



June 10, 2015

Dr. Gari Browning
President
Ohlone College
43600 Mission Boulevard
Fremont, CA 94539

UPS Tracking #
1Z A87 964 02 9923 8524

RE: Final Program Review Determination
OPE ID: 00448100
PRCN: 201130327576

Dear President Browning:

The U.S. Department of Education's (the Department) Clery Act Compliance Team issued a program review report on September 29, 2011, regarding Ohlone College's (Ohlone; 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 Amendments of 1989 (*DFSCA*). The College submitted multiple responses to the Department's report. The original text of the program review report is incorporated into this Final Program Review Determination (FPRD). Ohlone's responses and supporting documentation are being retained by the Department and are available for inspection by the College 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 this FPRD is issued.

Purpose:

Final determinations have been made concerning the findings identified during the program review. The purpose of this letter is to advise Ohlone of the Department's final determinations and to close the review, subject to the College's full and timely production of the documentation listed in Appendix A. Please note that this FPRD addresses several findings regarding Ohlone's failure to comply with the requirements of the *Clery Act* and the *DFSCA*. Because these findings will not result in financial liabilities, the findings 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 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 Ohlone'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 retention period applicable to all Title IV records including records that pertain to Ohlone's campus safety and drug and alcohol abuse prevention programs 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. Keith Ninemire on (816) 268-0418 or at keith.ninemire@ed.gov.

Sincerely,

[REDACTED]
James L. Moore, III
Compliance Manager
Clery Act Compliance Team

cc: Mr. John Worley, Chief, Campus Police Services/Safety and Security, Ohlone
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Enclosure:

Final Program Review Determination

Prepared for:
Ohlone College

OPE ID: 00448100
PRCN: 201110327488

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

Final Program Review Determination
June 10, 2015

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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 and crime prevention 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. Starting in July 2015, amendments to the *Clery Act* that were included in the Violence Against Women Reauthorization Act of 2013 will be fully implemented. These provisions are aimed at preventing campus sexual assaults and improving the response to these crimes when they do occur. 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.

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 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). 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 its enforcement of applicable drug and alcohol-related statutes, ordinances, and institutional policies against students and employees found to be in violation.

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

Ohlone College
43600 Mission Boulevard
Fremont, CA 04539-0390

Type: Public, 2-Year

Highest Level of Offering: Associate's Degree

Accrediting Agency: Northwest Commission on Colleges and Universities

Current Student Enrollment: 11,695 (Approx. Fall 2009)

% of Students Receiving Title IV: 33% (2008-2009 Academic Year)

Title IV Participation, Per U.S. Department of Education Data Base

2008-2009 Award Year

Federal Family Education Loan/Direct Loan Programs	\$ 1,307,441
Federal Pell Grant Program	\$ 3,270,990
Federal Supplemental Educational Opportunity Grant Program	\$ 86,700
Federal Work Study Program	\$ 71,925

FFEL/DL Default Rate: 2008 - 7.3%
2007 - 10.7%
2006 - 7.6%

Perkins Default Rate: 2009 - 0.0%
2008 - 5.0%
2007 - 5.0%
2006 - 10.0%

A multi-campus, single community college district, Ohlone College is located in the southern portion of the San Francisco Bay in California, serving more than 18,000 students per year. The District has a main campus in the City of Fremont and a newly constructed campus in the City of Newark. The Newark Campus is located near Interstate 880 and emphasizes programs in health, environment, and technology. During the review period, the Ohlone Community College District Police Department was comprised of two Police Officers, six Safety Officers, and two Dispatchers. Safety Officers are not police officers, but are provided special authority by the California Penal Code, California Vehicle Code, and Education Code to enforce campus rules and regulations. Safety Officers are the first line of support for campus police officers. Many

are trained in and have the responsibility for collecting field evidence, taking incident reports, and for enforcing parking and traffic regulations. In addition, Safety Officers are trained in first aid, CPR, and emergency response procedures and also provide community-oriented services such as fingerprinting. Campus Police Services has a Memorandum of Understanding with the Fremont Police Department and the Newark Police Department to provide mutual aid and support.

