



NOV 07 2014

Mr. Scott Rich  
President  
Sterling College  
125 West Cooper  
Sterling, KS 67579-1533

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Dear Mr. Rich:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Sterling College (Sterling) a total of \$165,000 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 Sterling's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), as reflected in 34 C.F.R. §§ 668.41 and 668.46, and the 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 a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). A complete ASR must include all the policy statements listed in 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).

**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 Clery Act and the Department's regulations also require that an institution that maintains 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 is reported to the campus police or the campus security department. 34 C.F.R. § 668.46(f).

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

The Department conducted an off-site program review of Sterling from September 15, 2010 to December 20, 2010. The Department initiated the review after it received a complaint from Security on Campus, Inc. (now the Clery Center for Security on Campus, Inc.), alleging that Sterling had violated the Clery Act in specific areas. The Department also received a complaint from a former Sterling student alleging that Sterling did not provide educational programs to prevent sex offenses and did not have clear policies for reporting sexual assaults. The focus of the Department's review was Sterling's compliance with the Clery Act. The review consisted of an examination of Sterling's campus police incident reports, arrest records, disciplinary files, policies and procedures relating to the Clery Act and its drug and alcohol abuse prevention program. The review team also spoke with Sterling officials with Clery Act responsibilities.

On August 2, 2011, the Department issued a Program Review Report (PRR) to Sterling. The review found that Sterling had not complied with the Clery Act, the DFSCA and the Department's implementing regulations. Sterling responded to the report on October 4, 2011. After reviewing Sterling's responses, the Department issued its Final Program Review Determination (FPRD) letter to Sterling on January 29, 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, which concluded that Sterling did not publish and properly distribute an ASR for 2009 and all prior years since the Clery Act became law; failed to include numerous policy statements in its 2010 ASR; failed to maintain a daily crime log for calendar year 2009; failed to publish and distribute a complete AFSR in calendar year 2010; failed to maintain a fire log; and failed to comply with the drug and alcohol abuse prevention regulations.

### **STERLING FAILED TO PUBLISH AND DISTRIBUTE ITS 2009 ASR**

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must make available statistical information related to certain reported crimes and arrest and campus disciplinary referrals for alcohol, drug and illegal weapons possession violations. The statistical information must be disclosed by location – on campus (dormitories vs. residential facilities), in or on non-campus buildings or property, and on public property – and must be provided for the three most recent calendar years. 34 C.F.R. §§ 668.46(a), 668.46(c)(1) – (c)(4).

The crime statistics must be disclosed and made available as part of the institution's ASR by October 1 of each year, and must be electronically submitted to the Department for inclusion in the Campus Crime and Security Website. The Department has established timeframes within which institutions must electronically submit information. 34 C.F.R. § 668.41(e)(1)-(e)(5).

The ASR must also contain, among other things, statements describing the institution's policies in a number of areas relating to campus security and safety, including a description of the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. The statement must include procedures for campus disciplinary actions in cases of an alleged sex offense, including a clear statement that both the accuser and the accused will be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense. 34 C.F.R. § 668.46(b).

Sterling acknowledged that it did not publish an ASR for calendar year 2009 or any prior year since the Clery Act became effective. In its October 4, 2011 response to the PRR, Sterling stated that it became aware of the Clery Act in September 2010. We note that Sterling had previously signed Program Participation Agreements necessary for participating in the Title IV, HEA programs in which it acknowledged that it complied with the Clery Act. 34 C.F.R. §668.14(c)(2)(i). Sterling's October 4, 2011 response to the PRR concurred with the finding and stated that it had published and posted on its website a complete 2010 ASR. However, the compilation, publication and distribution of an ASR after the Department alerted the college of its obligations does not excuse its earlier failure to comply with the law. Sterling's failure to prepare and distribute an accurate and complete ASR to current students and employees within the timeframe established by Federal law deprived the campus community of timely access to important campus crime information. Sterling's students and employees and prospective students and employees were not provided with timely crime statistics and information on the institution's policies that would have helped them to make informed decisions about their personal safety.

## **STERLING'S 2010 ASR OMITTED REQUIRED POLICY STATEMENTS**

The Clery Act and the Department's regulations require that participating institutions prepare an ASR that contains, among other things, the institution's statement of current campus crime and safety policies. 34 C.F.R. § 668.46(b)(2).

