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SEP 27 2017

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Dear Dr. Badal:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine the University of Jamestown (Jamestown; the University) a total of \$210,000 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 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 \$35,000 for each violation.¹ 34 C.F.R. § 668.84. As detailed below, this fine action is based on Jamestown'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 (2012)², the fire safety requirements in §485(i) of the HEA, 20 U.S.C. §1092(i) and 34 C.F.R. §668.49, and the Drug-Free Schools and Communities Act Amendments of 1989 (DFSCA), as reflected in 34 C.F.R. Part 86.

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, among other things, a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). Specifically, the ASR must include: policies for preparing the annual disclosure of crime statistics; a statement of policy concerning the security or access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities; a statement of policy concerning the enforcement authority of security personnel, including the working relationship with state and local police agencies; a statement that encourages accurate and prompt reporting of all crimes to the campus police or public safety department and/or appropriate local law enforcement

¹ The maximum fine amount cited in 34 C.F.R. § 668.84(a) was increased from \$27,500 to \$35,000 effective October 2, 2012 by final regulations issued by the Department on October 2, 2012, 77 *Fed. Reg.* 60047. This fine notice assesses up to \$35,000 for any serious and repeated violations that occurred after October 2, 2012 and up to \$27,500 for violations before that date.

² The Department significantly revised 34 C.F.R. § 668.46 in final regulations published on October 20, 2014. The fines proposed in this letter are based on violations of the regulations existing at the time each violation occurred, during the period covered by the program review.

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Administrative Actions and Appeals Service Group
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agencies; a description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage them to be responsible for their own security and the security of others; a description of programs designed to inform students and employees about crime prevention; a statement of policy concerning the monitoring and recording through local police agencies of criminal activity by students at noncampus locations of student organizations officially recognized by the institution; a description of the University's drug and alcohol abuse education programs, as required under section 120(a) through (d) of the HEA; a statement of policy regarding the institution's campus sexual assault programs designed to prevent sex offenses and a description of its educational programs to promote awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses; a statement regarding how interested parties can access information about registered sex offender; and, beginning with the ASR distributed by October 1, 2010, a statement of policy regarding missing student notification procedures. 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 (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 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).

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). 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, the title of both reports must conspicuously appear on the cover page. 34 C.F.R. § 668.41(e).

The DFSCA and the Department's regulations require an institution of higher education to adopt and implement a drug prevention program for its students and employees. 34 C.F.R. § 86.100.

On October 23, 2014, the Department announced an off-site program review of Jamestown. The entrance conference was conducted via conference call on December 11, 2014. The impetus for the review was a complaint that alleged multiple violations of the Clery Act by Jamestown. The complaint alleged serious violations primarily centered on Jamestown's persistent failure to

develop and implement required campus safety and crime prevention policies, procedures, and programmatic disclosures.

The review included an examination of Jamestown's: (1) ASRs, (2) AFSRs, (3) campus security incident reports, (4) arrest records, (5) disciplinary files, and (6) policies and programmatic disclosures related to the Clery Act. The initial examination period covered calendar years 2010–2013; however, upon the discovery of severe deficiencies within Jamestown's security operations, the scope of review expanded through the end of calendar year 2015. The Department also conducted interviews with certain institutional officials responsible for the implementation and monitoring of Clery Act requirements.

On August 16, 2016, the Department issued a Program Review Report (PRR) to Jamestown. The review found that Jamestown had not complied with the Clery Act, the fire safety requirements, the DFSCA, and the Department's implementing regulations. Jamestown responded to the PRR on October 14, 2016. After reviewing Jamestown's responses, the Department issued its Final Program Review Determination (FPRD) letter to Jamestown on December 20, 2016. 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 Jamestown: failed to produce and publish complete and accurate ASRs for calendar years 2013, 2014 and 2015; failed to produce and publish complete and accurate AFSRs for calendar years 2013, 2014 and 2015; failed to properly and timely distribute the ASRs for calendar years 2012, 2013 and 2014; failed to properly and timely distribute the AFSRs for calendar years 2012, 2013 and 2014; failed to maintain a complete and accurate crime log for calendar years 2012 and 2013; failed to maintain a complete and accurate fire log for calendar years 2012, and 2013; and failed to comply with the DFSCA and 34 C.F.R. Part 86.³

I. JAMESTOWN'S ASRs DID NOT INCLUDE REQUIRED POLICY STATEMENTS

Institutions participating in the federal student financial aid programs must have an ASR that includes its crime and security policies in a number of specific areas. The ASR must include this information so that students and employees have necessary information about the institution's security policies and procedures. 34 C.F.R. § 668.46(b).