B. Scope of Review

The Department's Clery Act Compliance Team (CACT) conducted an off-site campus crime program review at Ohlone. The Department issued an announcement letter on July 25, 2011 to advise the College of the review.

This review was initiated pursuant to a complaint filed by the parent of a prospective student who became frustrated by the lack of information about Ohlone's campus safety program. Specifically, the complainant claimed that the College failed to produce an ASR and did not maintain a daily crime log.

The objective of the review was to evaluate Ohlone's compliance with the *Clery Act* at §485(f) of the Higher Education Act of 1965 as amended (HEA), 20 U.S.C. §1092(f) and Drug-Free Schools and Communities Act (DFSCA), at §120 of the HEA, 20 U.S.C. §1011(i). The review consisted of an examination of Ohlone's police/security incident reports and arrest records. These reports documented Part I and Part II offenses reported to the Ohlone Police Department. From this report, a sample of Part II arrests for certain liquor, drug, and weapons offenses was also selected. The review team also examined a sample of student conduct files as well as the College's policies and procedures related to the *Clery Act* and the *DFSCA*. In addition, telephone interviews were conducted with Ohlone officials with campus safety-related responsibilities.

In addition to the findings and final determinations noted in this report, the Department notes that the California State Auditor (Cal State) reviewed the College's compliance with the *Clery Act* and reported its findings in a January 28, 2010 report entitled, California's Postsecondary Educational Institutions: More Complete Processes Are Needed to Comply with Clery Act Crime Disclosure Requirements. Cal State identified many of the same violations that were cited in the Department's program review report. In its initial responses to Cal State and to the Department, Ohlone asserted that it had taken remedial action to address the identified violations; however, the Department notes that those actions proved ineffective in several material respects. For example, the College continued to violate the *Clery Act* by failing to: 1) distribute its ASRs by the October 1st deadline; 2) include all required policy and procedural disclosures in its ASRs; and, 3) include only accurate and complete crime statistics in its ASRs.

The Department has documented several improvements throughout the program review process and is hopeful that Ohlone has finally and fully addressed its serious and persistent compliance failures. Although the Department has determined that this program review will be closed, the Clery Team remains concerned about the violations identified during the review and the Cal State audit. As such, Ohlone is admonished to

continue to improve and refine its campus safety and crime prevention program and to be mindful that the College will continue to be subject to oversight by the Department.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in this Final Program Review Determination (FPRD) concerning Ohlone'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 Ohlone of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs including the *Clery Act* and *DFSCA*. Finally, the Department emphasizes that this FPRD only addresses violations and weaknesses that were identified as occurring during the stated review period.

C. Findings and Final Determinations

During the review, several areas of noncompliance were noted. The findings identified in the Department's program review report appear in italics below. At the conclusion of each finding is a summary of Ohlone College's response and the Department's Final Determination.

Finding # 1: Failure to Distribute the Annual Security Report

Citation Summary:

The Clery Act and the Department's regulations require Title IV participating institutions to provide an Annual Security Report (ASR) to all current students and employees through appropriate publications and mailings. 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 to an internet or intranet site, the institution must, by October 1 of each year, distribute a notice to all students and employees that includes a statement of the reports availability and its exact electronic address, a description of its contents, as well as a statement that a paper copy will be provided upon request. 34 C.F.R. §668.41(e).

Noncompliance Summary:

Ohlone College failed to prepare and distribute the Annual Security Report as a Single Comprehensive Document. The original complaint came from a parent of a prospective student who stated their frustration in getting a campus safety record for the College. They could find the statistics but no Annual Security Report. Upon further review, the Department could not locate an ASR. The Department contacted the Chief of Police who stated that he would immediately post the ASR to their website on April 25, 2011. This means that there was no posting or delivery of the ASR to employees and students of Ohlone College by the deadline date of October 1, 2010. Failure to prepare an accurate and complete ASR and to actively distribute it to current students and employees and to

notify prospective students and employees in accordance with Federal regulations deprives the campus community of important security information and indicates an impaired capability to properly administer the HEA, Title IV Programs.

