



DEC 12 2014

Laurie M. Hamen, J.D.  
President  
Mount Mercy University  
1330 Elmhurst Drive N.E.  
Cedar Rapids, IA 52402-4797

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Dear President Hamen:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Mount Mercy University/College (Mount Mercy) a total of \$55,000 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 Mount Mercy'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). 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 prospective students and employees 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).

**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  
StudentAid.gov

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The Department conducted a program review at Mount Mercy from May 10, 2010 to May 14, 2010. The focus of the review was Mount Mercy's compliance with the statutes and Federal regulations as they pertain to the institution's administration of the Title IV, HEA programs, including the institution's compliance with the Clery Act. The review consisted of, but was not limited to, an examination of Mount Mercy's policies and procedures regarding institutional and student eligibility, individual student financial aid and academic files, attendance records, student account ledgers, and fiscal records.

On September 13, 2010, the Department issued a Program Review Report (PRR) to Mount Mercy; and on June 8, 2011, the Department issued an addendum to the PRR. Among other violations, the review found that Mount Mercy had not complied with the Clery Act and the Department's implementing regulations. Mount Mercy responded to the PRR on November 12, 2010, and to the PRR addendum on November 10, 2011. After reviewing Mount Mercy's responses, the Department issued its Final Program Review Determination (FPRD) letter to Mount Mercy on December 17, 2012. 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 Mount Mercy's compliance with the Clery Act, which concluded that Mount Mercy did not properly distribute its 2009 ASR and failed to include required policy statements in its 2009 ASR.

#### **MOUNT MERCY DID NOT PROPERLY DISTRIBUTE ITS ASR FOR CALANDER YEAR 2009**

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 ASR must be distributed 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 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 the 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(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).

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).

Mount Mercy did not properly distribute its calendar year 2009 ASR to its current students and employees, or to prospective employees. Mount Mercy distributed its 2009 ASR only to new students who received the ASR in Mount Mercy's student orientation materials.

In its response to the PRR, Mount Mercy provided revised procedures to ensure that its ASR is timely prepared and distributed. However, the revision of procedures after the Department alerted the College of its obligations does not excuse its earlier failure to comply with its legal obligations. Under the Clery Act, Mount Mercy was required to provide its current and prospective students and employees with timely and accurate crime statistics and with information about campus security and crime policies so they can make informed decisions about their personal safety. Failure to actively distribute an accurate and complete campus security report to current students and employees in accordance with the Clery Act deprived the campus community of important security information.

#### **MOUNT MERCY'S CALENDAR YEAR 2009 ASR OMITTED REQUIRED POLICY STATEMENTS**

Institutions participating in the federal student financial aid programs must have an ASR that includes statements of campus policies in a number of areas relating to campus security and crime. In particular, the ASR must have a statement describing the institution's procedures for campus disciplinary action in cases of an alleged sex offense which includes clear statements about certain rights of the accuser and the accused during the proceeding. 34 C.F.R. §668.46(b)(11)(vi).

In the PRR, the Department found that in its calendar year 2009 ASR, Mount Mercy did not have the following required statements of campus policies:

1. Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that:
  - (a) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and
  - (b) Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense.

In its response to the PRR, Mount Mercy did not dispute the Department's finding and stated that it has since revised its policies and its statements to include all the policy statements that were missing in its 2009 ASR. However, Mount Mercy's late corrective efforts do not excuse Mount Mercy's failure to have the required policy statement in the 2009 ASR, as required by the Clery Act and the Department's regulations. Mount Mercy's failure to include this information deprived students, employees and prospective students and employees of important information about the procedures Mount Mercy used in campus disciplinary actions relating to alleged sex offenses.

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 Mount Mercy is 2012-2013 award year. According to the Department records, Mount Mercy received approximately \$1,841,361 in Federal Pell Grant (Pell) funds, \$12,905,907 in Federal Direct Loan funds and \$547,118 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 \$1,583,853, for institutions participating in the Federal Direct Loan programs, the median funding level is \$3,105,978, and for institutions participating in the Campus-Based programs, the median funding level is \$275,987. Accordingly, Mount Mercy 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, Mount Mercy's violations of the Clery Act are very serious. Congress enacted the Clery Act to ensure that students and employees and prospective students and employees at institutions of higher education had vital information about the occurrence of crimes on campus and about the institution's security policies. Mount Mercy's students and employees were not given crime statistics and policy information that would have allowed them to take steps to understand the security situation on campus and 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 Mount Mercy's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

I have assessed a fine of \$27,500 for Mount Mercy's failure to properly distribute its ASR for calendar year 2009 to current students and employees, and to prospective employees. This is a serious violation because the campus community and the public were deprived of important information to help them make important safety decisions.

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I have assessed a fine of \$27,500 for Mount Mercy's failure to include in its calendar year 2009 ASR a statement of its procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding and a clear statement that both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. This is a serious violation because these statements describe important rights for students who may be the accuser or the accused in a campus disciplinary action. It is vital that institutions provide information on these rights to students as required by the Clery Act.

The fine of \$55,000 will be imposed on **January 2, 2015**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Mount Mercy may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If Mount Mercy 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

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

**ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT SUBMITS  
MUST BE RECEIVED BY JANUARY 2, 2015; OTHERWISE, THE \$55,000 FINE WILL  
BE EFFECTIVE ON THAT DATE.**

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

Sincerely,



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

Enclosure

cc: Dr. Sylvia Manning, President, the Higher Learning Commission (HLC), via [info@hlcommission.org](mailto:info@hlcommission.org)  
Mr. Jason Glass, Director, Iowa Department of Education, via [Jason.Glass@Iowa.gov](mailto:Jason.Glass@Iowa.gov)