As noted in finding 1, Sterling did not issue the required ASRs prior to 2010 and thus failed to properly disclose any of the required policies and procedures to its students, employees and prospective students and employees as required by the Clery Act and 34 C.F.R. 668.46(b)(2). After Sterling was notified of the program review, it developed campus security policies and procedures and submitted them to the Department as part its 2010 ASR. The Department's review of that submission revealed that Sterling's 2010 ASR lacked the following required information:

- A statement of current policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This policy must include: its policy governing its response to such reports; its policy for making timely warning reports to the campus community; policies for preparing the annual crime report; and a list of the titles of each person or organization to whom students and employees report crimes. 34 C.F.R. § 668.46(b)(2).
- A statement of current policies regarding campus law enforcement that addresses the authority of campus security personnel, the campus security personnel's relationship with other State and local law enforcement agencies, and whether campus security personnel have the authority to arrest individuals. 34 C.F.R. § 668.46(b)(4).
- A statement that clearly describes the institution's programs designed to inform students and employees about campus security procedures and practices. 34 C.F.R. § 668.46(b)(5).
- A statement that describes the programs available to inform students and employees about the prevention of crime. 34 C.F.R. § 668.46(b)(6).
- Statements of policy regarding the enforcement of underage drinking laws or enforcement of federal or state drug laws. 34 C.F.R. § 668.46(b)(8) and 668.46(b)(9).
- A description of the drug and alcohol education programs offered as required by the DFSCA. 34 C.F.R. § 668.46(b)(10).
- A statement of the institution's policies regarding its campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. 34 C.F.R. § 668.46(b)(11) including:

- A description of educational programs to promote the awareness of rape, acquaintance rape and nonforcible sex offenses.
- A statement of policy regarding procedures for campus disciplinary action in cases of an alleged sex offense, including clear statements that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense; and sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses. C.F.R. § 668.46(b)(11)(vi).
- A statement of policy regarding emergency response and evacuation procedures. 34 C.F.R. § 668.46(b)(13) and 668.46(g).
- A statement of policy regarding procedures to test the emergency response and evacuation procedures on at least an annual basis. 34 C.F.R. § 668.46(g)(6).

In its response to the PRR, Sterling concurred with the finding and revised the information it would provide in the future. However, these efforts do not excuse Sterling's failure to disclose its policies in these areas to students and employees and prospective students and employees in its 2009 ASR, as required by the Clery Act and the Department's regulations.

#### **STERLING DID NOT MAINTAIN A DAILY CRIME LOG FOR 2009**

Institutions participating in 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 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 to 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).

Sterling acknowledged that it did not maintain a daily crime log at the time of the review. Sterling did have a security staff with the authority to assist in maintaining campus security. The security staff did have the authority to question the presence of individuals on campus and to issue parking tickets and accepted reports of crimes on campus. Sterling's officials indicated that the college believed that it was not required to maintain a daily crime log because it did not believe that its security staff constituted a security department. However, since the institution's security staff accepted reports of crimes on campus or associated areas and performed other security services, Sterling was required to maintain a crime log.

Sterling 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 College of its obligations does not excuse its earlier failure to comply with its legal obligations. A crime log is vital for confirming crime statistics reported by the institution and allows students and employees to review information about crime on campus. Sterling's failure to maintain a proper crime log for 2009 and prior years was a serious violation of the Clery Act and the Department's regulations.

#### **STERLING DID NOT PUBLISH AND DISTRIBUTE A COMPLETE AFSR IN 2010**

The Clery Act 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 (including on-campus health centers), the number of fire-related deaths, and the dollar value of property damage caused by such fires. 34 C.F.R. § 668.49(c).

The AFSR must include several fire safety information disclosures covering topics such as the type(s) of fire safety systems that are used in each student housing facility, the number of fire drills that were conducted during the previous calendar year, 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 in the same manner as the ASR. The AFSR must be a comprehensive publication in the same manner as the ASR; however, if an institution chooses to combine the ASR and AFSR and publish them as a single document, then the title of both reports must conspicuously appear on the cover page. 34 C.F.R. § 668.41(e).

Sterling's AFSR for calendar year 2010 did not include certain required information, including: the institution's policies regarding fire safety education and training programs provided to students and employees; a description of each on campus housing facility fire safety system; and a list of the titles of each person or organization to which students and employees should report that a fire has occurred.

Sterling concurred with the finding and stated that it has developed an AFSR that contains the previously omitted elements. However, the revision of the AFSR after the Department alerted the college of its obligations does not excuse its earlier failure to comply with the requirements of the Clery Act. Sterling's failure to publish and distribute a complete AFSR in 2010 was a serious violation of the Clery Act and the Department's regulations.

#### **STERLING DID NOT MAINTAIN A FIRE LOG**

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).

Sterling failed to maintain a fire log containing the date the fire was reported, time, and nature and general location of the fire in accordance with the Department's regulations. Sterling concurred with the finding and stated that it has instituted a new fire log. However, the development of a fire log after the Department alerted the college of its obligations does not excuse its earlier failure to comply with its legal obligations. A fire log provides important information to students and their families about fire safety on campus and is needed to confirm the institution's fire statistics. Sterling's failure to maintain a fire log at the time of the review was a serious violation of the Clery Act and the Department's regulations.

