



## UNITED STATES DEPARTMENT OF EDUCATION

FEDERAL STUDENT AID  
CASE MANAGEMENT AND OVERSIGHT  
CASE MANAGEMENT DIVISION - NORTHWEST  
SEATTLE CASE MANAGEMENT TEAM

May 28, 2002

Marilou Eldred, President  
Saint Mary's College  
LeMans Hall  
Notre Dame, IN 46556-5007

Certified Mail/Receipt#

7001 1940 0007 8700 5000

Re: **COMBINED PROGRAM REVIEW REPORT AND EXPEDITED FINAL  
DETERMINATION LETTER**

Program Review Control Number (PRCN): 200131018735 / OPE ID#: 001836

Dear President Eldred:

On December 3, 4, and 5, 2001, a program review was conducted of the Title IV Federal Student Aid (FSA) programs administered at your institution. The findings of that review and our Final Determinations are presented in the enclosed report.

The report contains findings regarding the institution's administration of the FSA Programs. Specifically, the findings noted relate to the institution's compliance with provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act and Departmental regulations related to that Act.

Findings of non-compliance are referenced to the applicable statutes and regulations and specify any actions necessary to comply with the statutes and regulations.

The Department and the College have already had substantial exchanges of information regarding the issues presented in the report via correspondence and during our on-site review. Accordingly, it is not necessary that the College respond further at this time to the report or our Final Determinations unless it chooses to do so. The College may consider this letter as closure of this program review.

701 Fifth Avenue, Suite 1800, SEATTLE, WA 98104 (206) 415-2594


*Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.*

The Seattle Case Management Team wishes to express our appreciation for the courtesy and cooperation extended by you and Saint Mary's staff during the review. If you have any questions concerning this program review report, please contact Mr. Richard P. Reinhardt at (206) 615-3642.

Sincerely,



Richard P. Reinhardt  
Senior Institutional Review Specialist



Richard D. Nelson  
Co-Team Leader

Enclosure

cc: Keith Dennis, Vice President of Finance and Administration, Saint Mary's College

ATTACHMENTS

Saint Mary's CollegeINSTITUTIONAL REVIEW DATA SHEETDATES OF REVIEW:

December 3 - 5, 2001

AWARD YEARS REVIEWED:

Various Student and Campus Records from award years 1998-99, 1999-2000, 2000-01 related to the institution's compliance with provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

TYPE, CONTROL, CERTIFICATION STATUS:

Four year, Degree Granting, Private,  
Not-For-Profit / Fully Certified

ACCREDITATION:

North Central Association of Colleges and Schools

REVIEWING ED OFFICIALS:

Richard Reinhardt

FSA PROGRAM PARTICIPATION (FFELP//Pell Grants//Perkins)\*\*:

<u>1999-00</u>	<u>2000/01</u>	<u>2001/02 (as of 1/31/02)</u>	
\$ 315,694	\$ 375,718	\$ 441,719	Federal Pell Grant Program
2,525,844	2,375,551	2,390,253	Federal Family Education Loan Program (Sub)
884,063	1,135,924	1,301,162	Federal Family Education Loan Program (Unsub)
1,830,790	1,655,819	2,075,161	Federal Family Education Loan Program (PLUS)
288,925	202,705	Unknown	Federal Perkins Loan Program

\*\* Program Volume Information Estimated from ED National Student Loan Data System

DEFAULT RATES:

FFELP: (1999): 1.1 %  
 (1998): 0.9 %  
 (1997): 3.1 %  
 Perkins: 1999/2000: 10.9%

METHOD OF FUNDING: Advance Payment

**INSTITUTIONAL OFFICIALS CONTACTED:**

Marilou Eldred, President

Keith Dennis, Vice President, Finance/Administration

Linda Timm, Vice President, Student Affairs

Mary DePauw, Director of Counseling and Career Development

Richard Chlebek, Director of Safety and Security

Belinda Rathbert, Investigator (Safety and Security)

Mary Nucciarone, Director of Financial Aid

Nick Farmer, Director of Marketing and Communications

Kathy Brickley, College Counsel (from the Lawfirm of Barnes and Thornburg, South Bend, IN)

**Saint Mary's College, Notre Dame, IN (OPE# 001836)****A. Introduction**

Saint Mary's College is a private, not-for-profit, Catholic women's institution.