A. ASR FOR CALENDAR YEAR 2013

Jamestown's ASR for calendar year 2013 did not contain the following required statements of policy:

³ The FPRD included additional findings regarding lack of administrative capability, discrepancies in crime statistics between the ASR and the data reported to the Campus Safety and Security Data Analysis Cutting Tool, and failure to produce a 2015 ASR for the Fargo campus for which FSA is not proposing fines.

1. Policies for preparing the annual disclosure of crime statistics.
2. A statement of policy concerning the security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.
3. A statement of policy concerning campus law enforcement that addresses: the enforcement authority and jurisdiction of security personnel; the working relationship with state and local police agencies; whether those security personnel have arrest authority; information on any agreements, such as a memoranda of understanding between the institution and such agencies, for the investigation of alleged crimes; a statement that encourages accurate and prompt reporting of all crimes to the campus police or public safety department and/or appropriate local law enforcement agencies; and information of voluntary and confidential reporting options for professional and pastoral counselors.
4. A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage them to be responsible for their own security and the security of others.
5. A description of programs designed to inform students and employees about crime prevention.
6. A statement of policy concerning the monitoring and recording through local police agencies of criminal activity by students at noncampus locations of student organizations officially recognized by the institution.
7. A description of the University's drug and alcohol abuse education programs, as required under section 120(a) through (d) of the HEA.
8. A statement of policy regarding the institution's campus sexual assault programs designed to prevent sex offenses and a description of its educational programs to promote awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses.
9. A clear statement regarding how interested parties can access state sex offender registry information.
10. A statement of its missing student notification procedures advising students that: 1) their contact person's information will be confidentially registered and that the information will only be accessible to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in the furtherance of a missing student investigation; and 2) the University will notify the custodial parent or guardian of any student that is determined to be missing and who is under 18 years of age unless said person has been emancipated. 34 C.F.R., § 668.46(h).

B. ASR FOR CALENDAR YEAR 2014

Jamestown's ASR for calendar year 2014 did not contain the following required statements of policy

1. Policies for preparing the annual disclosure of crime statistics.

2. A statement of policy concerning the security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.
3. A statement of policy concerning campus law enforcement that addresses: the enforcement authority and jurisdiction of security personnel; the working relationship with state and local police agencies; whether those security personnel have arrest authority; information on any agreements, such as a memoranda of understanding between the institution and such agencies, for the investigation of alleged crimes; a statement that encourages accurate and prompt reporting of all crimes to the campus police or public safety department and/or appropriate local law enforcement agencies; and information of voluntary and confidential reporting options for professional and pastoral counselors.
4. A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage them to be responsible for their own security and the security of others.
5. A description of programs designed to inform students and employees about crime prevention.
6. A statement of policy concerning the monitoring and recording through local police agencies of criminal activity by students at noncampus locations of student organizations officially recognized by the institution.
7. A description of the University's drug and alcohol abuse education programs, as required under section 120(a) through (d) of the HEA.
8. A statement of policy regarding the institution's campus sexual assault programs designed to prevent sex offenses and a description of its educational programs to promote awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses.
9. A clear statement regarding how interested parties can access state sex offender registry information.
10. A statement of its missing student notification procedures advising students that: 1) their contact person's information will be confidentially registered and that the information will only be accessible to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in the furtherance of a missing student investigation and 2) the University will notify the custodial parent or guardian of any student that is determined to be missing and who is under 18 years of age unless said person has been emancipated. 34 C.F.R. §668.46(h).