Ohlone College failed to distribute an ASR during the years of 2007, 2008 and 2009 to their enrolled students and current employees. The College stated in a letter (Attachment A) to the Department on May 17, 2011 that the above ASR's were not distributed nor was a college-wide notification made to all students and employees of their availability.

Furthermore, the ASR was not available to prospective students or to prospective employees as required by the regulations.

Required Action Summary:

Ohlone College must take the necessary steps to ensure that all enrolled students and current employees receive the annual security report. A copy of all revised publications or forms containing the required notification language must be submitted with the College's response. The College must submit a copy of its 2011 ASR, show proof that the 2011 ASR was distributed by October 1, 2011, and provide evidence of a notification that was distributed to students and employees on or before October 1, 2011.

Institutional Response:

In its official response, Ohlone concurred with the finding and stated that remedial action was taken as directed in the program review report. In summary, College officials reported the following: Ohlone conceded that the 2009 and 2010 ASRs were not distributed as required and that the reports for prior years were not distributed at all. In addition, delivery of the 2011 report was not completed until October 6, 2011. Per the response, Ohlone management asserted that new ASR distribution procedures were put in place and assured the Department that the 2012 report would be disseminated in a timely manner.

Final Determination:

Finding #1 of the program review report cited Ohlone for its failure to properly and timely distribute the 2007, 2008, 2009, 2010, and 2011 ASRs to enrolled students and current employees by the October 1st deadline. The review team determined that the College did produce ASRs for 2007, 2008, and 2009 but failed to actively distribute them. In addition, the College did not distribute the 2010 ASR by the October 1st deadline. In fact, the report was not sent to require recipients until April 25, 2011, 206 days late. Moreover, the 2011 report was not distributed until October 6, 2011, an additional violation of the distribution rules even as the Department's review was in progress. The Department also found that Ohlone failed to comply with the ASR active notification requirements that pertain to prospective students and employees. This determination was based on a thorough review of publications typically provided to prospective students and employees as well as the responses of institutional officials to questions posed by the review team. The Department concluded that Ohlone officials were generally unaware of the ASR active distribution and notification requirements

prior to the review. As a result of these violations, Ohlone was required to develop and implement new procedures to inform the production and distribution of its ASRs and that will otherwise ensure that these and similar violations will not recur.

In its response, the College concurred, described its remedial actions, and submitted documents in support of its claims.

The Department carefully examined Ohlone's narrative response and supporting documentation. Based on that review and Ohlone's admission of noncompliance, each of the violations identified in the initial finding are sustained. The review team's examination also indicated that the identified violations were, for the most part, satisfactorily addressed by Ohlone's new and revised internal policies and procedures. As such, the Department also determined that Ohlone's remedial action plan meets minimum requirements. For these reasons, the Department has accepted Ohlone's response and considers this finding to be closed for the purposes of this program review. Nevertheless, the officials and directors of Ohlone are put on notice that they must continue to develop the College's campus safety and *Clery Act* compliance programs and take all other action that may be necessary to address the deficiencies identified by the Department as well as those that were detected during the preparation of the response, and/or as may otherwise be needed to ensure that these violations do not recur.

Although the finding is now closed for the purposes of this program review¹, Ohlone is reminded that the exceptions identified above constitute serious and persistent violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. The requirement to produce an accurate and complete ASR and to actively distribute it to members of the campus community is the most basic requirement of the *Clery Act* and is fundamental to its campus safety and crime prevention goals. The College asserted that it has taken adequate remedial actions and that by doing so, that it is now in compliance with the *Clery Act* as required by its Program Participation Agreement (PPA). Nevertheless, Ohlone officials must understand that these ongoing compliance failures deprived students and employees of important campus security information to which they are entitled. For these reasons, the College is advised that its remedial efforts cannot and do not diminish the seriousness of these violations nor do these efforts eliminate the possibility that the Department will impose an adverse administrative action and/or additional corrective measures as a result.

Because of the serious consequences of *Clery Act* violations, the Department strongly recommends that Ohlone 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. Ohlone officials are encouraged to consult the Department's "Handbook for Campus Safety and Security Reporting" (2011) as a reference guide on *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

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

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.

