



August 3, 2015

Dr. DeRionne P. Pollard
President
Montgomery College
900 Hungerford Drive
Rockville, MD 20850

UPS Tracking #
1Z A87 964 02 9197 5260

RE: Final Program Review Determination
OPE ID: 00691100
PRCN: 201110327497

Dear President Pollard:

The U.S. Department of Education (the Department) previously issued a program review report regarding Montgomery College's (MC; the College) compliance with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) and the Drug-Free Schools and Communities Act (*DFSCA*). The original text of the program review report is incorporated into this Final Program Review Determination (FPRD). The College submitted an acceptable response to the Department's report. MC's response and any supporting documentation submitted with the response are being retained by the Department and are available for inspection by MC upon request. Please be advised that this FPRD and any supporting documentation may be subject to release under the Freedom of Information Act and may be provided to other oversight entities after it is issued.

Purpose:

Final determinations have been made concerning the findings identified during the program review. The purpose of this letter is to advise MC of the Department's final determinations and to close the review, subject to the College's full and timely production of the documentation identified in Appendix A. Please note that this FPRD contains several findings regarding MC's failure to comply with the *Clery Act* and the *DFSCA*. Because these findings do not result in financial liabilities, they may not be appealed.

Due to the serious nature of these findings, this FPRD is being referred to the Administrative Actions and Appeals Service Group (AAASG) for consideration of a possible adverse administrative action. Such action may include a fine and/or the limitation, suspension or termination of the eligibility of the institution to participate in the Title IV, HEA programs pursuant to 34 C.F.R. Part 668, Subpart G. If AAASG initiates any such action, additional information about MC's appeal rights and procedures for filing an appeal will be provided under separate cover.

Record Retention:

Records relating to the period covered by this program review must be retained until the latter of resolution of the violations identified during the review or the end of the regular record retention period applicable to all Title IV records including *Clerly Act*-related documents under 34 C.F.R. §668.24(e).

Thank you for the courtesy, cooperation, and patience shown to us throughout the program review process. If you have any questions about this FPRD or the program review process, please contact Mr. Ricardo Brown on 215-656-8560 or at ricardo.brown@ed.gov.

Sincerely,

[Redacted]
James L. Moore, III
Compliance Manager
Clerly Act Compliance Team

cc: Ms. Tara Nelson, Safety and Security Manager, MC
tara.nelson@montgomerycollege.edu

Ms. Melissa F. Gregory, Chief Enrollment Services and Financial Aid Officer, MC
melissa.gregory@montgomerycollege.edu

Enclosure:
Final Program Review Determination

Prepared for:
Montgomery College

OPE ID: 00691100
PRCN: 201110327497

Prepared by:
U.S. Department of Education
Federal Student Aid
The Clery Act Compliance Team

Final Program Review Determination
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Table of Contents

	Page
The Clery Act and the DFSCA	3
A. Institutional Information	5
B. Scope of Review	6
C. Findings and Final Determinations	6
Finding #1: Failure to Comply with the Timely Warning Requirements	7
Finding #2: Failure to Distribute the ASR within Regulatory Timeframes	11
Finding #3: Required Policy Statement Omitted from ASR	13
Finding #4: Failure to Maintain a Daily Crime Log	15
Finding #5: Failure to Properly Disclose Hate Crime Statistics in the ASR	17
Finding #6: Failure to Comply with the Drug-Free Schools and Communities Act	19
Appendix A: Supplemental Document Production Instructions	23

The Clery Act and the DFSCA

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*), in §485(f) of the Higher Education Act of 1965, as amended, (HEA), 20 U.S.C. §1092(f), is a Federal consumer protection statute that provides students, parents, employees, prospective students and employees, and the public with important information about public safety issues on America's college campuses. Each domestic institution that participates in the Federal student financial aid programs under Title IV of the HEA must comply with the *Clery Act*. The institution must certify that it will comply with the *Clery Act* as part of its Program Participation Agreement to participate in the Title IV, Federal student financial aid programs.

The *Clery Act* requires institutions to publish and distribute an Annual Security Report (ASR) containing its campus crime statistics. Statistics must be included for the most serious crimes against persons and property that occur in buildings or on grounds that are owned or controlled by the institution or recognized student organizations as well as on adjacent and accessible public property. These crimes are deemed to have been reported anytime such an offense is brought to the attention of an institution's campus police or security department, a local or state law enforcement agency of jurisdiction, or another campus security authority (CSA). A CSA is any institutional official who is 1) designated to receive reports of crime and/or student or employee disciplinary infractions, such as Human Resources and Alternative Dispute Resolution professionals and/or 2) an official that has significant responsibilities for student life or activities such as residential life staff, student advocacy and programming offices as well as athletic department officials and coaches.

The ASR also must include more than 50 statements of policy, procedures, and programmatic information regarding issues of student safety and crime prevention. The *Clery Act* also requires institutions to maintain a daily crime log that is available for public inspection and to issue timely warnings and emergency notifications to provide up-to-date information about ongoing threats to the health and safety of the campus community. In addition, the *Clery Act* requires institutions to develop emergency response and evacuation plans. Institutions that maintain student residential facilities must also publish and distribute an Annual Fire Safety Report (AFSR) containing fire statistics and important policy information about safety procedures, fire safety and suppression equipment, and what to do in the case of a fire. Finally, the *Clery Act* amendments that were included in Section 304 of the Violence Against Women Reauthorization Act of 2013 went into effect on July 1, 2015. These provisions are aimed at preventing campus sexual assaults and improving the response to these crimes when they do occur.