C. ASR FOR CALENDAR YEAR 2015

Jamestown's ASR for calendar year 2015 did not contain the following required statements of policy:

1. A statement of policy concerning the security of and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.
2. A statement of policy concerning campus law enforcement that addresses: the enforcement authority and jurisdiction of security personnel; the working relationship with state and local police agencies; whether those security personnel have arrest authority; information on any agreements, such as a memoranda of understanding between the institution and such agencies, for the investigation of alleged crimes; a statement that encourages accurate and prompt reporting of all crimes to the campus police or public safety department and/or appropriate local law enforcement agencies; and information of voluntary and confidential reporting options for professional and pastoral counselors.
3. A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage them to be responsible for their own security and the security of others.
4. A description of programs designed to inform students and employees about crime prevention.
5. A statement of policy concerning the monitoring and recording through local police agencies of criminal activity by students at noncampus locations of student organizations officially recognized by the institution.
6. A description of the University's drug and alcohol abuse education programs, as required under section 120(a) through (d) of the HEA.
7. A statement of policy regarding the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking.
8. A clear statement regarding how interested parties can access state sex offender registry information.
9. A statement of its missing student notification procedures advising students that: 1) their contact person's information will be confidentially registered and that the information will only be accessible to authorized campus officials, and that it may not be disclosed, except to law enforcement personnel in the furtherance of a missing student investigation and 2) the University will notify the custodial parent or guardian of any student that is determined to be missing and who is under 18 years of age unless said person has been emancipated. 34 C.F.R. § 668.46(h).

Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) amended the Clery Act to require institutions to compile and disclose statistics for incidents of sexual assault, dating violence, domestic violence, and stalking. VAWA also requires institutions to include new policy, procedural, and programmatic disclosures regarding sexual assault prevention and

response in their ASRs. The Department issued Final Rules regarding the implementation of the VAWA amendments on October 20, 2014. These regulations went into effect on July 1, 2015. Beginning with the 2015 ASR, institutions must disclose the number of incidents of dating violence, domestic violence, and stalking offenses and include new policy, procedural and programmatic disclosures listed in 34 C.F.R. §§ 668.46(b)(11), 668.46(j), 668.46(k)(1) - (k)(2). Jamestown's 2015 ASR did not comply with these requirements in the following ways:

10. It failed to include a statement of policy regarding the University's programs to prevent dating violence, domestic violence, sexual assault, and stalking. This disclosure must include: 1) a description of educational programs and campaigns about these offenses that are provided to students and employees; 2) a statement about the importance of preserving evidence; 3) information on the student's option to notify law enforcement authorities and that institutional officials will assist victims or witnesses to navigate the reporting process; 4) information on how to secure an order of protection, "no-contact" orders, restraining order, or similar lawful orders issued by a criminal, civil, or tribal court or by the institution; 5) information on how to access existing counseling, health, mental health, victim advocacy, legal assistance, and other services; 6) information on how to request changes to academic, living, transportation, and working situations or protective measures and the fact that the institution must make such accommodations or provide such protective measures if the victim requests them and if they are reasonably available, regardless of whether the incident is reported local law enforcement; 7) information about the University's procedures for campus disciplinary actions in cases of an alleged crime of sexual or intimate partner violence; and, 8) a statement of policy that the institution will provide a student or employee that has been a victim of dating violence, domestic violence, sexual assault, or stalking, on or off campus, a written explanation of the student's or employee's rights and options.
11. It failed to include a statement of policy that addresses the institution's programs to prevent dating violence, domestic violence, sexual assault, and stalking. The University's disclosure did not include the following required elements: 1) a description of primary prevention and awareness programs for all incoming students and new employees that included a statement that the institution prohibits all acts of dating violence, domestic violence, sexual assault, and stalking; and 2) the definitions for dating violence, domestic violence, sexual assault, and stalking in the applicable jurisdiction; the definition of "consent" in reference to sexual activity in the applicable jurisdiction; a description of safe and positive options for bystander intervention; information on risk reduction programs and a description of the institution's ongoing and awareness and prevention programs.
12. It failed to include a clear statement of policy that addresses the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, or stalking. This disclosure must address each type of disciplinary proceeding used by the institution; the standard of evidence that will apply; the steps in the hearing process, anticipated timelines, and the decision-making process for each type of disciplinary proceeding; how to file a disciplinary complaint; and how the institution

determines which type of proceeding to use based on the circumstances of the allegations. The disclosure must also describe the range of possible sanctions and a list of available protective measures.

13. It failed to include a clear statement that, in cases of alleged dating violence, domestic violence, sexual assault, or stalking, the institution will provide for a prompt, fair, and impartial process from initial investigation to final result. This disclosure must address the annual training requirement that applies to all persons that will participate in investigations and/or proceedings. It must also advise that both the accuser and the accused will have the same opportunities to have others present during any disciplinary proceeding or meeting. The disclosure must clearly state that each party is entitled to be accompanied by an advisor of their choice and must spell out the restrictions that will apply to the advisor's participation and that such limitations will apply to all such advisors. Finally, the disclosure must state that the accuser and the accused will receive simultaneous notification, in writing, that provides the result of the disciplinary proceeding, appeal procedures, information about any changes to the result, and notification of when the results become final.

