reviewers, and in its March 22, 2018 response to the PRR that the University sent its notice to students about the availability of its 2017 AFSR on December 7, 2017. The institution then later sent a notice to employees on December 14, 2017. Thus, for three months SU's students and employees were not properly and timely provided with the 2017 AFSR. The goal of the HEA and the Department's regulations is to allow current students and employees, as well as prospective students and employees, to use the AFSR to assess an institution's campus fire safety procedures and environment. The policy statements in the AFSR are intended for use by the campus community to understand the institution's campus fire safety, policies and procedures. By failing to properly and timely distribute the 2017 AFSR, SU denied its students and employees timely and accurate fire statistics and policy statements which would have helped them to make important personal safety decisions.

Dr. Beck A. Taylor
Grays Harbor University
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The fine of \$111,000 will be imposed on October 17, 2022, unless I receive, by that date, one of the following: 1) a request for a hearing to be conducted by the Office of Hearings and Appeals; or 2) a request for reconsideration of the fine by submitting written material indicating why the fine should not be imposed.

If SU chooses to request a hearing or submit written material, you must write to me at:

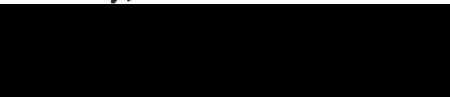
Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid
830 First Street, NE – UCP-3, Room 84F2
Washington, DC 20002-8019

If SU requests a hearing, 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 SU's case to a hearing official who will conduct an independent hearing. SU is entitled to be represented by counsel during the proceedings. If SU does not request a hearing but submits written material instead, I will consider that material and notify SU of the amount of fine, if any, that will be imposed.

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT SU SUBMITS MUST BE RECEIVED BY OCTOBER 17, 2022; OTHERWISE, THE \$111,000 FINE WILL BE EFFECTIVE ON THAT DATE.

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

Sincerely,



Susan D. Crim, Director
Administrative Actions and Appeals Service Group
U.S. Department of Education

Enclosure

Dr. Belle S. Wheelan, President, SACSCC, via bwheelan@sacscoc.org
Dr. Jim Purcell, Executive Director, AL State Department of Education, via
Jim.purcell@ache.edu