The *Clery Act* is based on the premise that students and employees are entitled to accurate and honest information about the realities of crime and other threats to their personal safety and the security of their property. Armed with this knowledge, members of the campus community can make informed decisions about their educational and employment choices and can take an active role in their own personal safety and to secure and protect their personal property. For that reason, the office of Federal Student Aid (FSA) must ensure that the information disclosed in each ASR and AFSR is accurate and complete. FSA uses a multi-faceted approach to ensure that institutions comply with the *Clery Act*, which includes providing technical assistance and training programs and materials as well as monitoring and enforcement through the program review process.

FSA may initiate a campus crime program review as a result of a complaint or on public reports about crimes and crime reporting and prevention at a particular institution. FSA also conducts Quality Assurance Reviews in cooperation with the FBI's Criminal Justice Information Service

(CJIS) Audit Unit. Program reviews entail in-depth analysis of campus police and security records and interviews with institutional officials, crime victims, and witnesses. During a program review, an institution's policies and procedures related to campus security matters are also examined to determine if they are accurate and meet the needs of the campus community.

Because more than 90% of campus crimes are alcohol and drug-related, the Secretary of Education has delegated oversight and enforcement responsibilities for the Drug-Free Schools and Communities Act (*DFSCA*), in §120 of the HEA, 20 U.S.C. §1011(i) to FSA. The *DFSCA* requires all institutions of higher education that receive Federal funding to develop and implement a comprehensive drug and alcohol abuse prevention program (DAAPP) and certify to the Secretary that the program is in place. The program must be designed to prevent the unlawful possession, use, and distribution of drugs and alcohol on campus and at recognized events and activities.

On an annual basis, each institution must provide a DAAPP disclosure to all current students (including all students enrolled for any type of academic credit except for continuing education units) and all current employees that explains the educational, disciplinary, health, and legal consequences of illegal drug use and alcohol abuse as well as information about available counseling, treatment, and rehabilitations programs, including those that may permit former students or employees to return following expulsion or firing.

The distribution plan must make provisions for providing the DAAPP disclosure annually to students who enroll after the initial distribution and for employees who are hired at different points throughout the year.

Finally, the *DFSCA* requires institutions to conduct a biennial review to determine the effectiveness of its DAAPP; to identify areas requiring improvement or modification; and to assess the consistency of enforcement actions imposed on students and employees that are found to be in violation of applicable Federal, state, and local drug and alcohol-related statutes or ordinances and/or institutional polices and codes of conduct.

Proper implementation of the *DFSCA* provides students and employees with vital information about the detrimental consequences of illicit drug use and alcohol abuse. The conduct of a meaningful biennial review provides the institution with quality information about the effectiveness of its drug and alcohol programs. Any failure to implement these requirements may contribute to increased drug and alcohol abuse on-campus as well as an increase in drug and alcohol-related violent crime. The *DFSCA* is monitored and enforced by the Department.

A. Institutional Information

Montgomery College
900 Hungerford Drive
Rockville, MD 20850

Type: 2-year, Public

Highest Level of Offering: Associate's Degree

Accrediting Agency: Middle States Association Commission of Higher Education

Current Student Enrollment: 26,147 (all undergraduate)

% of Students Receiving Title IV: 64% (2008-2009)

Title IV Participation, Per U.S Department of Education Data Base (Postsecondary Education Participants System):

2008-2009 Award Year

Federal Family Education Loan Program	\$ 8,024,396
Federal Pell Grants	\$ 15,395,684
Federal Perkins Loan Program	\$ 111,600
Federal Supplemental Education Opportunity Grant Program	\$ 623,506
Federal Work-Study Program	\$ 251,475

FFEL/DL Default Rate: 2008 - 7.3%
 2007 - 8.0 %
 2006 – 5.2%

Perkins Default Rate: 2009 – 1.9%
 2008 – 3.4%
 2007 – 1.2%

Montgomery College (MC) is a public community college with three separate campuses in Montgomery County, Maryland. At the time of the site visit, MC operated a Safety and Safety Office (SSO) that was open 24 hours-a-day and was staffed by a team of Safety and Security Officers. A review of available information indicates that this structure is still in place. The SSO communicates with officers by portable radio and also communicates with local law enforcement agencies (LLE), as needed. SSO Officers maintain a 24-hour-a-day presence on campus and are responsible for patrolling all campus buildings and grounds. Officers are authorized to enforce the College's rules, regulations, and codes or conduct and issue tickets for parking infractions, but are not deputized to carry firearms or make arrests. Incidents of crime are typically referred to the LLEs of jurisdiction. MC officials

stated that the College maintains a working relationship with the Montgomery County, Rockville City, and Takoma Park Police Departments. The College does not have any on-campus student residential facilities.

B. Scope of Review

In December 2010, the U.S. Department of Education's (the Department) Philadelphia School Participation Team commenced an off-site campus crime program review at Montgomery College (MC; the College). The review was completed by the Department's Clery Act Compliance Team (CACT). The review was initiated in part based on news reports and student inquiries that questioned MC's handling of a sex crime that occurred on MC's campus in Takoma Park, Maryland.

The objective of the review was to assess the College's compliance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) and the Drug-Free Schools Communities Amendment Act of 1989 (*DFSCA*). During the review Department officials examined several of MC's Annual Security Reports (ASR), including the 2009 and 2010 reports, with a special focus on the College's sexual assault prevention and response policies and procedures as well as its compliance with the "Timely Warning" requirements.

The statutory provisions of the *Clery Act* appear at §485(f) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. §1092(f) and the Department's implementing regulations are at 34 C.F.R. §§668.41, 668.46, and 668.49. The *DFSCA* can be found at 20 U.S.C. §1011i and the Department's regulations are at 34 C.F.R. Part 86.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning MC's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific policing and campus safety practices, procedures, and policies. Furthermore, it does not relieve the College of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs, including the *Clery Act*. Finally, the Department emphasizes that this FPRD only addresses violations and weaknesses that were identified as a result of program review activities associated with PRCN: 201110327497.