In its official response, Jamestown concurred with the findings that its ASRs for calendar years 2013, 2014 and 2015 did not include all the required policy statements. In support of its claims that it took corrective action, Jamestown provided copies of its new and revised policies and procedures and the University's combined 2016 ASR and AFSR.

However, the issuance of improved ASRs after the Department alerted the University of its failure to meet its obligations does not excuse its earlier failure to comply with the law. Jamestown's students and employees and potential students and employees should have had access to the legally required and complete policy statements and procedures, in order to make important personal safety decisions, and to understand their rights and obligations.

One of the goals of the Clery Act is to allow current students and employees, and prospective students and employees to use the ASR to assess an institution's campus crime profile, policies and procedures, and general campus environment, as far as personal security is concerned. The required policy statements in the ASR allow the campus community to understand the institution's campus security policies and procedures. In the absence of ten (10) required policy statements from the 2013 ASR, ten (10) policy statements from the 2014 ASR, and thirteen (13) policy statements from the 2015 ASR, as listed above, Jamestown's students and employees were denied important safety information about how to prevent crime; where to report incidents; their rights after an alleged sex offense has occurred; and information about the school's missing student notification procedures. Jamestown's 2013, 2014 and 2015 ASRs were incomplete and unreliable. Students and employees cannot benefit from policies and procedures that have not been provided to them.

II. JAMESTOWN DID NOT PREPARE AND PUBLISH COMPLETE AND ACCURATE AFSRs

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). 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, 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, 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, the title of both reports must conspicuously appear on the cover page. 34 C.F.R. § 668.41(e).

The University published its 2013, 2014 and 2015 AFSRs in one document with the corresponding ASRs but the title of the document did not clearly state that the AFSR was included in the ASRs, as required by 34 C.F.R. § 668.41(e)(6).

In its response, the University conceded that its 2013, 2014 and 2015 AFSRs were not properly identified. Jamestown stated that it had taken corrective action after the review. However, the fact that the institution made corrections after the Department alerted the University of its obligation does not excuse its earlier violations. The requirement is included in the regulations to ensure that students and employees can immediately see that the institution has combined the ASR and AFSR. It is likely that many students and employees did not know that the AFSRs for calendar years 2013, 2014 and 2015 were included in the document distributed as the ASR.

Jamestown did not prepare and publish complete and accurate AFSRs for calendar years 2013, 2014 and 2015. The Department's reviewers determined that Jamestown's AFSRs did not include the following required material:

A. AFSR FOR CALENDAR YEAR 2013

1. Information concerning the fire safety systems in each of the on-campus student housing facilities.
2. A statement of policy regarding the use of portable electrical appliances, smoking, and open flames in student housing facilities.
3. Specific institutional procedures for student housing evacuation in the case of a fire.
4. A statement regarding its fire safety education and training programs that are provided to the students and employees.
5. A list of the titles of each person or organization to which students and employees should report that a fire occurred.
6. A statement regarding its plans for future improvements in its fire safety program or facility upgrades or at a minimum, a clear statement that there are no plans for any such improvements.

B. AFSR FOR CALENDAR YEAR 2014

1. Information concerning the fire safety systems in each of the on-campus student housing facilities.
2. A statement of policy regarding the use of portable electrical appliances, smoking, and open flames in student housing facilities.
3. Specific institutional procedures for student housing evacuation in the case of a fire.
4. A statement regarding its fire safety education and training programs that are provided to the students and employees.
5. A list of the titles of each person or organization to which students and employees should report that a fire occurred.
6. A statement regarding its plans for future improvements in its fire safety program or facility upgrades or at a minimum, a clear statement that there are no plans for any such improvements.

C. AFSR FOR CALENDAR YEAR 2015

1. Information concerning the fire safety systems in each of the on-campus student housing facilities.
2. A statement of policy regarding the use of portable electrical appliances, smoking, and open flames in student housing facilities.
3. Specific institutional procedures for student housing evacuation in the case of a fire.
4. A statement regarding its fire safety education and training programs that are provided to the students and employees.