Finally, Ohlone 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 make a documented good-faith effort to comply with the statutory requirements of VAWA and were obligated to include all new required content in the 2014 ASR. The Department issued Final Rules on the VAWA amendments on October 20, 2014 and therefore, these regulations will go into effect on July 1, 2015, per the Department's Master Calendar. Ohlone officials may access the text of the Final Rule at:
<http://ifap.ed.gov/fregisters/attachments/FR102014FinalRuleViolenceAgainstWomenAct.pdf>.

Finding #2: Lack of Policy Statements in the ASR

Citation Summary:

The Clery Act and the Department's regulations require that an institution must prepare an ASR that contains the following policy statements. 34 C.F.R. §688.46(b)(2)–(b)(14),

- *Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes described in 34 C.F.R. §668.46(c)(1),*
- *A list of the titles of each person or organization to whom students and employees should report the criminal offenses described in 34 C.F.R. §668.46(c)(1) for the purpose of making timely warning reports and the annual statistical disclosure. This statement must also disclose whether the institution has policies or procedures that allow victims or witnesses to report on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics, and, if so, a description of those policies and procedures. 34 C.F.R. §688.46(b)(2)(iii),*
- *Encourages accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies; and describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary basis for inclusion in the annual disclosure of crime statistics. 34 C.F.R. §668.46(b)(4)(ii)(iii),*
- *Three statements regarding Alcohol and Drug Prevention.*
 - *A statement of policy regarding the possession, use, and sale of alcohol beverages and enforcement of State underage drinking laws.*
 - *A statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws.*

- *A description of any drug or alcohol-abuse education programs, as required under section 120(a) through (d) of the HEA. 34 C.F.R. §688.46 (b)(8)-(b)(10),*
- *A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses. 34 C.F.R. §688.46(b)(11)(i), and,*
- *Effective October 1, 2003, a statement advising the campus community where law enforcement agency information provided by a State under section 170101(j) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. §14071(j), concerning registered sex offenders may be obtained, such as the law enforcement office of the institution, a local law enforcement agency with jurisdiction for the campus, or a computer network address.*

Federal regulations also specifically require all participating institutions to develop and implement emergency response and evacuation procedures and to publish them in the ASR. At a minimum, the procedure must state that the institution will, immediately and without any delay, disseminate emergency notifications upon confirmation of a significant emergency or other immediate threat to student and employee health or safety. The policy also must state how institutions will go about confirming immediate threats and how EN's will be communicated to students, employees, and the larger community. An institution's procedure must state who may issue an EN, the process for determining the content of an EN, and its approach for determining what segments of the campus community should receive an EN. Institutions must also conduct announced and/or unannounced tests of its emergency procedures on at least an annual basis and publicize the nature and results of the test(s). 34 C.F.R. §668.46(g).

Noncompliance Summary:

Ohlone's ASRs failed to include the following:

- *Policies for Timely Warnings. There were no time warning policies in Ohlone's 2007, 2008 and 2009 ASRs.*
- *A list of College Security Authorities (CSA's) to which students and employees can report criminal offenses in the ASR's of 2007, 2008, 2009 and 2010.*
- *A statement that encourages accurate and prompt reporting of all crimes and encourages counselors to report on a confidential basis those crimes for inclusion in the annual security report.*
- *Policy statements on Drug and Alcohol abuse and its education programs on these abuses.*

- *A statement of its educational programs to promote the awareness of rape. Ohlone College's ASR reported that it does not provide a regular sexual assault program.*
- *A Statement concerning registered sexual offenders.*
- *Emergency response and evacuation procedures in its 2010 Annual Security Report. The policy must include a statement that it will, without delay determine the content and initiate the notification system. In addition, the policy must describe the process that the College will use to confirm that there is a significant emergency, determine who to notify, determine the content of the notification. The College must provide the positions (titles) of the individuals or organization that will make the above determinations. And last, the College must have an emergency plan, test it, evaluate it and publicize it.*

Required Action Summary:

Ohlone College must review and revise its upcoming 2011 ASR to ensure that all required policy statements and procedures are included as described in 34 C.F.R. §668.46(b)(2)-(b)(14). The College must include a copy of its 2011 ASR in its response to this finding. In addition, the College must develop and implement a system of policies and procedure improvements to ensure that these findings do not recur.