C. Findings and Final Determinations

During the review, several findings of noncompliance were identified. The findings identified in the Department's initial program review report appear in *italics* below. Please note that certain, non-substantive edits were made to the text of the initial program review report. At the conclusion of each finding is a summary of MC's response and the Department's Final Determination.

Finding #1: Failure to Comply with the Timely Warning Requirements

Citation:

The Clery Act and the Department's regulations stipulate that an institution must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community on crimes reported to campus security authorities as described in 34 C.F.R. §668.46(c)(1).

Noncompliance:

MC failed to follow its policy for issuing a timely warning in response to the October 9, 2010 sexual assault offense that occurred on the Takoma Park campus. MC's timely warning policy in its 2009 ASR states, "Safety and Security Office has a self-imposed policy to distribute alerts within 24 hours of receiving a report of a crime against a person on campus." The sexual assault, which occurred at 1:30 p.m. on October 9, 2010, and reported to Safety and Security Office the same day, was not reported to the campus community for two days. When the campus community was made aware of the incident, on Monday, October 11, the staff and faculty were alerted first, and then red alert flyers were distributed around campus to alert the students later in the day. The Director of Facilities for the Takoma Park campus explained in an e-mail that the alert was sent by the Public Relations Staff of Montgomery College. The text in the alert message to the students was exactly the same text that appeared in the faculty/staff alert. However, the alert to the students was sent out later that day and was sent initially to the Takoma Park campus only. A college-wide distribution of the alert was made later.

Although the Department's regulations do not give a specific timeframe for reporting Clery-reportable crimes to the community, an institution must, send a timely warning in a manner that will aid in the prevention of similar crimes. MC did not follow its policy that states a timely warning will be issued within 24 hours of a reported incident. MC did not distribute the timely warning for two days. In addition, the issuance of the timely warning was delayed until Monday, when the Director of Facilities could reach the Public Relations Staff.

Required Action:

MC's timely warning policy states, "the Safety and Security Office distributes alerts." It does not indicate that the Facilities Office distributes the alerts after discussions with the Public Relations Staff of the College. If the latter is MC's practice for issuing timely warnings, then the College must update its policy and procedures to identify the responsible person or office to ensure the campus community is alerted of certain crimes in a manner that is timely and will aid in the prevention of similar crimes. In its response to this finding, MC must submit a copy of its updated timely warning policy or provide a written description of the procedures the College will follow in the future.

Institutional Response:

In its official response, MC substantially concurred with the finding and stated that remedial action was taken as directed in the program review report. In summary, the College's management made the following admissions and assertions: MC officials stated that the campus community was made aware of the incident on Monday October 11, by posting red alert flyers around campus and sending an e-mail to the employees in the morning and an e-mail to the students later in the afternoon.

MC also asserted that "the notification occurred on Monday because there were a limited number of classes and activities that weekend, which is typical of Saturday evenings and Sundays, since the College is a two-year public community college with no student housing. The only activities that occurred on the Takoma Park/Silver Spring Campus following the closure and locking of campus buildings on October 9 were two events on Sunday, October 10, one each at the Cultural Arts Center and the Health Sciences Center. MC management represented that the ongoing risks posed by this violent sex crime were in some way mitigated by the fact that participants at one of the events were required to present I.D. to enter the building. Moreover, MC claimed that campus safety officials determined that the campus was "essentially closed during the evening of Saturday, October 9, and also all day on Sunday, October 10" and therefore, "made the decision to issue a crime alert when employees and students returned to the campus on Monday, October 11."

At the same time, MC management conceded that SSO did not have the requisite authority or systems access to actually issue warnings. Specifically, the College's response indicated that the policies and procedures in place at that time required campus safety supervisors to draft warnings and that the message is "then sent to the campus facilities director to transmit to employees via e-mail. The campus facilities director needed to then send the warning to the Media Relations Office for transmission to students."

Finally, MC claimed that "as a result of this incident and the subsequent program review, the College has reviewed and updated its procedures for issuing timely warnings." A copy of the new policies and procedures were submitted as part of the response. Per the new procedure, the College now uses e-mail to transmit timely warnings in addition to posting red alert flyers. The procedures have been modified to give safety and security supervisors or their designees the authority to issue crime alerts. In addition, whereas previously only the Media Relations Office could send system-wide e-mails to students, modifications have been made to allow safety and security supervisors or their designees to e-mail crime alerts directly to students using the MyMC student e-mail system. Therefore, safety and security supervisors or the designees can now directly e-mail crime alerts to both employees and students."

Final Determination:

Finding #1 of the program review report cited MC for failing to follow its timely warning policy and for failing to issue a campus-wide warning in a manner that was timely and reasonably calculated to prevent the occurrence of similar crimes. The review team

determined that MC failed to follow its policy for issuing a timely warning in response to the October 9, 2010 sexual assault offense that occurred on the Takoma Park campus. The timely warning policy in MC's 2009 ASR stated, "Safety and Security Office has a self-imposed policy to distribute alerts within 24 hours of receiving a report of a crime against a person on campus." The sexual assault, which occurred at 1:30 p.m. on October 9, 2010, and was reported to Safety and Security Office the same day, was not disclosed to the campus community for two days. When the campus community was made aware of the incident, on Monday, October 11, the staff and faculty were alerted first and then red alert flyers were distributed around campus to alert the students later in the day.

