



DEC 9 2014

Dr. Marshall White, Jr.  
President  
Midlands Technical College  
1260 Lexington Drive  
West Columbia, SC 29170

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Dear Dr. White:

In a letter dated September 23, 2014, the U.S. Department of Education (Department) notified Midlands Technical College (MTC) of its intent to fine MTC \$47,500 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 January 29, 2014. In a letter dated October 10, 2014, Dr. Ronald L. Rhames, Senior Vice President and Chief Operating Officer for MTC submitted a written response to that fine notice on MTC's behalf and requested that the Department not impose the proposed fine. MTC did not request for a hearing on the proposed fine.

The Department has considered the arguments and facts presented in Dr. Rhames' letter. This letter provides the Department's final decision on MTC's request that the proposed fine not be imposed.

In the September 23, 2014 fine notice, the Department proposed to fine MTC a total of \$47,500 based on two findings.

1. MTC's 2009 ASR did not include 18 statements of institutional policy required by 34 C.F.R. 668.46(b)(2). Specifically, the Department determined that MTC's 2009 ASR did not include the following required policy statements:

1. Current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus.
2. Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes.
3. Policies for preparing the annual disclosure of crime statistics.
4. A list of the titles of each person or organization to which students and employees should report the criminal offenses described in 34 C.F.R. § 668.46(c) (1) for the purpose of making timely warning reports and the annual statistical disclosure.
5. Current policies concerning campus law enforcement that: addresses the enforcement authority of security personnel, including their relationship with State and local police

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agencies and whether those security personnel have the authority to arrest individuals; encourages accurate and prompt reporting of all crimes to the campus police (if any) and the appropriate police agencies; and describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.

6. A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.
7. A description of programs designed to inform students and employees about the prevention of crimes.
8. A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of students organizations officially recognized by the institution, including student organizations with off-campus housing facilities.
9. A statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs.
10. A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses.
11. Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported.
12. Information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel.
13. Notification to students of existing on and off campus counseling, mental health, or other student services for victims of sex offenses.
14. Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available.
15. Procedures for campus disciplinary action in cases of an alleged sex offense.
16. A statement that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding.
17. A statement that both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense.
18. 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.

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

2. MTC did not properly compile and publish accurate crime statistics in its 2009 ASR. Specifically, MTC improperly classified a burglary as an "Investigation of Funds" which resulted in excluding the incident from the crime statistics. Incident report # AP-08-09-069 indicated that on September 2, 2008, an unknown person(s) entered the Subway Restaurant in MTC's Student Center and took \$200 from a grey lockbox. The complainant stated that her keys were stolen and someone had entered the facility and taken the money. MTC classified the incident as an investigation of funds; however, it should have been classified as a burglary. As a result, students, employees, and the public were not provided with accurate crime statistics in MTC's 2009 ASR; and MTC did not report accurate information to the Department's Campus Crime and Security Website for calendar year 2008.

In addition, as discussed in the fine letter, in the report of its Quality Assurance Review at MTC, the FBI identified one case in which MTC incorrectly characterized a crime and did not include it in its campus crime statistics in the ASR and in the report to the Department. Specifically, the FBI found that the crime recorded in incident report #AP-09-03-019 had been incorrectly classified by MTC as a larceny-theft from a building when it should have been classified as a burglary. Since larceny-thefts are not included in the general campus crime statistics (they are included if they are hate crimes), but burglaries are reported, MTC's incorrect characterization of the crime reflected in incident #AP-09-03-019 meant it was not included in the statistics provided in the ASR and reported to the Department. The Department proposed to impose a fine of \$10,000 for MTC's failure to properly classify and report incident report # AP-08-09-069 in its 2009 ASR as a burglary. The Department also proposed to impose a fine of \$10,000 for MTC's failure to properly classify and report incident report # AP-09-03-019 as a burglary for calendar year 2009, in violation of the requirements of the HEA and the Department's regulations.