5. A list of the titles of each person or organization to which students and employees should report that a fire occurred.
6. A statement regarding its plans for future improvements in its fire safety program or facility upgrades or at a minimum, a clear statement that there are no plans for any such improvements.

In its official response, Jamestown concurred with the findings that it did not prepare and publish accurate and complete AFSRs for calendar years 2013, 2014 and 2015. Jamestown claimed that it believed that “majority of the information related to the University’s ASR and AFSR was correct” but conceded that the report was not properly distributed to students and employees. In support of its claims that it took corrective action, Jamestown provided copies of its new and revised policies and procedures and the University’s 2016 combined ASR and AFSR.

However, the issuance of a corrected ASR after the Department alerted the University of its failure to meet its obligations does not excuse its earlier failure to comply with the law, Jamestown’s students and employees and potential students and employees should have had access to complete fire policy statements and procedures, in order to make important personal safety decisions, and to understand their rights and obligations.

The goal of the HEA is to allow the institution’s students and employees, and prospective students and employees to use the AFSR to assess an institution’s campus fire safety policies, procedures and environment. The policy statements in the AFSR help the campus community to understand the institution’s campus fire security policies and procedures. Without the required fire safety information and procedures in the 2013, 2014 and 2015 AFSRs, as listed above, Jamestown’s students and employees were denied important fire safety information. Jamestown’s 2013, 2014 and 2015 AFSRs were, therefore, incomplete and unreliable. Students and employees could not benefit from fire safety information that was not been provided to them.

III (A). JAMESTOWN DID NOT PROPERLY AND TIMELY DISTRIBUTE ITS ASR FOR CALENDAR YEARS 2012, 2013, AND 2014

Under the Clery Act and the Department’s regulations, institutions participating in the Title IV, HEA programs must distribute the 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).

If an institution distributes 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 current 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 distributes 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).

Jamestown did not properly and timely distribute its calendar years 2012, 2013 and 2014 ASRs to its students and employees by October 1, of each year, as required by the Department's regulations. The institution did not provide any evidence to the program reviewers that it ever distributed the 2012 and 2014 ASRs. Records provided by the University to the reviewers indicated that the combined 2013 ASR/AFSR was not distributed until October 29, 2013, and that a revised version was distributed on December 5, 2013.

In its October 14, 2016 response to the PRR, Jamestown conceded that it did not properly and timely distribute the 2012, 2013 and 2014 ASRs by the deadline of October 1. The institution claimed that it distributed "data" to the campus community but did not explain what specific information was distributed and when. The institution also claimed that it has improved its compliance efforts to avoid this problem in the future.

The Clery Act and the Department's regulations require institutions to provide the ASR by October 1, each year. The date is intended to ensure that 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. Jamestown consistently violated this requirement including in regard to the 2012, 2013 and 2014 ASRs. Thus, it failed to meet its legal obligation to properly provide timely safety information.

III (B). JAMESTOWN DID NOT PROPERLY AND TIMELY DISTRIBUTE ITS AFSR FOR CALENDAR YEARS 2012, 2013, AND 2014

Beginning October 1, 2010, an institution that maintains any on-campus student housing facility must prepare and distribute an AFSR. 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, an institution may combine the ASR and AFSR in a single document as long as the title of both reports conspicuously appears on the cover page of the document. 34 C.F.R. § 668.41(e).

Jamestown did not properly and timely distribute its calendar years 2012, 2013 and 2014 AFSRs to its students and employees by October 1, each year, as required by the Department's regulations. The institution did not provide any evidence to the program reviewers that it ever

distributed the 2012 and 2014 AFSRs. Records provided by the University to the reviewers indicated that the combined 2013 ASR/AFSR was not distributed until October 29, 2013, and that a revised version was distributed on December 5, 2013.

In its October 14, 2016 response to the PRR, Jamestown conceded that it did not properly and timely distribute the 2012, 2013 and 2014 AFSRs by the deadline of October 1, each year. The institution claimed that it distributed "data" to the campus community but did not explain what specific information was distributed and when. The institution also claimed that it has improved its compliance efforts to avoid this problem in the future.

The HEA and the Department's regulations require institutions to provide the AFSR by October 1 each year. The date is intended to ensure that students and employees have the necessary fire safety information on a timely basis so that they can make informed decisions about their personal safety, and to understand how to help avoid fires in campus buildings. Jamestown consistently violated this requirement, including in regard to the 2012, 2013 and 2014 AFSRs. Thus, it failed to meet its legal obligation to properly provide timely fire safety information.