As a result of this violation, the College was required to conduct a full review of its policies and procedures regarding the issuance of such warnings. As part of that review, the College was also required to identify the specific officials and offices that were to be involved in the preparation, approval, and/or issuance of timely warnings. Then, using the information developed during this review, MC was required to develop and implement a compliant timely warning policy and procedures and to advise the Department of the details of this plan and to include required information in the next ASR. In its response, the College stated that the crime in question occurred on Saturday, October 9, 2010, at the Takoma Park/Silver Spring Campus Library. MC officials decided to initiate the timely warning on Monday, October 11, 2010, because there were a limited number of classes and events occurring during the weekend.

The Department has determined that MC violated the Clery Act and its own inadequate policy by the delay outlined above. Pursuant to 34 C.F.R. §668.46(e), an institution must, in a manner that is timely and will aid in the prevention of similar crimes, report to the campus community crimes reported to campus security that the institution considers is a threat to students and employees. MC acknowledged in its response that what it characterized as a limited number of students and employees were on campus after the incident occurred and considered the incident to be a threat by eventually initiating a timely warning. However, MC delayed in reporting that information to the campus community in accordance with the federal guidelines. As a result, MC violated the *Clery Act* and jeopardized the safety of students and employees by notifying the campus community two days after the incident occurred.

As noted above, MC substantially concurred with the Department's finding and acknowledged that its timely warning policies and procedures required revision to adequately alert the campus community of serious and ongoing. The College also submitted documentation that indicates remedial action was taken.

The Department carefully examined MC's narrative response and supporting documentation. Based on that review and MC's qualified admissions, each of the violations noted in the noncompliance section of the initial finding are sustained. In upholding these findings, the Department must point out that a timely warning policy that sets a 24-hour timeframe for the issuance of timely warnings is not adequate to meet Federal requirements. A warning must be issued timely and in a manner that will prevent the occurrence of similar crimes. The actual timing of a message must be based on a

reasonable analysis of the totality of case-specific facts. The review team's examination also showed that the College acknowledged the need to substantially revise its timely warning policies and procedures and to vest the authority to issue warnings in the campus safety officials, who are more appropriately situated to assess the existence of ongoing risks to the health and safety of students and employees and the broader campus community. The review team's examination of the response and supporting documentation indicated that the identified violations were for the most part, satisfactorily addressed by MC's revised timely warning policies and procedures. The College's revised procedures to allow the Safety and Security Supervisors or their designee direct access to the students and employees e-mail systems should ensure that timely warnings reach the MC community more timely in the future. As such, the Department has determined that MC's remedial action plan meets minimum requirements. For these reasons, the Department accepts the College's response and considers this finding to be closed for purposes of this program review¹. Nevertheless, the officials and directors of MC are advised that they must take any additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the College's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

MC is reminded that the exception identified above constitutes a serious violation of the *Clergy Act* that by its nature cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. MC asserts that it has taken adequate remedial actions and that by doing so, is now in compliance with the *Clergy Act* as required by its Program Participation Agreement (PPA). Nevertheless, MC officials must understand that it is essential that each institution establish an accurate and detailed timely warning policy that conforms to Federal requirements and then must issue campus-wide warnings in a manner that is timely and that will prevent similar crimes from occurring. Any failure to comply with either any aspect of the timely warning requirements in terms of policy development and implementation or the actual issuance of a warning causes the institution to violate Federal law and its own policies and more importantly, deprives students and employees of important information that will allow them to play an active and informed role in their own safety. In this way, timely warnings, emergency notifications, and the daily crime log provide vitally important up-to-date information that supplements the longitudinal statistical data that must be included in the ASR and Department's online campus crime statistics database. As such, the College is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

In light of the serious consequences associated with compliance failures of this type, the Department strongly recommends that MC re-examine its campus security and general Title IV policies and procedures on an annual basis to ensure that they continue to reflect current institutional practices and are compliant with Federal regulations. As part of these periodic reviews, MC officials are encouraged to consult the Department's "Handbook for

¹ Subject to MC's full and timely production of the documentation listed in Appendix A

Campus Safety and Security Reporting" (2011) as a reference guide for *Clery Act* compliance. The Handbook is online at: www2.ed.gov/admins/lead/safety/handbook.pdf. The Department also provides a number of other *Clery Act* training resources. College officials can access these materials at: www2.ed.gov/admins/lead/safety/campus.html. The regulations governing the *Clery Act* can be found at 34 C.F.R. §§668.14, 668.41, 668.46, and 668.49.

Once again, MC management is also reminded that 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. All institutions are currently obligated to comply with the statutory requirements of VAWA and must include the new required amendments in the 2014 ASR. Because the Department issued Final Rules on the VAWA amendments on October 20, 2014, the regulations went into effect on July 1, 2015, per the Department's Master Calendar. MC officials may access the text of the Fine Rule at:

<http://ifap.ed.gov/fregisters/attachments/FR102014FinalRuleViolenceAgainstWomenAct.pdf>.

Finding #2: Failure to Distribute the ASR within Regulatory Timeframes

Citation:

The Clery Act and the Department's regulations require that a Title IV participating institution must distribute to all enrolled students and current employees its Annual Security Report (ASR). Institutions must also provide the report to any prospective student or prospective employee upon request. Acceptable means of delivery include regular U. S. Mail, hand delivery, or campus distribution to each individual or posting on the institution's internet or intranet site. If an institution chooses to distribute its ASR by posting the disclosure on an Internet or Intranet Web site, the institution must, by October 1 of each year, distribute a notice to all current students and employees that includes a statement of the report's availability with the exact electronic address at which the report is posted, a brief description of the report's content, and a statement that the institution will provide a paper copy upon request. 34 C.F.R. §668.41.