The College provides undergraduate degree educational programs and it has a student body of approximately 1,550 students, 90% of whom reside on campus, and 475 faculty/staff. It is accredited as an Institution of Higher Education by the North Central Association of Colleges and Schools. Annually, approximately 85% of Saint Mary's students receive some form of student aid – Title IV or institutional.

The College is located in Notre Dame, IN and is adjacent to two other institutions – the University of Notre Dame and Holy Cross College. Notre Dame, IN immediately borders the city of South Bend, IN.

**B. Scope of Review**

A program review was conducted on December 3, 4, and 5, 2001, to examine the institution's administration of the FSA programs and determine compliance with certain statutes and regulations pertaining to the FSA programs.

This program review was specifically targeted to review the institution's compliance with provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) which is included in §485(f) of the Higher Education Act of 1965, as amended (HEA). During the review, various Student and Campus records were reviewed from award years 1995-96, 1996-97, 1997-98, 1998-99, 1999-2000, 2000-01, and 2001-02 related to determining the institution's compliance with the Act. The review was prompted by a complaint filed with the Department in May, 2001 by Security On Campus, Inc.

During the visit, some areas of non-compliance were noted. Findings of non-compliance are referenced to the applicable laws, regulations, and/or policies. The findings specify the actions the institution must take to ensure compliance with regulations and statutes that govern the FSA programs.

This review was limited to the institution's compliance with the Clery Act and the implementing regulations. The absence of statements in the report concerning the institution's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific practices and procedures. Furthermore, it does not relieve the institution of its obligation to comply with all of the statutory and regulatory provisions governing the FSA programs.

## C. FINDINGS AND REQUIREMENTS

### Finding: NON-COMPLIANCE WITH THE JEANNE CLERY DISCLOSURE OF CAMPUS SECURITY POLICY AND CAMPUS CRIME STATISTICS ACT AND RELATED REGULATIONS

On May 9, 2001, Security On Campus, Inc. filed a complaint with the Department regarding Saint Mary's College's compliance with the Clery Act. The complaint was assigned to the Seattle Case Management Team, which has responsibility for compliance issues and complaints regarding institutions in Indiana. The complaint alleges that the College has not accurately disclosed crime statistics and that its annual security reports have not fully disclosed all required policy statements. Security on Campus followed up with a subsequent letter to the Department dated May 11, 2001, that provided additional information regarding its complaint and a copy of an article from a newspaper in South Bend, Indiana regarding a rape on the Saint Mary campus in March 2001.

On June 19, 2001 the Department sent a letter to the College. Since it appeared the College had already received a copy of the Security On Campus complaint, the Department provided a copy of the Security On Campus letter of May 11, 2001 and the accompanying newspaper article. The Department asked the College to review and respond to the complaint's allegations. The College responded in a letter dated June 26, 2001. The Department sent letters to the College on August 14 and August 31, 2001 seeking additional information and clarification, and the College responded, respectively, on August 28 and September 7, 2001. On November 6, 2001, the Department informed the College that it would be conducting an on-site program review and the review was conducted in early December, 2001.

#### Sub-Finding #1 – Crime Statistics Not Accurately Disclosed

The Security on Campus complaint alleged that the College did not include in its published campus crime report a rape which occurred on its campus in January, 1999 and a rape which was reported by a student to have occurred on its campus in April, 1996.

The complaint states that the January, 1999 rape was reported by the involved Saint Mary's student to campus security authorities on the University of Notre Dame campus where the student accused of the rape was attending. The complaint indicates that the College may not have fulfilled its obligation to make a good faith effort to obtain statistics for covered crimes occurring on its campus from all local police agencies, including security / police entities with jurisdictions on other local campuses, such as the University of Notre Dame.

The complaint states that the student-reported rape from April, 1996, may not have been included in the College's published Security Report because the College at one point had possibly indicated to the student that "it was merely an alleged incident". The complaint indicates that this incident was reported to both Campus and County Police.

We also noted during the on-site review that the College has implemented a procedure to obtain relevant crime statistics from area police departments as required by 34 C.F.R. §668.46(c)(9).