IV (A). JAMESTOWN DID NOT MAINTAIN A DAILY CRIME LOG FOR 2012 AND 2013

Institutions participating in the Title IV, HEA programs that maintain a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a non-campus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and that is reported to the campus police or the campus security department. This log must include the nature, date, time, and general location of each crime and the disposition of the complaint, if known. The institution must make an entry or an addition to an entry in the log within two business days of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim. An institution may withhold information if there is clear and convincing evidence that the release of the information would jeopardize an ongoing criminal investigation or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence. §485(f)(4) of the HEA; 34 C.F.R. § 668.46(f). The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection. 34 C.F.R. § 668.46(f)(5).

Jamestown did not maintain an accurate and complete daily crime log for the years covered in the review. The Department's review team requested copies of the crime log for calendar years 2010 to 2013 and up to September 30, 2014. Jamestown provided a written memo stating, "Daily security logs prior to August 2012, are not available due to computer failure". The earliest report provided was dated August 24, 2012. The August 24, 2012, document heading

was “Security Report” even though Jamestown officials represented that it was part of the daily crime log. The title of the document was later changed to “Daily Security Report.” Upon reviewing the document, the review team found that the documents that the institution identified as its crime log did not include numerous reported crimes that were reflected in the campus police’s records, including:

1. September 15, 2012, 0130 hours, vandalism occurred at Kroeze Residence Hall;
2. September 22, 2012, 2330 hours, an assault occurred at Watson Hall;
3. October 27, 2012, 2350 hours, a report of a disturbance at “Jamestown University” (which should have been classified as either an assault or a simple assault);
4. March 1, 2013, 2330 hours, a victim accused an individual of sexual misconduct or of sexual assault. This incident occurred at Kroeze Residence Hall;
5. September 15, 2013, 2315 hours, an individual accused someone of assault/harassment at Seibold (according to the written report); and
6. November 7, 2013, 1045 hours, the University of Jamestown campus locked down due to credible threats from a student.

Based on the information provided by Jamestown, the program reviewers concluded that the institution did not have a crime log that met the legal requirements.

In its official response, Jamestown concurred with the finding. It stated that it used the daily Safety Patrol Log as the crime log but recognized that the Patrol Log did not satisfy the requirements of the Clery Act. Jamestown also stated that it has since developed new policies and procedures to ensure that a daily crime log is maintained. However, the revision of procedures after the Department alerted the University of its obligations does not excuse its earlier failure to comply with the law. A crime log provides vital day-to-day crime information for the campus community. It is also vital for confirming crime statistics reported by the institution. In the absence of a complete and accurate crime log, the campus community does not have an accurate timely method of checking crimes on campus. Moreover, without an accurate log, an institution is likely to produce an incorrect and incomplete ASR. Jamestown’s failure to maintain a proper crime log for 2012 and 2013 was a serious violation of the Clery Act and the Department’s regulations.

IV (B). JAMESTOWN DID NOT MAINTAIN A COMPLETE AND ACCURATE FIRE LOG IN 2012 AND 2013

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).

Jamestown failed to maintain a complete and accurate fire log as required by the Department’s regulations. The Department’s review team requested copies of the fire log for calendar years 2010 to 2013 and up to September 30, 2014. The institution provided a spreadsheet for the

Department's review. The first two columns of the fire log provided headers, "Date" and "Time". However, it could not be determined if these two columns indicated the date the fire was reported or the date and time when the fire occurred, as required by the Department's regulations. The second row entry provided the date of 2011-12 and stated that no fires were reported. However, the next entry (third row) provided a date of "Jun-12" indicating that a fire occurred in a dumpster at Kroeze Hall. Accordingly, Rows 2 and 3 contradicted each other. In addition, an entry dated "12/8/2013" indicated a partial time of "12:5- P.M." providing inaccurate information for the consumer.