Noncompliance:

MC's 2010 ASR was not reasonably accessible to currently enrolled students and employees. In an e-mail sent to the campus community on October 23, 2010 and in the October 27, 2010 e-newsletter, titled "Inside MC Online" the URL provided: <http://cms.montgomerycollege.edu/EDU/plain.aspx?id=2071> contained general information about MC's official policies, documents and reports. The reader then had to search the page for the hyperlink labeled "Official Policies & Documents" and then scan the page for a link to the ASR. MC did not provide the exact electronic address (URL) at which the ASR was posted. Students and employees should not have to search for this information.

MC did not distribute its 2010 ASR by October 1, 2010. E-mails and newsletter articles notified the campus community of the ASR's availability on October 23, 2010 and October 27, 2010, respectively.

Required Action:

MC must ensure that it is reporting and disclosing its ASR as required in 34 C.F.R. §668.41. MC must review and revise its policies and procedures for preparing and distributing its ASR to ensure that the distribution is prior to October 1 of each year. In addition, MC must ensure it provides an exact electronic address and a description of the report's content. In response to this finding, MC must submit a copy of those procedures and the exact URL for accessing its calendar year 2009 ASR.

Institutional Response:

In its official response, MC concurred with the finding and stated that remedial action was taken as directed in the program review report. In summary, the College's management made the following admissions and assertions: MC claimed that the College was developing a portal web page and had planned to launch the portal by the start of the 2010-2011 academic year, but apparently, there was a delay in the implementation process. MC also stated that as a result, the 2010 ASR, which was purportedly completed in September 2010 was not distributed in the required manner until late October. Finally, College officials did indicate that it did respond to the Department's campus crime statistics survey.

To address this deficiency, MC officials stated that the College reviewed and revised its procedures for producing and distributing ASRs to ensure that reports are distributed before the October 1 deadline.

Final Determination:

Finding #2 of the program review report cited MC for not distributing the 2010 ASR to enrolled students and current employees on or before the October 1, 2010 deadline. Specifically, e-mails and newsletter articles were used to distribute the report to members of the campus community on October 23, 2010 and October 27, 2010, respectively. As a result of this violation, the College was required to review and revise its policies and procedures for preparing and distributing its ASR to ensure that the distribution is prior to October 1 of each year and to submit credible evidence of its distribution efforts. In its response, the College concurred with the Department's finding by stating that their 2010 report was not distributed to the College community until later in October, which is in violation of 34 C.F.R. §668.41. Furthermore, the College stated that remedial action was taken, and submitted documentation to support that claim.

The Department carefully examined MC's narrative response and supporting documentation. Based on that review and the College's admissions, the violation identified in the noncompliance section of the initial finding is sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by the College's revised internal policies and procedures for distributing and

electronically posting its ASR. As such, the Department has determined that MC's remedial action plan meets minimum requirements. For these reasons, the Department has acknowledged MC's response and considers this finding to be closed for purposes of this program review². Nevertheless, the officials and directors of MC are advised that they must take any additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the College's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

MC is reminded that the exception identified above constitutes a serious violation of the *Clergy Act* that by its nature cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. MC asserted that it has taken adequate remedial actions and that by doing so, is now in compliance with the *Clergy Act* as required by its PPA. The production and timely distribution of an accurate and complete ASR are among the most basic requirements of the *Clergy Act* and are fundamental to its campus safety goals. As such, MC officials must understand that any failure to publish and distribute an accurate and complete ASR deprives students and employees of important campus safety information to which they are entitled. For these reasons, the College is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding #3: Required Policy Statement Omitted from ASR

Citation:

The Clergy Act and the Department's regulations stipulate that an institution must prepare an ASR that includes a statement of current campus policies for students and others to report criminal actions or other emergencies occurring on campus. This statement must, at a minimum, include a list of the titles of each person or organization to whom students and employees should report the criminal offenses for the purpose of making timely warning reports and the annual statistical disclosure. This statement must also disclose whether the institution has any policies or procedures that allow victims or witnesses to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics. 34 SC.F.R. 668.46(b)(2)(iii).

Noncompliance:

MC's 2010 ASR did not include a list of the titles of each campus security authority (CSA) or the organizations to whom a criminal offense should be reported.

² Subject to MC's full and timely production of the documentation listed in Appendix A

Required Action:

MC must modify its ASR to include a list of the titles of each designated CSA or organization to whom students and employees should report criminal activity described in the law. That list should be accompanied by the phone numbers and locations of those individuals or organizations for crime reporting purposes. In response to this finding, MC must submit a copy of its modified 2010 ASR.

Institutional Response

In its official response, MC concurred with the finding and stated that remedial action was taken as directed in the program review report. In summary, the College's management made the following admissions and assertions: MC conceded it did not include a list of its primary CSAs in its 2009 and 2010 ASRs. Per the response, the College added a list of the titles, phone numbers, and locations of its primary CSAs to its modified 2010 report and submitted as part of its response. The document was labeled as Appendix 3.

Final Determination

Finding #3 of the program review report cited MC for not including the titles and contact information for its primary CSAs and offices to whom students, employees, and witnesses should report incidents of crime in the 2009 and 2010 ASRs. As a result of this violation, the College was required to review and revise its existing campus safety and crime prevention information and to develop and implement new policies and procedures as needed to ensure that all future ASRs include all information required by 34 C.F.R. §668.46(b). Then, in accordance with that regulation and its new and revised internal rules, the College was then directed to produce a revised 2010 ASR that met all program requirements and to actively distribute the report to all required recipients. In its response, MC concurred with the finding, asserted that all necessary remedial action was taken, and submitted documents in support of its claims.