#### **STERLING 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.

Sterling did not meet the requirements of the DFSCA. The Department found multiple violations of the DFSCA and 34 C.F.R. Part 86. Specifically, Sterling failed to develop and implement a substantive drug and alcohol abuse prevention program (DAAPP) that contained all of the required elements, and also failed to distribute a DAAPP disclosure to all employees and students enrolled for academic credit on an annual basis. In its response to the program review report, Sterling concurred with the finding. Sterling's failure to provide a DAAPP that met statutory requirements is a serious violation of the DFSCA and the Department's regulations.

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 Sterling is 2012-2013 award year. According to the Department records, Sterling received approximately \$1,100,305 in Federal Pell Grant (Pell) funds, \$4,425,659 in Federal Direct Loan funds and \$280,296 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, Sterling is a large institution because its funding levels for Federal Direct Loan, or Campus-Based funds are above the median funding levels for those Title IV, HEA programs.

As detailed in this letter, Sterling's violations of the Clery Act, the DFSCA, and the Department's regulations are very serious and numerous. These failures could have endangered Sterling's students and employees who must be able to rely on the disclosures of campus crime statistics, policies and statements, and the accurate reporting of crime and fire statistics 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 Sterling's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.



After considering the gravity of the violations and size of the institution, I have assessed a fine of \$27,500 for Sterling's failure to publish and distribute an ASR for calendar year 2009 and for prior years since the Clery Act became law. The publication and distribution of the ASR is a fundamental requirement of the Clery Act. The ASR is used to provide important safety and security information to the institution's students and employees and prospective students and employees so that they can appropriately assess an institution's security. Thus, the failure to provide this information is a serious violation of the Clery Act and the maximum fine is an appropriate sanction.

I have assessed \$27,500 for Sterling's failure to include eleven (11) required policy statements in the ASR it distributed in 2010. This is a serious violation because by failing to include these required policy statement in its ASR, Sterling denied the campus community important information about its campus security policies, rendering the distributed ASR incomplete and unreliable. Students and employees cannot take advantage of information that has not been provided to them. I impose a fine of \$5,000 for each missing policy statement up to a maximum of \$27,500. In this case, Sterling failed to include eleven (11) policy statements so I have assessed the maximum amount.

I have assessed a fine of \$27,500 for Sterling's failure to maintain a daily crime log for calendar year 2009 and prior years. This is a serious violation because the failure to maintain daily crime logs often leads to inaccurate statistical data in the ASR. In addition, this failure deprived students and employees of an important source of information about crime on campus. The maximum fine amount is appropriate for this violation.

I have assessed a fine of \$27,500 for Sterling's failure to publish and distribute a complete 2010 AFSR. This is a serious violation because the campus community and the public were deprived of important information to help them make important safety decisions with regard to fire safety at Sterling. This violation is similar to the failure to publish an ASR and the maximum fine amount is appropriate

I have assessed a fine of \$27,500 for Sterling's failure to maintain a fire log at the time of the review. This is a serious violation because the fire log is the basis for the fire statistics reported by the institution. Failure to maintain an accurate fire log often leads to inaccurate fire statistics in the AFSR. In addition, the AFSR provides important information about fire safety on campus to students.

I have assessed a fine of \$27,500 for Sterling's multiple violations of the DFSCA and Part 86 of the Department's regulations. This is a serious violation because Sterling failed to develop and implement a substantive DAAPP, and also failed to distribute a DAAPP disclosure to all employees and students enrolled for academic credit on an annual basis. Students and employees cannot be expected to benefit from a drug and alcohol prevention program that is deficient and has not been distributed to them. Sterling's failure to comply with the law justifies the imposition of the maximum fine amount.

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Sterling College

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The fine of \$165,000 will be imposed on **November 28, 2014**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Sterling may submit both a written request for a hearing and written material indicating why a fine should not be imposed.

If Sterling 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

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

**ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT STERLING SUBMITS MUST BE RECEIVED BY NOVEMBER 28, 2014; OTHERWISE, THE \$165,000 FINE WILL BE EFFECTIVE ON THAT DATE.**

If you have any questions or desire any additional explanation of Sterling'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: Ms. Karen Solomon, Vice President for Accreditation Relations, Higher Learning  
Commission, via [ksolomon@hlcommission.org](mailto:ksolomon@hlcommission.org)  
Dr. Diane DeBacker, Kansas Commissioner of Education, KSDE, via [ddebacker@ksde.org](mailto:ddebacker@ksde.org)