



JUN - 3 2015

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

Sent: United Parcel Service  
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OPE-ID: 00188000

Dear President Hamen:

In a letter dated December 12, 2014, the U.S. Department of Education (Department) notified Mount Mercy University/College (Mount Mercy) of its intent to fine Mount Mercy \$55,000 for its failure to comply with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in §485(f) of the Higher Education Act of 1965, as amended (HEA). The proposed fine was based on the findings in a Final Program Review Determination (FPRD) issued on December 17, 2012. In a letter dated December 22, 2014, you submitted a written response to that fine notice on Mount Mercy's behalf and requested that the Department reduce the proposed fine to \$6,875. Mount Mercy did not request for a hearing on the proposed fine.

The Department has considered the arguments and facts presented in your letter. This letter provides the Department's final decision on Mount Mercy's request that the proposed fine be reduced.

In the December 12, 2014 fine notice, the Department proposed to fine Mount Mercy a total of \$55,000 based on two findings that:

1. Mount Mercy did not properly distribute its Annual Security Report (ASR) for calendar year 2009 to its students and employees and to prospective employees. The Department proposed to impose a fine of \$27,500 for Mount Mercy's failure to properly distribute its ASR for calendar year 2009 in violation of the requirements of the HEA and the Department's regulations.

2. Mount Mercy's 2009 ASR did not include statements of institutional policy regarding sex offenses as required by 34 C.F.R 668.46(b)(2). Specifically, the Department determined that Mount Mercy's 2009 ASR did not include the following required policy statements:

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

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- (b) Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense.

The Department proposed to impose a fine of \$27,500 for Mount Mercy's failure to include these policy statements in its 2009 ASR.

The Department's letter notifying Mount Mercy of the proposed fine also notified the institution that it could request a hearing or submit written material contesting the proposed fine. Mount Mercy did not request a hearing, but in your letter of December 22, 2014, Mount Mercy requested that the fine be reduced to \$6,875. We address the violations and Mount Mercy's response below.

1. Failure to properly distribute the ASR for calendar year 2009.

The FPRD concluded that Mount Mercy did not properly distribute its ASR for calendar year 2009 to students and employees and to prospective employees. However, in its December 22, 2014 response to the Department, Mount Mercy provided an e-mail demonstrating that it properly distributed the 2009 ASR to students and employees and to prospective employees. Therefore, we are withdrawing the proposed fine of \$27,500 for not properly distributing the ASR for calendar year 2009.

2. Failure to include required policy statements regarding sex offenses in the 2009 ASR.

The FPRD concluded that Mount Mercy's 2009 ASR did not include required policy statements regarding disciplinary proceedings involving alleged sex offenses as detailed above. In its response to the fine notification, Mount Mercy acknowledged that it "did not incorporate these policies expressly in its ASR prior to the notification and request by the Department" in the Program Review Report. However, Mount Mercy contended that it included those required policy statements in a Student Handbook it calls "The Good Book" made available to all students and employees every year. Mount Mercy argued that its violation was, at most, a technical violation. Mount Mercy contended that it complied with the substance of the regulations by having such policies developed and communicated to students and employees, simply through a different medium. For these reasons, Mount Mercy requested a reduction of the proposed \$27,500 fine.

Mount Mercy argues that a fine of \$6,875 is "proper and appropriate" due to the size of its student body and staff, the size of the campus and the location of the campus. Mount Mercy contended that in the fall of 2009, it had a total student enrollment of 1,666, 118 faculty and 138 staff. Mount Mercy stated that its campus in 2009 was approximately 40 acres in size, and that with a student enrollment average of 1,466, Mount Mercy "is more appropriately considered a

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small institution.” Mount Mercy also claimed that the fine should be reduced because it claimed that it did not knowingly violate the requirements of the Clery Act.

As discussed in our letter of December 12, 2014, the Secretary has established the rule that in determining the amount of a fine to be imposed, 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. See In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993). The Department determined that Mount Mercy is a large institution because the amount of funding it received through the Federal Pell Grant, Federal Direct Loan program, and the Campus-Based programs using the most recent complete year for which data is available (2012-2013) are above the median funding levels for those programs. Although Mount Mercy challenged that conclusion, it did not challenge the data on which we related. Therefore, there is no basis for reducing the fine based on the institution’s student body size, staff size, the size of the campus and the location of the campus.

Moreover, Mount Mercy’s claim that it included the required policies in a separate publication does not serve the purposes of the Clery Act. The Clery Act requires that all of the required statements of policy and procedure must be included in a single publication. The institution must make the publication available to all students, employees and prospective students and employees in a manner that complies with 34 CFR 668.41. Mount Mercy’s failure to include the required policy statements regarding disciplinary procedures for matters involving allegations of sex offenses in the ASR meant that those statements were not readily available to students, employees and prospective students and employees in the manner required by the regulations.

#### Final Decision

For the reasons discussed above, the Department affirms the proposed fine of \$27,500 for Mount Mercy’s failure to include in its 2009 ASR required policy statements regarding sex offenses. Therefore, Mount Mercy must pay a total fine of \$27,500.

**The \$27,500 fine is due to the Department within 30 days of the date of this letter. Payment must be in the form of a certified or cashier’s check, and made payable to the U.S.**

**Department of Education.** If payment is not received by the Department within that 30-day time period, interest will accrue in monthly increments until payment is received. Please send your fine payment to me **to the attention of Lawrence Mwethuku** at the following address:

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

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**Please identify the payment as Bill No. AAA201502021 to ensure proper crediting of your payment account.**

If you have any questions about this letter, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,

A black rectangular box redacting the signature of Robin S. Minor.

Robin S. Minor, Acting Director  
Administrative Actions and Appeals Service Group  
Federal Student Aid/Program Compliance  
U.S. Department of Education

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)