The Department carefully examined MC's narrative response and supporting documentation. Based on that review and MC's admission, the Department has determined that the violation noted in the noncompliance section of the initial finding is sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by the College's revised report and its new and revised internal policies and procedures. As such, the Department also determined that the College's remedial action plan meets minimum requirements. For these reasons, the Department has accepted MC's response and considers this finding to be closed for the purposes of this program review³. Nevertheless, the officers and directors of MC are once again put on notice that the College must take any additional actions that may be needed to address these violations well as any other similar deficiencies and weaknesses that were

³ Subject to MC's full and timely production of the documentation listed in Appendix A

detected during the preparation of its response and/or as may otherwise be needed to ensure that these violations do not recur.

MC is also reminded that the exception identified above constitute a serious violation of the *Clerly Act* that by its nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. The requirement to develop, implement, and disclose accurate and complete statements of policy, procedure, and programs and to include them in the ASR is a violation of the most basic requirements of the *Clerly Act*. MC asserted that it has taken adequate remedial actions and that by doing so, has brought its overall campus safety program into compliance with the *Clerly Act* as required by its PPA. Notwithstanding these actions, MC is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

MC has included a revised copy of their 2010 ASR that includes a list of the titles of each designated CSA or organization to whom students and employees should report criminal activity. This new list should improve reporting and allow students to easily reach CSAs on the Takoma Park, Rockville and Germantown campuses of Montgomery College. As such, the Department accepts MC's response and considers this finding to be closed.

Nevertheless, the College is reminded that corrective actions do not diminish the seriousness of the violations identified during the program review.

Finding #4: Failure to Maintain a Daily Crime Log

Citation:

The Clery Act and the Department's regulations 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 to the campus police or the campus security department, any crime that occurred on campus, on a noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department. 34 C.F.R. §668.46(f).

Noncompliance:

MC did not maintain a crime log at its Takoma Park, Rockville, or Germantown campuses. The campuses maintain an Incident Report Log, which contained some, but not all of the information required by the regulations.

Required Action:

MC must develop and maintain a daily crime log that records crimes reported to its security department that occur on campus, in or on noncampus buildings or property, on public property or within the patrol jurisdiction of the security department. The crime log must include:

- (i) *The nature, date, time, and general location of each crime; and*

(ii) The disposition of the complaint, if known.

MC must make an entry or an addition to an entry to the log within two business days of the reported crime, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim.

MC must make the crime log for the most recent 60-day period open to public inspection during normal business hours.

In response to this finding, MC must submit a copy of its crime log developed for each of the campuses cited above. In addition, MC must develop and submit, for the Department's review, procedures to ensure the crime log is maintained as required by the Department's regulations.

Institutional Response:

In its official response, MC concurred with the finding and stated that remedial action was taken as directed in the program review report. In summary, the College's management made the following admissions and assertions: MC conceded that the incident logs that are maintained at each of the campuses do not include the information that is required to be in the daily crime log. To address this deficiency, the College developed a "daily crime/incident log" and directed each campus to implement this new requirement. Per the response, the new log includes the data elements required by 34 C.F.R. §668.46(f) – specifically the nature, date, time, and general location of each incident that is reported to the SSO.

MC management asserted that the College has retained elements of its original log that are used as an internal tracking tool of reported incidents. Per the response, College officials, presumably including SSO staff, will use the modified log as a tool to identify Clery-reportable offenses and as a data source to compile its campus crime statistics.

Final Determination:

Finding #4 of the program review report cited MC for its failure to maintain a crime log at its Takoma Park, Rockville, or Germantown campuses. The review team determined that each campus did maintain an "Incident Report Log," which contained some, but not all of the information required by the regulations. As a result of this violation, the College was required to develop and maintain a daily crime log that records crimes reported to its security department that occur on campus, in or on noncampus buildings or property, on public property or within the patrol jurisdiction of the security department. In its response, the College concurred with the Department's finding by stating that although their campuses maintained an incident log the log contained only some of the information required by 34 C.F.R. §668.46(f). Furthermore, MC stated that remedial action was taken, and submitted documentation to support its claim.

The Department carefully examined MC's narrative response and supporting documentation. Based on that review and MC's admissions, the violation noted in the

noncompliance section of the initial finding is sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by the College's new daily crime log and its new and revised internal policies and procedures. As such, the Department has determined that MC's remedial action plan meets minimum requirements. For these reasons, the Department accepts MC's response and considers this finding to be closed for purposes of this program review⁴. Nevertheless, the officials and directors of MC are advised that they must take any additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the College's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

MC is reminded that the exception identified above constitutes a serious violation of the *Clergy Act* that by its nature cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. MC asserted that it took adequate remedial actions and that by doing so, is now in compliance with the *Clergy Act* as required by its PPA. Nevertheless, MC officials must understand that the failure to maintain a daily crime log deprives students, employees, parents, the media, and other stakeholders of access to important campus crime information to which they are entitled. Like timely warnings and emergency notifications, the information in the log provides up-to-date current data about the status of criminal incidents on the campus and in the near-campus community. In this way, the crime log and safety alerts supplement the longitudinal statistical data that is included in the ASR and the Department's online campus crime statistics database. For these reasons, the College is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding #5: Failure to Properly Disclose Hate Crime Statistics in the ASR

Citation:

An institution must report, by category of prejudice, the following crimes reported to the local police agencies or to a campus security authority that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability. The crimes include:

- *Any crime reported pursuant to 34 C.F.R. §668.46 (c)(1)(i) through (vii) and*
- *The crimes of larceny-theft, simply assault, intimidation, and destruction of property/damage/vandalism of property.*

Noncompliance:

⁴ Subject to MC's full and timely production of the documentation listed in Appendix A

MC failed to classify the categories of offense for hate crimes that occurred on campus and reported in its ASR for calendar year 2009. The ASR lists the specific campus and the geographic locations where crimes occurred, but it did not indicate 1) the nature of the hate crime, and 2) the offense associated with the hate crime. MC's ASR should have disclosed that four (4) hate crime incidents were reported as occurring in calendar year 2009. The College was required to ensure that these incidents were included in the campus crime statistics that were disclosed in the ASR for the Rockville Campus – one incident of intimidation and three incidents of vandalism/destruction of property. In addition, MC failed to disclose a racially-motivated case of vandalism/destruction of property at the Takoma Park campus, bringing the total of unreported offenses to five.

