



OCT 16 2015

Mr. Mitsu Sato
President
Mitsu Sato Hair Academy
9062 Metcalf Avenue
Overland Park, KS 66212-1457

Sent: United Parcel Service
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Dear Mr. Sato:

In a letter dated July 1, 2015, the U.S. Department of Education (Department) notified Mitsu Sato Hair Academy (Mitsu) of its intent to fine Mitsu \$15,000 for its failure to comply with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in §485(f) of the Higher Education Act of 1965, as amended (HEA). The proposed fine was based on the findings in a Final Audit Determination (FAD) letter issued by the Department on January 9, 2014 which concluded that Mitsu had failed to comply with the Clery Act.

In a letter dated July 16, 2015, Mitsu's Counsel, Mr. Ronald L. Holt submitted a written response to that fine notice on Mitsu's behalf and requested that the Department not impose a fine or reduce the proposed fine amount. Mitsu did not request a hearing on the proposed fine.

The Department has considered the arguments and facts presented in Mr. Holt's letter. This letter provides the Department's final decision on Mitsu's request that the proposed fine be eliminated or reduced.

In the July 1, 2015 fine notice, the Department proposed to fine Mitsu a total of \$15,000 based on the finding that Mitsu did not:

1. distribute its Annual Security Report (ASR) for calendar year 2012 to students and employees or notify prospective students and employees of the availability of the report in violation of the Clery Act and 34 C.F.R. §668.41(e) (2011)¹.

In its appeal letter, Mitsu acknowledges that it did not prepare or distribute a calendar year 2012 ASR to students and employees, and did not properly notify potential students and employees of the availability of the ASR for calendar year 2012 by the deadline of October 1, 2012. However,

¹ The Department published new regulations for the Clery Act on October 20, 2014. However, the findings on which the proposed fines are based rely on the regulations in place at the time of the violation as reflected in this citation. Unless otherwise noted, all of the regulations cited are dated 2011.

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

Mitsu requested that the fine be reduced and raised a number of arguments which we address below.

Mitsu acknowledges that it did not prepare or distribute a 2012 ASR by the deadline of October 1, 2012. However, Mitsu claims that it did include some of the required information in its 2012 school catalog. Mitsu also argues that its failure to properly distribute the 2012 ASR was “at most, a mistake made in good faith.” Mitsu contends that it started to participate in the Title IV programs in March 2012 and believed that it was not “subject to formal crime reporting requirements in 2012.” To support Mitsu’s claim, Mr. Holt’s letter points to a couple of email exchanges in the year 2014 between representatives of the Institution and a member of FSA’s staff and on an email exchange Mr. Holt had in July 2015 with a member of FSA’s Clery Team. Mitsu also claims that it relied on Chapter 9 of the 2011 Handbook for Campus Safety and Security Reporting (“Handbook”) which it quotes as stating, “[I]f for example, your institution became Title IV eligible in July 2009, you would not have collected any *HEA* crime and fire statistics prior to that date. Because the online survey collects statistics for an entire calendar year, your institution would not participate in the survey until you had an entire year of statistics. In this case, you would participate in the 2011 survey for the collection of 2010 statistics...” Handbook at 158-159. Mitsu claims that when it received the auditor’s report in 2013, it took immediate and significant steps to ensure future compliance with the law and took action against the employee.

The HEA and the Department’s regulations require that by October 1 of each year, institutions distribute to all enrolled students and current employees a complete and comprehensive ASR. See §485(f) of the HEA, 34 C.F.R. §§ 668.41 and 668.46. The regulations do not exempt institutions in the first year of participation in the federal student financial aid programs.

As noted above, in its appeal, Mitsu referred to Chapter 9 of the 2011 Handbook for Campus Safety and Security Reporting. However, Mitsu’s interpretation of that material is directly contradicted by the very next sentence in the Handbook that Mitsu did not include. That sentence states: “This exemption applies *only* to the online data collection.” Handbook at 159 (emphasis in original). Moreover, earlier in that same chapter, the Handbook specifically states that “every postsecondary institution that participates in any Title IV federal student financial assistance program must publish an annual security report.” Handbook at 149.

The Department notes that the emails from the Department’s employees that Mitsu claims to have relied on are dated the year 2014. The email communication between Mr. Holt and a staff member of FSA’s Clery Team occurred in July 2015. Therefore, Mitsu could not have relied on those emails to make a determination that the institution was not required to properly distribute its 2012 ASR. Moreover, the email exchange specifically refers to the requirement that institutions submit crime statistics to the Department and does not mention the institution’s obligation to prepare and distribute an ASR to its students and employees. See Mitsu’s Exhibit 1.

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Finally, Mitsu argues that it provided crime and security information to its students in its school catalog. However, this partial publication did not satisfy the requirement that the ASR be a separate publication.

Mitsu referred to steps it has taken recently to improve its compliance with the Clery Act and the Department's regulations. These alleged improvements do not excuse its earlier failure to comply with its legal obligations to prepare and distribute a 2012 ASR to its students and employees, and to make the report available to prospective students and employees.

The Department has concluded that the arguments and evidence submitted by Mitsu do not support the elimination of the proposed fine. However, in light of the facts that 2012 was Mitsu's first year of participation in the Title IV programs, Mitsu did provide some security information to students through the school catalog; and the violation has not been repeated, the Department has decided to reduce the fine amount to \$10,000.

Final Decision

For the reasons discussed above, the Department has decided to impose a fine of \$10,000 for Mitsu's failure to distribute an ASR for calendar year 2012 to its students and employees, and to make the report available to prospective students and employees.

Therefore, Mitsu must pay a total fine of \$10,000.

The \$10,000 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. AAA201504026 to ensure proper crediting of your payment account.

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

Sincerely,



Susan D. Crim, Director
Administrative Actions and Appeals Service Group
Federal Student Aid/Program Compliance
U.S. Department of Education

cc: Tony Mirando, Executive Director, via amirando@naccas.org
Wendy Flowers, Remedial Action Fines, Kansas Board of Cosmetology, via
wendy.flowers@kboc.ks.gov
Ronald L. Holt, Counsel for Mitsu, via rholt@dunndavison.com