C. In regard to the April, 1996 incident, several internal campus security documents related to the event were examined by the reviewer. Those documents do not contain any evidence that anyone on the campus informed the student that the alleged sexual assault which occurred on campus would not be included in the College's annual security report because "it was merely an alleged incident".

In fact, the documents indicate that the student and her parent met with Dr. Mary DePauw, Director of Saint Mary's Counseling and Career Development Center, and Mr. Richard Chlebek, Director of Saint Mary's Safety and Security Department, to discuss the on-campus incident, as well as a related off-campus incident, and available options for the student. The documents indicate the following:

- Mr. Chlebek obtained and documented details of both incidents,
- Responding to a question from the student and her parent as to what their options were, Mr. Chlebek indicated that for the off-campus incident the student would need to contact the St. Joseph County Police since the incident occurred within that department's jurisdiction and outside Saint Mary's jurisdiction. Regarding the on-campus incident, Mr. Chlebek advised that the prosecutor would not likely pursue rape charges against the perpetrator since the student, when at the hospital for treatment after the incidents, had stated that she did not want a rape examination conducted. Due to the probable lack of evidence supporting a rape complaint, it was suggested that the student might want to file an assault complaint.
- The record indicates that the student indicated she was not sure she wanted to pursue criminal prosecution at the time, and it was suggested to the student and her mother that they go home for a couple of days and think things over.
- The student and her mother were requested to inform Mr. Chlebek of the course of action they wished to pursue.

The confusion as to whether the rape would be included in campus crime statistics may have been related to the statements made about the difficulty of supporting the prosecution of a rape complaint against the perpetrator. In any case, the College did include the rape in its campus crime report, albeit in the incorrect reporting year.

#### **Sub-Finding #2 -- Use of Improper Crime Reporting Categories**

The Security on Campus complaint alleges that the College did not use or include all required crime categories in its campus crime report.

The complaint notes that the categories for reporting crimes were changed by the 1998 amendments to the Clery Act and the implementing regulations issued by the Department. Those changes took effect on July 1, 2000. The new categories required by these changes were not included in the College's crime statistics reporting.

Specifically, the complaint notes that the College's 2000 Campus Security Report for 1999 statistical information did not include the "Arson" category, continued to use the "Murder" category rather than the newly required reporting category of "Criminal Homicide" with subdivisions of "Murder" / "Non-Negligent Manslaughter" and "Negligent Manslaughter", and included only "Arrests" data for the Liquor, Drug, and Illegal Weapons Possession categories, rather than separate statistics for "Arrests" and "Disciplinary Actions/Judicial Referrals".

#### **Final Determination:**

The College in its 2000 annual security report did not provide statistics for 1999 for all categories specified by the 1998 amendments to the Clery Act and the Department's Regulations (34 CFR §668.46(c)(1)) which were published in November, 1999 and took effect July 1, 2000.

Specifically, the College did not include a reporting category for "Arson", did not expand the "Murder" category into "Criminal Homicide", with the appropriate sub-divisions, and did not expand the reporting categories for Liquor, Drug, and Illegal Weapons Possession violations to include "Disciplinary Actions/Judicial Referrals". The College violated the HEA and the regulations by failing to properly report the 1999 crime statistics in the required categories.

We note that the College has indicated that it did not have any incidents to report in the Arson or Criminal Homicide categories for the 1999 reporting year. And during the on-site review, the reviewer did not locate any record of any such incidents which should have been reported for that year.

In regard to the reporting of incidents in the Liquor, Drug, and Illegal Weapons Possession categories, we note that the College reported campus disciplinary referrals as "Arrests", even though it did not have any "true" arrests in 1998, 1999, or 2000. This mis-reporting was corrected in the College's 2001 campus crime report as well as in the information it reported to the Department.

#### **Sub-Finding #3 - Geographical Breakdown of Crime Statistics Not Reported**

The Security on Campus complaint alleges that the College did not include the required geographical breakdowns for its reported crime statistics for the 1999 calendar year in its 2000 annual campus crime report.