MC did correctly categorize the hate crimes reported to the Department for inclusion on the Office of Postsecondary Education's website, but failed to do so in its ASR.

Required Action:

MC must ensure it classifies all hate crimes in its ASRs. MC must modify the calendar year 2009 crime statistics that were included in its 2010 ASR. MC must submit a copy of its modified ASR with its response to this report.

Institutional Response:

In its official response, MC concurred with the finding and stated that remedial action was taken as directed in the program review report. In summary, the College's management made the following admissions and assertions: MC conceded that that it did not include the identified hate crime incidents in the 2009 crime statistics and disclosures that were included in the 2010 ASR, but claimed that these offenses were included in the College's reporting to the Department's online campus crime statistics database. College management claimed that the notations and footnotes detailing the nature of the hate crime and offense associated with the identified hate crimes were mistakenly excluded from the ASR. To address these deficiencies, MC officials represented that the crime statistics in the ASR were revised and its policies and procedures were reviewed and improved to prevent future violations of this type.

Final Determination:

Finding #5 of the program review report cited MC for its failure to disclose five on-campus hate crime incidents in the campus crime statistics for calendar year 2009 that were included in the 2010 ASR. As a result of this violation, the College was required to review and revise its crime statistics and to include the corrected data in a revised 2010 ASR and to distribute that report to all required recipients. In its response, the College concurred with the Department's finding by stating that they did not include the categories for hate crime in the information provided to the Department for posting on the Office of Postsecondary Education's website. Furthermore, MC stated that remedial action was taken, and submitted documentation to support its claim.

The Department carefully examined MC's narrative response and supporting documentation. Based on that review and MC's admissions, each of the violations noted in the noncompliance section of the initial finding are sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed in the College's revised 2010 ASR, subsequent reports, and its new and revised internal policies and procedures. As such, the Department has determined that MC's remedial action plan meets minimum requirements and should ensure that future incidents will be captured and documented according to the federal guidelines. For these reasons, the Department has acknowledged MC's response and considers this finding to be closed for purposes of this program review⁵. Nevertheless, the officials and directors of MC are advised that they must take any additional actions that may be necessary to address the deficiencies and weaknesses identified by the Department as well as those that were detected during the preparation of the College's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

MC is reminded that the exception identified above constitutes a serious violation of the *Clery Act* that by its nature cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. MC asserted that it has taken adequate remedial actions and that by doing so, is now in compliance with the *Clery Act* as required by its PPA. As such, MC officials must understand that the compilation and disclosure of accurate and complete crime statistics are among the most basic and essential requirements of the *Clery Act* and that any failure to do so deprives students, employees, parents, researches, the media, and other stakeholders of important campus safety information. For these reasons, the College is advised that its remedial actions cannot and do not diminish the seriousness of these violations nor do they eliminate the possibility that the Department will impose an adverse administrative action and/or require additional corrective actions as a result.

Finding 6: Failure to Comply with the Drug-Free Schools and Communities Act

Citation:

The Drug-Free Schools and Communities Act (DFSCA) and Part 86 of the Department's General Administrative Regulations require each institution of higher education (IHE) that receives federal education funding to certify that it has developed and implemented a drug and alcohol abuse prevention program (DAAPP). The program must be designed to prevent the unlawful possession, use and distribution of illicit drugs and alcohol abuse on campus and at recognized events and activities.

On an annual basis, each IHE must provide the following information in writing to all current students (enrolled for any type of academic credit except continuing education units) and all current employees.

⁵ Subject to MC's full and timely production of the documentation listed in Appendix A

- *A written statement about its standards of conduct that clearly prohibits 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;*
- *A written description of the applicable legal sanctions under local, state, or federal law for the unlawful possession or distribution of illicit drugs and alcohol;*
- *A description of the health risks associated with the use of illicit drugs and the abuse of alcohol;*
- *A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or student; and,*
- *A clear statement that the institution will impose disciplinary sanctions on students and employees (consistent with federal, state, and local laws and ordinances) and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct. For the purpose of this section, please note that a disciplinary sanction may include the required completion of an appropriate treatment program.*

Finally, Federal regulations require each institution to conduct biennial reviews to measure the effectiveness of its DAAPP and to ensure consistent treatment in its enforcement of applicable drug and alcohol-related statutes, ordinances, and institutional policies against students and employees found to be in violation. The institution must prepare a report of findings and maintain its biennial review report and supporting documents and make them available to the Department upon request. 34 C.F.R. §§86.3, 86.100 and 86.103.

Noncompliance:

MC has not complied with the minimum requirements for a drug prevention program as described in 34 C.F.R. §86.100 to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol. MC's drug prevention program does not include a description of the health risks associated with the use of illicit drugs nor does it indicate that the College measured the effectiveness of its drug and alcohol prevention program by conducting a biennial review. MC was unable to document that a biennial review was ever done.

Required Action:

MC must review and revise its policy and procedures to ensure compliance with all of the required elements of the Drug and Alcohol Prevention Program. In addition, MC must complete a biennial review of its Drug and Alcohol Prevention Program to determine its effectiveness and implement changes, as needed, and ensure that disciplinary sanctions for violations of the laws are consistently enforced. MC must submit a copy of its revised policies and procedures and a copy of its biennial review with its response to this finding.