Institutional Response:

In its official response, Ohlone concurred with the finding and stated that remedial action was taken as directed in the program review report. In summary, College officials reported the following: Ohlone management conceded that several required disclosures were omitted from its ASRs during the review period. To address these violations, new policies and procedures were developed and will be included in all future ASRs. In addition, College management asserted that new policies and procedures will be developed to comply with any new mandates and to inform the college community about important safety issues.

Final Determination:

Finding #2 cited Ohlone for its failure to include several required campus safety policies and procedures in its ASRs for calendar years 2007, 2008 and 2009, 2010, and 2011. As noted in the noncompliance section above as many as seven (7) required policy statements were omitted from some of these reports. As a result of these violations, Ohlone was required to develop and implement new policies and procedures to ensure that future ASRs will include all statistical and policy disclosures required by 34 C.F.R. §668.46(b). Then, in accordance with the Department's regulations and the institution's new policies, the College was directed to produce a revised 2010 ASR and distribute it to all required recipients. In its response, Ohlone concurred with the finding, asserted that all necessary remedial action was taken, and submitted documents in support of its claims.

The Department carefully examined Ohlone's narrative response and supporting documentation. Based on that review and Ohlone's admission of noncompliance, the Department has determined that each of the violations identified in the initial finding are sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by the College's response and its new and revised internal policies and procedures. The Department also notes that Ohlone's ASRs did improve during the review period. For example, the College did develop and implement a basic timely warning policy that was included in the 2010 ASR. In addition, a list of primary CSAs was added to the 2011 report. As such, the Department also determined that the College's remedial action plan meets minimum requirements. For these reasons, the Department has accepted Ohlone's response and considers this finding to be closed for the purposes of this program review. Nevertheless, the officers and directors of Ohlone 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 detected during the preparation of its response and/or as may otherwise be needed to ensure that these violations do not recur.

In this regard, Ohlone must continue to develop its campus safety, crime prevention, and *Clery Act* compliance programs. For example, The College has included contradictory information about its sexual assault prevention and response programs in recent ASRs. The 2011 ASR described policy changes that led to the development of such a program. Then, in the 2012 report, the College represented that it does not provide a regular sexual assault program. This is especially troubling in light of the new provisions included in Section 304 of VAWA described at the end of Finding #1. Ohlone must clarify the precise nature of its sexual assault programming and ensure that it is prepared to comply with the new VAWA requirements. The College is also advised to continue to develop its timely warning and emergency notification policies and procedures. Ohlone's emergency response information must make clear how, by whom, and under what circumstances each type of alert will be issued.

The College must also conduct an internal review to identify and train its Campus Security Authorities (CSA) and to provide a reasonable mechanism for these institutional officials to provide information to designated office about incidents of crime that are reported to them. Ohlone consistently failed to identify key CSAs throughout the review period. In its response to one of the Department's information requests, the College specifically stated that "no request for the collection of Clery information was sent to Campus Security Authorities for the years requested. This deficiency will be corrected by sending out a memorandum to all persons who fall within the definition of Campus Security Authority. The memorandum will be in the same format as set forth in the Handbook for Safety and Security Reporting." The College is once again admonished to make sure that the new procedure is in place and is functioning appropriately.

Although the finding is now closed for the purposes of this program review², Ohlone is reminded that the exceptions identified above constitute serious and persistent violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct"

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

violations of this type once they occur. The requirement to develop and implement 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 *Clery Act*. Ohlone asserted that it has taken adequate remedial actions and that by doing so, that it has brought its overall campus safety program into compliance with the *Clery Act* as required by its PPA. Notwithstanding these actions, Ohlone 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: Failure to Properly Disclose Crime Statistics

Citation Summary:

The Clery Act and the Department's regulations require that institutions participating in the Title IV, HEA programs compile and publish crime statistics for the three most recent calendar years concerning the occurrence on campus, in or on non-campus buildings or property, and on public property of the following that are reported to local police agencies or to a campus security authority: criminal homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. In addition, institutions must disclose arrests and disciplinary actions for violations of Federal or state liquor, drug, and weapons laws. 34 C.F.R. §668.46(c)(1) and (7).