The Department's letter notifying MTC of the proposed fine also notified the institution that it could request a hearing or submit written material contesting the proposed fine. MTC did not request a hearing, but in Dr. Rhames letter of October 10, 2014, MTC argued that a fine should not be imposed. In particular, in regard to the finding that it had not included required policy statements, MTC contended that it believes that its 2009 ASR contained clear and concise statements that referenced detailed required policy statements that were available elsewhere. MTC argued that it acted in good faith, and students and employees were not denied information that would help them make informed personal safety decisions at MTC. In response to the finding that it had published inaccurate crime statistics, MTC specifically contested the finding that it failed to properly classify and report incident report # AP-09-03-019 as a burglary in its 2009 crime statistics.

MTC argued that the Department should not impose a fine for MTC's failure to include Incident #AP 09-03-019 in its 2009 crime statistics because the 2009 crime statistics were first included in the 2010 ASR, which was not covered in the program review. MTC did not specifically address the finding that it failed to properly classify and report incident report # AP-08-09-069 as a burglary in its 2009 ASR. We address the violations and MTC's response below.

1. Failure to include in the 2009 ASR policy statements in 18 required areas.

The FPRD concluded that MTC's 2009 ASR did not include required policy statements in 18 areas as detailed above. In its response to the fine notification, MTC asserted that it believes that "clear and concise statements were in its 2009 ASR that referenced the required policy statements." Additionally, MTC stated that "the college made one mistake in methodology, providing concise statements that referred to more detailed policy statements." MTC asserted that "Not until the Final Program Review dated January 29, 2014, was it made clear to the college that the policies had to be in writing in the ASR."

Contrary to MTC's argument, however, both the Program Review Report (PRR) and the FPRD concluded that MTC's 2009 ASR did not have complete required policy statements in the 18 areas. Moreover, in its January 27, 2011 response to the PRR, MTC claimed that it did have policy statements in some of these areas, but conceded that those policies were not included in its 2009 ASR. Both the HEA and the Department's regulations require that institutions provide a complete and comprehensive ASR that includes all the required policies and statistics. See §485(f) of the HEA, 34 C.F.R. §§ 668.41 and 668.46 and *The Handbook for Campus Crime Reporting*, U.S. Department of Education, 2005 at 85-114.

2. Failure to properly classify and report two burglaries in crime statistics for 2008 and 2009 respectively.

The FPRD found that MTC did not properly classify and report incident # AP-08-09-069 in its 2009 ASR as a burglary. MTC did not specifically ask the Department to reconsider the fine based on its failure to include this incident in its campus crime statistics. Therefore, we affirm the proposed fine of \$10,000 for MTC's failure to properly classify and report incident report # AP-08-09-069 as a burglary in its crime statistics for calendar year 2008, which should have been reported in the 2009 ASR.

The FPRD also concluded that MTC did not properly classify and report incident report # AP-09-03-019 as a burglary for calendar year 2009. The FBI found that the crime recorded in incident report #AP-09-03-019 had been incorrectly classified by MTC as a larceny-theft from a building when it should have been classified as a burglary. Since larceny-thefts are not included in the general campus crime statistics, but burglaries are reported, MTC's incorrect characterization of the crime reflected in incident #AP-09-03-019 meant it was not included in the statistics provided in the ASR and reported to the Department.

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However, MTC correctly noted that the incident reflected in report #AP-09-0319 occurred in 2009 and, therefore, it would have been first reported in 2010 and not in the 2009 ASR which was the subject of the FPRD. Therefore, we are withdrawing the proposed fine of \$10,000 for not including this incident in the crime statistics.

#### Final Decision

For the reasons discussed above, the Department affirms the proposed fines of \$27,500 for MTC's failure to include in its 2009 ASR required policy statements in 18 areas, and \$10,000 for its failure to properly classify and report incident report # AP-08-09-069 as a burglary in its 2008 crime statistics. Therefore, MTC must pay a total fine of \$37,500.

**The \$37,500 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 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

**Please identify the payment as Bill No. AAA201501017 to ensure proper crediting of your payment account.**

Dr. Marshall White, Jr.  
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If you have any questions about this letter, 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

cc: Dr. Belle S. Wheelan, President, Southern Association of Colleges and Schools  
Commission on Colleges, via [bwheelan@sacscoc.org](mailto:bwheelan@sacscoc.org)  
Dr. MaryAnn Janosik, Director, SC Commission of Higher Education, via  
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