In its response, Jamestown claimed that it has always tracked and reported all fire log related incidents and actions but conceded that it had not complied with the Department's regulatory requirements for the log. It also claimed that it has instituted a new fire log. However, the development of a fire log after the Department alerted the University of its obligations does not excuse its earlier failure to comply with the law. A fire log provides important information to students and their families about fire safety on campus. It also helps to confirm the institution's fire statistics. The fire log is the basis for an AFSR. The document Jamestown presented as a fire log did not give students, employees, and the public an accurate picture about fire safety on campus. Jamestown's failure to maintain a complete and accurate fire log at the time of the review was a serious violation of the HEA and the Department's regulations.

V. JAMESTOWN 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 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.

The Department found that Jamestown failed to comply with the DFSCA and 34 C.F.R. Part 86. Specifically, Jamestown failed to develop, publish, and properly distribute to its students and employees, a comprehensive drug and alcohol abuse prevention program (DAAPP) that addressed all the required subject areas. The Department's reviewers determined that while

Jamestown included portions of the required DAAPP disclosures in its student and staff handbooks, those publications did not include the following required material:

1. A description of the applicable legal sanctions under local, state, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol.
2. A description of the health risks associated with the use of illicit drugs and the abuse of alcohol.
3. A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students.

The Department's reviewers also found that Jamestown's reliance on its student and staff handbooks as the means of distributing the annual disclosures was not adequate. The University failed to provide documentation or even credible assurances that the disclosure was provided to current employees and every student enrolled for academic credit during each year of the review period, as required by the DFSCA. Moreover, Jamestown failed to conduct biennial reviews of the University's DAAPP to evaluate its effectiveness and produce a report of findings. Reviewers requested copies of the two most recent biennial reviews conducted by Jamestown. The institution provided documents titled "Biennial Review of Alcohol and Other Drug Policies and Programs" dated , January 31, 2011, September 6, 2012 and October 28, 2014. The Department also downloaded similarly titled and dated documents from Jamestown's website for comparison. The Department carefully examined and compared each version. The Biennial Reviews were identical in every respect; Jamestown restated the same goals, justifications, and activities for each calendar year. On the other hand, the statistics in the 2014 Biennial Review Jamestown forwarded to the Department differ from the statistics in a "2014 Biennial Review" downloaded from the institution's website, but simply duplicates data from Jamestown's 2012 Biennial Review. Thus, it appeared that the institution had not complied with the regulatory requirements.

In its response to the PRR, Jamestown concurred with the finding and stated that it has taken corrective actions to ensure future compliance. However, the development of a complete DAAPP after the Department alerted the University of its obligation does not excuse its earlier failure to comply with the law. Jamestown's failure to provide a DAAPP that met statutory requirements is a serious violation of the DFSCA and the Department's regulations, and deprived students and employees of important information about the institution's drug policies and procedures.

Congress enacted the DFSCA to ensure that students and employees have vital information about drug and alcohol prevention programs at their institution. Moreover, a DAAPP that has not been tested in a biennial review is unlikely to be reliable and effective. Jamestown's students and employees were not given drug and alcohol program information that would have helped them to understand the standards and code of conduct expected of them with regard to drugs and alcohol use, and the sanctions to be imposed if the code of conduct was violated.

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 Jamestown is the 2014-2015 award year. According to the Department's records, Jamestown received approximately \$951,089 in Federal Pell Grant (Pell) funds, \$4,747,258 in Federal Direct Loan funds and \$706,508 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. Jamestown is a large institution because its funding levels for Federal Direct Loans, and Campus-Based funds exceed the median funding levels for those Title IV, HEA programs.

As detailed in this letter, Jamestown's violations of the, the Clery Act, the HEA, the DFSCA and the Department's regulations are very serious and numerous. Jamestown's students and employees should have been able to rely on the timely and accurate disclosure of campus crime statistics, policies and statements and accurate fire safety information. In addition, Jamestown failed to comply with the DFSCA. Congress enacted the DFSCA to ensure that students and employees had vital information about drug and alcohol prevention programs at their institution. Moreover, a DAAPP has to be tested in a biennial review to ensure that it is reliable and effective. Jamestown's students and employees were not given drug and alcohol program information that would have helped them to understand the standards and code of conduct expected of them with regard to drug and alcohol use, and sanctions to be imposed if the code of conduct was violated.

I.