Each institution must also submit its crime statistics to the Department for inclusion in the Office of Postsecondary Education's "Campus Safety and Security Data Analysis Cutting Tool." 34 C.F.R. §668.41(e)(5).

Noncompliance Summary:

The 2010 ASR is incomplete as it contained no referrals statistics for Drug Law Violation, Liquor Law Violations and no Weapons Violation report section.

In addition, numerous reporting errors were identified in Ohlone's crime statistics. Please see the charts below that illustrate the variances in Ohlone's crime statistics for specific calendar years as published in its ASR's. Reporting discrepancies were also identified between the crimes statistics published in Ohlone's ASR's and those submitted to the Department for inclusion in the "Campus Safety and Security Data Analysis Cutting Tool."

- A. The 2010 ASR reported the following statistics for 2007, 2008 and 2009 years which were inconsistent with what the institution reported to DOE's cutting tool:

<i>Ohlone Main Campus On-Campus</i>		<i>2007</i>
<i>Sex Offenses - Forcible</i>	<i>ED Website</i>	1
	<i>Ohlone's 2010 ASR</i>	4
<i>Aggravated Assaults</i>	<i>ED Website</i>	2
	<i>Ohlone's 2010 ASR</i>	1
<i>Motor Vehicle Theft</i>	<i>ED Website</i>	1
	<i>Ohlone's 2010 ASR</i>	6

<i>Ohlone Main Campus On-Campus</i>		<i>2008</i>
<i>Burglary</i>	<i>ED Website</i>	8
	<i>Ohlone's 2010 ASR</i>	0
<i>Aggravated Assaults</i>	<i>ED Website</i>	0
	<i>Ohlone's 2010 ASR</i>	2
<i>Motor Vehicle Theft</i>	<i>ED Website</i>	0
	<i>Ohlone's 2010 ASR</i>	2

<i>Ohlone Main Campus On-Campus</i>		<i>2009</i>
<i>Burglary</i>	<i>ED Website</i>	1
	<i>Ohlone's 2010 ASR</i>	8

- B. In the 2009 ASR, Ohlone listed a hate crime as an assault but did not define the type of hate crime committed as racial, gender, religion, sexual orientation, ethnicity or disability. Ohlone reported in DOE's cutting tool that this hate crime was vandalism rather than assault and that it was racial

- C. The 2009 ASR recorded the following discrepancies:

<i>Ohlone Main Campus On-Campus</i>	<i>Motor Vehicle Theft 2008</i>
<i>ED Website</i>	0
<i>Ohlone's 2009 ASR</i>	1
<i>Ohlone's 2010 ASR</i>	2

Ohlone Main Campus On-Campus	Liquor Law Violations 2009
ED Website	1
Ohlone's 2009 ASR	3

D. The 2008 ASR has the following discrepancies:

Ohlone Main Campus On-Campus	Sex Assaults- Forcible 2007
ED Website	1
Ohlone's 2008 ASR	0
Ohlone's 2010 ASR	4

Ohlone Main Campus On-Campus	Liquor Law Violations 2007
ED Website	0
Ohlone's 2008 ASR	7

Ohlone Main Campus On-Campus	Weapon Violations 2007
ED Website	0
Ohlone's 2009 ASR	2

Required Action Summary:

Ohlone College must review, revise and resolve the above discrepancies and produce a corrected 2011 ASR. The College must also submit corrective information to the Department's website to update the "Campus Safety and Security Data Analysis Cutting Tool."