Specifically, under §485(f)(12) of the HEA and 34 C.F.R. §668.46(c)(4), Colleges are required to provide reportable statistics broken down by those occurring: 1. On-Campus, 2. In On-Campus Dormitories or Residential Facilities (a "subset" of "On-Campus"), 3. In Non-Campus



Buildings or on Non-Campus Property (Off-Campus Buildings or Property owned or controlled by the College and used either by students or in direct support of the College's educational purposes OR Off-Campus Buildings or Property owned or controlled by a College-recognized student organization), or 4. Public Property within or immediately adjacent to and accessible from the campus.

**Final Determination:**

The College's 2000 annual campus crime report did not provide statistics for 1999 by the required location. The College violated statutory and regulatory provisions (§485(f)(12) of the HEA and 34 C.F.R. §668.46(c)(4)) by not providing the required breakdowns.

**Sub-Finding #4 - Lack of Required Policy Disclosures in Annual Security Reports**

The Security on Campus complaint alleges that the College's annual security reports did not contain policy disclosures required by §485(f) of the HEA and 34 C.F.R. §668.46.

Specifically, the complaint alleges that the College's security reports did not include:

- its policy for making "timely warnings" to the campus community about reported crimes that pose an ongoing threat to the community,
- the policy used to prepare the annual crime statistics, including an identification of the officials surveyed,
- information about whether the College has a program that encourages pastoral and professional counselors to inform victims that crimes may be reported on a voluntarily and confidential basis for inclusion in the annual disclosure of crime statistics, and
- the policy defining how the institution will respond to allegations of campus sexual assault, and ensuring campus sexual assault victims certain basic rights.

**Final Determination:**

The College responded to issues raised in the complaint, as follows:

- The College maintained that despite the lack of a specific policy statement in its 2000 annual report about how and when it will issue "timely warnings" it has, in fact, issued such warnings. And, the College provided several examples of "timely warnings" which it had issued to the campus community over the past several years either by notice or, more recently, via email.
- The College indicated that it has expanded its latest annual report to include all of the required policies related to a victim's voluntary and confidential reporting of crime statistics.

-- The College indicated that the policies regarding how the institution will respond to allegations of campus sexual assault have historically been included in the "Saint Mary's College, Student Handbook".

-- The College indicated that in view of its history as an all-women's campus it has not had a victim's rights policy since it had not (until early 2001) received a report of sexual assault in which the alleged assailant was another Saint Mary's student.

The College violated 34 C.F.R. §668.46(b) by failing to include all of the required policy information into its annual reports.

The College has incorporated the required policy statements into its 2001 annual security report which was issued in September, 2001. This includes a new victim's rights policy, which was developed after the campus incurred its first situation in which a Saint Mary's student alleged a sexual assault by another Saint Mary's student.

The Complaint argues that the College's failure to have a victim's rights policy at the time of the alleged student-on-student assault in March, 2001, resulted in the victim being "denied the full benefit of the disciplinary policies the institution would have otherwise had to have in place to ensure her basic rights". In response, the College stated that the victim was provided a timely hearing, an opportunity to be accompanied by an advisor, an opportunity to present evidence and witnesses to the College's Judicial Hearing Board, and the results of the Hearing. The College also argues that the victim in the March, 2001, incident received the opportunities and rights required by 34 CFR §668.46(b)(1)(vi). Beyond those specific requirements, the Department does not have jurisdiction over other elements of a College's disciplinary hearing process.

#### **Sub-Finding #5 -- Crime Log Does Not Contain All Reported Incidents**

Under §485(f)(4) of the HEA and 34 C.F.R. §668.46(f), an institution that maintains a campus police or 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, in or on a non-campus building or property, on public property or within the patrol jurisdiction of the campus police or security department.

In reviewing the institution's Crime Log, the reviewer noted that some "reportable" incidents were not supported by entries in the Crime Log. Specifically, it was noted that "reportable" incidents which were reported to Security by Counseling in cases where the victim wished to remain anonymous were not included in the Crime Log.

Schools are required to include all non-exempted incidents on the Crime Log so that the Crime Log may serve as a "master listing" of all incidents, and the documentation supporting the College's campus crime statistics. Without such a "master" listing, there is no cumulative and total record of campus crimes which can be made publicly available.