Institutional Response:

In its official response, MC concurred with the finding and stated that remedial action was taken as directed in the program review report. In summary, the College's management made the following admissions and assertions: MC officials claimed a drug and alcohol abuse prevention policy was in place prior to the site visit and that students and employees were notified on an annual basis. However, College officials also conceded that the 2009 and 2010 materials did not include a description of the health risks associated with the use of illicit drugs and alcohol abuse. MC management also admitted that the College had not conducted any biennial reviews to assess the effectiveness of its DAAPP. To address these deficiencies, MC represented that its program materials were enhanced to include the previously-omitted material. Finally, the College also drafted new internal procedures to improve its DAAPP and its compliance program. A copy of the draft procedures (Appendix 5) was submitted as part of the College's response.

Final Determination:

Finding #6 of the program review report cited MC for its failure to include a description of the health risks associated with the use of illicit drugs in its DAAPP and for its failure to conduct a biennial review to measure the effectiveness of the DAAPP. As a result of this violation, the College was required to review and revise its program to ensure that it addressed all required program subject areas. MC was also required to conduct its first biennial review to evaluate the effectiveness of its DAAPP and the consistency of sanction processes. In its response, the College concurred with the Department's finding by stating that they did not include a description of the health risks associated with the use of illicit drugs and had not conducted a biennial review of its DAAPP. MC also asserted that adequate remedial action was taken and submitted documentation in support of its claims.

The Department carefully examined all available information including MC's narrative response and supporting documentation. Based on that review and the College's admissions, each of the violations noted in the noncompliance section of the initial finding are sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed with its modified DAAPP and its first biennial review report. Key findings of the biennial review pointed to strengths and weaknesses in the existing program and indicated a specific need for more drug and alcohol-related programming for students and employees. The Department expects that the College will take specific and sustained action to address the findings of the review and will implement the recommendations for additional focused programming. Based on a thorough analysis of the response, the review team determined that MC's remedial action plan meets minimum requirements. As such, the Department has accepted the College's response and considers this finding to be closed for purposes of this program review⁶. Nevertheless, the officials and directors of MC are once again advised that they must take any additional actions that may be necessary to address the deficiencies and weaknesses

⁶ Subject to MC's full and timely production of the documentation listed in Appendix A

identified by the Department as well as those that were detected during the preparation of the College's response to the Department's report and/or as may otherwise be needed to ensure that these violations do not recur.

In this context, MC is advised that it must continue to develop its DAAPP. MC must also ensure that it distributes accurate and complete DAAPP materials to all students and employees annually in accordance with the Department's regulations and the College's new procedures. As such, the College is specifically reminded that compliance with the annual distribution cannot be accomplished merely by including information in the ASR. MC must also continue to conduct biennial reviews. Each review must be a substantive examination of the existing program. MC must also produce a detailed report of findings and recommendations for each review. The review process itself must be a probative inquiry into the actual effectiveness of the program and not merely be a conclusory ratification of existing policy and the findings of each review must be documented in the report along with recommendations for improvement. Finally, the College is reminded that each official report must be approved by its President and/or its board.

MC is also reminded that the exceptions identified above constitute serious and persistent violations of the *DFSCA* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. MC asserted that it has taken adequate remedial actions and is now in compliance with the *DFSCA* as required by its PPA. Nevertheless, MC officials must understand that the Department considers compliance with the *DFSCA* to be essential to maintaining a safe and healthy learning environment. This is true for all institutions regardless of their size, location, or organizational structure. Data compiled by the Department shows that the use of illicit drugs and alcohol abuse is highly correlated to increased incidents of violent crime on campus. *DFSCA* violations deprive students and employees of important information regarding the educational, financial, health, and legal consequences of illicit drug use and alcohol abuse and may also deprive institutions of important information about the effectiveness of any drug and alcohol programs that may have been in place during the program review period. For these reasons, the College is advised that its remedial measures cannot and do not diminish the seriousness of these violations nor do these actions eliminate the possibility that the Department will impose an adverse administrative action and/or additional remedial measures as a result.

Due to the seriousness associated with compliance failures of this type, the Department strongly recommends that MC re-examine its drug and alcohol and general Title IV policies, procedures, and programs on at least an annual basis and revise them as needed to ensure that they continue to reflect current institutional policy and are in full compliance with the Federal regulations. Please be advised that the Department may request information on a periodic basis to test the effectiveness of the institution's new policies and procedures.

Appendix A

As part of the resolution of this program review, MC must submit the following information to the Department:

1. Copies of MC's 2011, 2012, 2013, and 2014 Annual Security Reports with credible evidence showing that each of these reports was actively distributed to mandatory recipients. Suitable evidence of distribution may include copies of e-mail messages used to transmit the report or other similar documentation.
2. Copies of all Timely Warnings and Emergency Notifications issued by MC during calendar year 2014 and thus far in 2015.
3. A copy of the SSO's daily crime log for the period January 1, 2015 to May 15, 2015.
4. A status report on MC's efforts to implement the requirements of Section 304 of the Violence Against Women Reauthorization Act of 2013.
5. A copy of MC's current DAAPP program materials, current annual disclosure, and two most-recent biennial review reports.

These materials must be submitted via electronic mail to the CACT at clery@ed.gov within 45 days of its receipt of this FPRD. Please advise the Department via electronic mail if the College would prefer to deliver the required documentation in a different format.

MC's submission must reference the PRCN noted on the cover letter to this FPRD, in the subject line of its e-mail message. If any of the requested records were not produced or do not exist, MC officials must clearly communicate that fact to the Department in writing via electronic mail. In this context, MC officials are advised that no new documents are to be created at this time for the purpose of attempting to demonstrate compliance with any *Clery Act* or *DFSCA* requirement for past periods. The College is also advised that a failure to respond to this request for document production will result in a referral for the imposition of an adverse administrative action.