I have assessed a fine of \$27,000 for Jamestown's failure to include a total of 33 policy statements in its 2013, 2014, and 2015 ASRs. This is a serious violation because students and employees, and prospective students and employees were denied information that would help them make informed decisions about safety and campus crime policies at Jamestown. The Clery Act requires institutions to provide the various policy statements in one publication so that students and employees don't have to search for policies that may or may not exist elsewhere. Students and employees could not take advantage of policies and procedures that Jamestown did not disclose to them. Jamestown's failure to include numerous policy statements in its 2013, 2014, and 2015 ASRs rendered these reports woefully deficient, unreliable, and unhelpful to the campus community.

II.

I have assessed a fine of \$48,000 for Jamestown's failure to prepare and publish complete AFSRs for calendar years 2013, 2014, and 2015 by failing to include six (6) required fire safety information disclosures. This is a serious violation because students and employees, and prospective students and employees were denied information that would help them make informed decisions about fire safety and policies and procedures at Jamestown. The HEA requires institutions to provide the fire safety information and procedures in one publication so that students and employees don't have to search for the information that may or may not exist elsewhere. Students and employees could not take advantage of fire policies and procedures that Jamestown did not disclose to them. Jamestown's AFSRs for calendar years 2013, 2014, and 2015 did not include six required policy statements. This failure to include numerous fire safety policy statements and procedures in its 2013, 2014, and 2015 AFSRs rendered these reports woefully deficient, unreliable, and unhelpful to the campus community.

III.

I have assessed a total fine of \$87,500 for the three calendar years Jamestown failed to properly and timely distribute its ASR and AFSR to its students and employees. I have assessed \$27,500 for Jamestown's failure to properly and timely distribute its ASR and AFSR for calendar year 2012. I have also assessed \$25,000 for Jamestown's failure to properly and timely distribute its ASR and AFSR for calendar year 2013, and \$35,000 for its failure to properly and timely distribute the ASR and AFSR for calendar year 2014 to its students and employees by October 1 as required by the Clery Act, and the Department's regulations. Because the ASR/AFSR was not distributed at all for 2012 and 2014, I have assessed the maximum fines for those years (\$27,500 and \$35,000, respectively). Because the 2013 ASR/AFSR was distributed untimely, I have assessed the fine at \$25,000. Congress set a clear deadline for institutions to distribute the ASR and AFSR to students and employees. Jamestown never distributed its ASR/AFSR s for 2012 and 2014 and distributed its 2013 ASR/AFSR well after the statutory deadline. Jamestown's failure to timely and properly distribute the ASRs and AFSRs for 2012, 2013 and 2014 denied students and employees the campus security and fire safety information to which they are entitled under the law by the deadline established by the law. The ASR and AFSR is an annual document mandated by law.

IV.

I have assessed a fine of \$35,000 for Jamestown's failure to maintain a daily crime log and a daily fire log for calendar years 2012 and 2013. This failure deprived students and employees of an important source of information about crime and fire safety on campus. Moreover, the failure to maintain daily crime logs often leads to inaccurate statistical data in the ASR. The fire log is the basis for the fire statistics reported by the institution, and the failure to maintain an accurate fire log often leads to inaccurate fire statistics in the AFSR.

V.

I have assessed a fine of \$12,500 for Jamestown's failure to prepare, publish and distribute a complete DAAPP to its students and employees, and its failure to conduct a biennial review to evaluate the effectiveness of its DAAPP and to assess the consistency of sanctions imposed for violations of its disciplinary standards and codes of conduct related to drugs and alcohol. This is a serious violation because students and employees cannot make good use of a DAAPP that is incomplete, and inaccurate. Moreover, the failure to conduct a complete and accurate biennial review meant that Jamestown's DAAPP was likely outdated and inadequate for its students and employees.

The fine of \$210,000 will be imposed on **October 20, 2017**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Jamestown may submit both a written request for a hearing and written material indicating why a fine should not be imposed.

If Jamestown 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 Unit
830 First Street, NE – UCP-3, Room 84F2
Washington, DC 20002-8019

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

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT JAMESTOWN SUBMITS MUST BE RECEIVED BY OCTOBER 20, 2017; OTHERWISE, THE \$210,000 FINE WILL BE EFFECTIVE ON THAT DATE.

Dr. Robert S. Badal
University of Jamestown
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If you have any questions or desire any additional explanation of Jamestown'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
Federal Student Aid/Enforcement Unit
U.S. Department of Education

Enclosure

cc: Barbara Gellman-Danley, President, HLC, via bgdanley@hlcommission.org
ND Department of State, Administrative/Licensing Unit, via sosadlic@nd.gov