



JUN 13 2017

Dr. Jann Weitzel
President
Cottey College
1000 West Austin
Nevada, MO 64772-2790

Sent: United Parcel Service
Tracking #: 1Z 37X 7Y3 01 9876 6662

OPE-ID: 00245800

Dear Dr. Weitzel:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Cottey College (Cottey) a total of \$30,000 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). As applicable here, 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 Cottey's failure to comply with the requirements of the fire safety requirements in Section 485(i) of the HEA, 20 U.S.C. § 1092(i), as reflected in 34 C.F.R. § 668.49,¹ and the Drug-Free Schools and Communities Act Amendments of 1989 (DFSCA) as reflected in 34 C.F.R. Part 86.

Under the HEA, 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). In addition, beginning October 1, 2010, an institution that maintains any on-campus student housing facility, must prepare an Annual Fire Safety Report (AFSR). 34 C.F.R. § 668.49(b).

The Department conducted a program review at Cottey from January 28, 2013 to February 1, 2013. The review included an assessment of Cottey's compliance with the laws and regulations pertaining to the institution's administration of Title IV programs. The reviewers also examined Cottey's compliance with the HEA, specifically the accuracy and completeness of campus crime and fire statistics and policy disclosures published in its 2012 ASR and 2012 AFSR; and its compliance with the DFSCA and its implementing regulation.

¹ The Department significantly revised 34 C.F.R. § 668.46 in final regulations published on October 20, 2014. However, the fines proposed in this letter are based on violations of the regulations existing during the period covered by the program review.

Federal Student Aid
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On August 30, 2013, the Department issued a Program Review Report (PRR) to Cottey. The review found that Cottey had not complied with the crime and fire safety reporting requirements in the HEA, the DFSCA and the Department's implementing regulations. Cottey responded to the report on October 24, 2013. After reviewing Cottey's responses, the Department issued its Final Program Review Determination (FPRD) letter to Cottey on March 17, 2014. 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 relating to Cottey's compliance with the fire safety reporting requirements in the HEA and the DFSCA, which concluded that Cottey's 2012 AFSR omitted required information and that Cottey failed to comply with the drug and alcohol abuse prevention regulations.²

COTTEY'S 2012 AFSR OMITTED REQUIRED INFORMATION

As of October 1, 2010, the HEA and the Department's regulations require that all institutions that receive Title IV, HEA funds 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). These 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, the number of fire-related deaths, and the dollar value of property damage caused by such fires. 34 C.F.R. § 668.49(c).

In addition, 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, any institutional policies, procedures, and programs regarding: 1) the use and/or possession of portable electrical appliances; 2) smoking and the use/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. The AFSR must be a comprehensive publication; however, an institution may combine the ASR and AFSR in a single document as long as the titles of both reports appear conspicuously on the cover page. 34 C.F.R. § 668.41(e).

² The FPRD included a finding relating to Cottey's failure to publish and distribute a complete and accurate ASR for calendar year 2012 (finding #2). The Department has decided not to assess a fine relating to that finding.

Cottey has student housing facilities and is covered by the requirement for an AFSR. The FPRD found that Cottey's 2012 AFSR did not include required policy statements in seven areas. Cottey's 2012 AFSR did not include information about the number of fire drills that were conducted during the previous calendar year; the use and/or possession of portable electrical appliances; and the evacuation procedures to be followed in the case of a fire. Cottey did not contest the finding that it did not publish and distribute a complete AFSR for calendar year 2012. Cottey provided a corrective action plan designed to ensure that its future AFSRs are complete and accurate. However, the revision of procedures after the Department alerted the institution of its obligations does not excuse its earlier failure to comply with the law. Cottey's students and employees should have received complete fire safety information so that they could make informed decisions about their personal safety, and where to report that a fire has occurred.

COTTEY DID NOT COMPLY WITH THE DRUG AND ALCOHOL ABUSE PREVENTION REQUIREMENTS

The DFSCA and the Department's regulations require institutions of higher education to adopt and implement a drug prevention program for its students and employees that, at a minimum, includes the annual distribution in writing to each employee, and to each student who is taking one or more classes for any type of academic credit (except continuing education units) standards of conduct that: clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities; describe the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol; describe the health risks associated with the use of illicit drugs and the abuse of alcohol; describe any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and include a clear statement that the institution will impose disciplinary sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions for violation of the standards of conduct. In addition, an institution must conduct a biennial review of its program to determine its effectiveness and implement changes to the program if they are needed and ensure that the disciplinary sanctions mentioned above are consistently enforced. 34 C.F.R. § 86.100.

Cottey did not meet the requirements of the DFSCA. The Department's reviewers found that, during calendar year 2012, Cottey did not distribute its drug and alcohol abuse prevention program (DAAPP) to students who enrolled, and employees who were hired after the initial distribution. Cottey posted the DAAPP on its website, but did not ensure that it was actively provided to all of its students and employees as required by 34 C.F.R. §86.100(a). Cottey did not challenge this finding or contend that it complied with the regulatory requirements.

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 Cottey

is 2014-2015 award year. According to the Department records, Cottey received approximately \$564,676 in Federal Pell Grant (Pell) funds, \$695,150 in Federal Direct Loan funds and \$55,877 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 \$1,540,305, for institutions participating in the Federal Direct Loan programs, the median funding level is \$2,108,926, and for institutions participating in the Campus-Based programs, the median funding level is \$271,961. Accordingly, Cottey is a small institution because its funding levels for Federal Pell Grants, Federal Direct Loans, and Campus-Based funds are below the median funding levels for those Title IV, HEA programs.

As detailed in this letter, Cottey's violations of the HEA and the DFSCA are very serious. As a result of these violations, students and employees were deprived of complete fire safety information, and drug and alcohol abuse prevention information necessary for their safety. The Department considers an institution's compliance with these requirements to be part of its administrative capability, and Cottey's failure to comply with those requirements constitutes an inability to properly administer the Title IV programs.

After considering the gravity of the violations and size of the institution, I have assessed a fine of \$15,000 for Cottey's failure to publish and distribute a complete AFSR for calendar year 2012. This is a serious violation because students and employees were denied critical information about fire safety at Cottey, including fire evacuation procedures. The AFSR is unlikely to be helpful when it does not contain fire drill information, and evacuation procedures.

I have assessed a fine of \$15,000 for Cottey's failure to properly distribute its DAAPP to its students and employees. This is a serious violation because students and employees who did not browse the institution's website had no way to knowing that there was actually a posted DAAPP.

The fine of \$30,000 will be imposed on **July 3, 2017**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Cottey may submit both a written request for a hearing and written material indicating why a fine should not be imposed.

If Cottey 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/Enforcement
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 Cottey's case to a hearing official who will conduct an independent hearing. Cottey is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If Cottey does

Dr. Jann Weitzel
Cottey College
Page 5

not request a hearing but submits written material instead, I will consider that material and notify Cottey of the amount of fine, if any, that will be imposed.

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT COTTEY SUBMITS MUST BE RECEIVED BY JULY 3, 2017; OTHERWISE, THE \$30,000 FINE WILL BE EFFECTIVE ON THAT DATE.

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

Sincerely,

A black rectangular redaction box covering the signature of Susan D. Crim.

Susan D. Crim, Director
Administrative Actions and Appeals Service Group
Federal Student Aid/Enforcement Unit
U.S. Department of Education

Enclosure

cc: HLC, via bgdanley@hlcommission.org
Leroy Wade, MO Coordinating Board of Higher Ed, via info@dhe.mo.gov