**Final Determination:**

While the noted incidents were included by the College as reported campus crime incidents in its campus crime reports, they were not included in the Crime Log as required by 34 CFR §668.46(f).

The College's Director of Security explained that while he included the incidents reported by Counseling in the applicable crime statistics, he had not included those incidents in the Crime Log due to confidentiality concerns. However, the reports to Security from Counseling did not contain the victim's identity and none of the entries on the Crime Log include the victim's identity or the identity of the party reporting the crime. Instead, this information is usually included in a separate "incident report" which is not generally available for public inspection. Accordingly, there is no basis for not including the crimes reported by Counseling in the crime log.

The College has agreed that henceforth all reported incidents, including those referred anonymously through Counseling for statistical purposes, would be included on the Crime Log.

**RECOMMENDATION:**

As was discussed during our visit, several incidents that have affected Saint Mary's student population involve students from the University of Notre Dame with which Saint Mary's has a number of interrelated activities.

In view of that, the Department is encouraged that Saint Mary's has included a section in its 2001 Annual Security Report specifically informing Saint Mary's students of "Options for Discipline and Legal Recourse if Alleged Assailant is a Member of the Notre Dame Community". And, we encourage the College to build upon that effort.

For the benefit of both institutions, we recommend and encourage Saint Mary's officials to further refine the working relationship with Notre Dame officials so that Saint Mary's students might feel more confident when interacting with Notre Dame processes.

**CONCLUSION / CLOSING OBSERVATIONS:**

As evidenced by the contents of this Report, the College has been not been in full compliance with provisions of the Clery Act and the Department's regulations. Non-compliance to varying degrees, until recently, had continued for nearly 10 years.

Criminal statistics, while reported by the College, were not reported for the appropriate periods, in the appropriate categories, and by the required geographical breakdowns. The College's initial attempts to correct statistical information resulted in additional errors and confusion about the actual number of reportable instances which had occurred.

Policy statements which must be made available to the campus community in the "annual security report" did not contain all of the required information for students.

However, we have determined that the College has not substantively misrepresented the crime statistics that it has reported to students and the Department. Additionally, the College has made significant efforts within the last year – mostly even before the Department became involved – to improve its reporting and its "annual security report" to provide (and implement) all legally required policy statements. The 2001 report issued by the College in September, 2001 properly reports statistics and contains the required policy statements.

During our review, we noted that the College over the past few years has initiated many other on-campus safety and security programs for the benefit of its students, such as Orientation sessions for students and parents regarding sexual assault/substance abuse, specialized speakers and subject-specific seminars, weekly presentations to various student groups regarding security issues, campus "safe walk" sessions coordinated with student government, as well as "inter-related" activities with the University of Notre Dame. Generally, we found that the College's current overall interest and efforts in the area of campus safety were impressive.

We are confident based on the attention afforded the issue that the College will exert appropriate efforts to assure continuing compliance with the Clery Act and the Department's implementing regulations and that the College will be aware of and properly react to future legislative and regulatory updates as they occur.

## **PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION**

Personally Identifiable Information (PII) being submitted to the Department must be protected. PII is any information about an individual which can be used to distinguish or trace an individual's identity (some examples are name, social security number, date and place of birth).

PII being submitted electronically or on media (e.g., CD-ROM, floppy disk, DVD) must be encrypted. The data must be submitted in a .zip file encrypted with Advanced Encryption Standard (AES) encryption (256-bit is preferred). The Department uses WinZip. However, files created with other encryption software are also acceptable, provided that they are compatible with WinZip and are encrypted with AES encryption.

The Department must receive an access password to view the encrypted information. The password must be e-mailed separately from the encrypted data. The password must be 12 characters in length and use three of the following: upper case letter, lower case letter, number, special character. A manifest must be included with the e-mail that lists the types of files being sent (a copy of the manifest must be retained by the sender).

Hard copy files and media containing PII must be:

- sent via a shipping method that can be tracked with signature required upon delivery
- double packaged in packaging that is approved by the shipping agent (FedEx, DHL, UPS, USPS)
- labeled with both the "To" and "From" addresses on both the inner and outer packages
- identified by a manifest included in the inner package that lists the types of files in the shipment (a copy of the manifest must be retained by the sender).

PII data cannot be sent via fax.