Institutional Response:

In its official response, Ohlone concurred with the finding and stated that remedial action was taken as directed in the program review report. In summary, College officials reported the following:

1. The errors listed in the findings were in part determined to have occurred due to the difference in reporting the crime statistics per the Uniform Crime Report and the Clery Crime Statistics Report. For instance, the crime of burglary of motor vehicles is considered a burglary under the UCR but not for Clery purposes. In addition, some officers and clerical staff were unclear whether the crime was a Clery crime and in some cases were counted twice. A review of the years in question has been conducted and the numbers corrected. The statistics reported to the U.S. Department of Education have been corrected and the statistics listed in the Annual Security Report and the Ohlone Website were corrected.
2. In order to avoid confusion and any miscounting or tabulating errors of crimes and whether the crime is a Clery-reportable crime, a new Jeanne Clery Act Crime

Reporting and Evaluation Statistics Form has been instituted. Implementation of this form will assist the officers and clerical staff identifying, classifying, indicating the disposition of the case, and include referrals for student disciplinary action.

3. The face sheet of the Ohlone Community College District Police Department Police Report has also been modified to include a box that requires marking if the crime is a Clery-reportable offense. This will also assist to identify the crime as a Clery Crime and remind the officer to use the Reporting and Evaluation Form mentioned previously.

Final Determination:

Finding #3 cited Ohlone for its failure to properly classify crimes and to disclose accurate and complete crime statistics in its ASRs and in its CSSDACT submissions throughout the review period. The Department has determined that, as detailed in the noncompliance section above, Ohlone's ASRs for calendar years 2008, 2009 and 2010 contained discrepant crime statistical data compared to the crime statistics reported to the Department. Data extracted from the 2010 ASR provides several clear examples of the types of significant discrepancies that were identified during the review. These include: the crime statistics that were included in the 2010 ASR for calendar year 2007 indicated that four (4) forcible sex offenses and six (6) burglaries were reported; however, only one (1) FSO and one (1) burglary were included in the College's data submission to the CSSDACT. Additional reporting errors were noted in the statistics for the other two calendar years covered by the 2010 ASR as well. For example, the statistics included in the 2010 ASR for calendar year 2008 indicated that zero (0) burglaries were reported; however, eight (8) such incidents were reported to the CSSDACT. Similarly, the 2010 ASR indicated that eight (8) burglaries were reported in calendar year 2009; however, only one (1) such offense was reported to the CSSDACT.

As a result of this violation, Ohlone was required to review and revise its existing policies and procedures regarding the compilation and disclosure of campus crime statistics and to develop and implement any new policies and procedures as needed to ensure that all campus security operations will be carried out in accordance with the *Clery Act* going forward. Ohlone was then required to revise and reconcile its crime statistics and to revise the 2011 ASR and its CSSDACT submissions as needed. In its response, the College concurred with the finding, described its remedial actions, and submitted documents in support of its claims.

The Department carefully examined Ohlone's narrative response and supporting documentation. Based on that review and the College's admission of noncompliance, the exceptions identified in the initial finding are sustained. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by Ohlone's subsequent ASRs and CSSDACT submissions and its revised internal policies and procedures. As such, the review team has determined that Ohlone's remedial action plan meets minimum requirements. For these reasons, the Department

has accepted Ohlone's response and considers this finding to be closed for program review purposes. Given the passage of time, no additional corrective measures are needed to address the specific violations above. Nevertheless, the officials and directors of Ohlone are put on notice 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 and/or as may otherwise be needed to ensure that these violations do not recur.

Although the finding is now closed for the purposes of this review³, Ohlone is reminded that the exceptions identified above constitute serious and persistent violations of the *Clergy Act* that by their nature cannot be cured. There is no way to truly "correct" a violation of this type once it occurs. The requirement to compile and disclose accurate and complete campus crime statistics is a violation of one of the most foundational requirements of the *Clergy Act*. Reporting discrepancies of this type create confusion for readers of the report and call the College's ability and willingness to properly administer the Title IV, FSA program into question. Ohlone asserted that it has taken adequate remedial actions and that by doing so, that it has brought its overall campus safety program into compliance with the *Clergy Act* as required by its PPA. Notwithstanding these actions, Ohlone is advised that it 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 #4: Part 86 Program Requirements Not Met - Multiple Violations

Citation Summary:

The institution of Higher Education (IHE) drug prevention program must, at a minimum include the following:

- (a) *The annual distribution in writing to each employee, and to each student who is taking at least one or more classes for any type of academic credit except for continuing education units, regardless of the student's program of study, of—*
 - (1) *Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities;*
 - (2) *A description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;*
 - (3) *A description of the health risks associated with the use of illicit drugs and the abuse of alcohol;*

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

- (4) *A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and*
 - (5) *A clear statement that the Institution of Higher Education (IHE) will impose disciplinary sanctions on students and employees (consistent with local, State, and Federal law), 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 required by paragraph (a) (1) of this section. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.*
- (b) *A biennial review by the IHE of its program to –*
- (1) *Determine its effectiveness and implement changes to the program if they are needed; and*
 - (2) *Ensure that the disciplinary sanctions described in paragraph (a) (5) of this section are consistently enforced. C.F.R. §86.100.*

Noncompliance Summary:

The College's Drug and Alcohol Policy fails to meet the above Statute by not providing the required polices in their statement:

1. *No evidence of annual distribution to each employee or student.*
2. *No statements on applicable legal sanctions in its policy.*
3. *No statements on health risks.*
4. *No statement of any drug or alcohol counseling, treatment, or rehabilitation programs.*
5. *No clear statement that the College will impose disciplinary sanctions.*
6. *No Biennial reviews of a Drug and Alcohol Abuse Program were conducted as stated in the College's letter dated May 17, 2011 (Attachment A).*

Required Action Summary:

Ohlone must develop and implement a substantive drug and alcohol prevention program. The program materials must include all of the required elements set forth in the above citation. Furthermore, Ohlone College must develop procedures for ensuring that the required materials are distributed to every enrolled student who is matriculating toward a credential and every employee of the College. Once the new program materials are completed and evaluated by the Department, the College will be required to distribute

prior to the end of the Fall 2011 semester. The College will be required to provide documentation evidencing the distribution as well as a statement of certification that the required distribution was accomplished.

Moreover, the College is required to conduct a Biennial Review report that actually measures the effectiveness of Ohlone's current AOD education and prevention programs. The College must provide a detailed explanation of the methods and data analysis tools that will be used to determine the effectiveness of the program. The Biennial Report must be completed and certified by the Ohlone President by December 31, 2011 and submitted to the Department within 10 days for our review.

Institutional Response:

In its official response, Ohlone concurred with the finding and stated that remedial action was taken as directed in the program review report. In summary, College officials reported the following:

As noted previously, the College's President submitted a status report on violations and remedial actions dated May 17, 2011. In that letter, the President stated that the College had adopted a drug and alcohol abuse prevention program and noted that it was designated as "Board Policy (BP) BP 3550. He also submitted copies of the new Campus Catalog and Schedule of Classes that included relevant information under the following headings: *Maintaining a Drug Free Campus, Alcohol and Drug Abuse Policies and Standards of Student Conduct and Discipline and Due Process Procedures*. Per the responses, the Schedule of Classes document is mailed out to each enrolled student twice a year. The President also claimed that the new DAAPP information was included in the Ohlone Faculty Handbook, which is distributed to all faculty each year. Per the response, both of these publications are also posted on the official website. The College conceded that these distribution methods failed to reach non-faculty staff. To remedy this condition, Ohlone stated that officials drafted an "ANNUAL NOTICE OF OHLONE CCD'S BOARD POLICY (BP 3550) TO INFORM YOU OF DISTRICT ALCOHOL AND UNLAWFUL DRUGS POLICIES AND RULES. A copy of this document was submitted for the Department's review.

Management claimed that it would move to a single, electronic document approach and discontinue the use of the pre-existing *Maintaining a Drug Free Campus* statement in the Schedule of Classes and Faculty Handbook in the belief that it would reduce confusion.

Per the response, the College appointed a committee of officials to conduct its first biennial review as part of its remedial action plan. The committee used the self-evaluation checklist that the review team provided as a starting point for the review. Per the response and the initial biennial review report, the College developed and implemented a DAAPP. The committee also documented the flaws in its DAAPP disclosure distribution procedures and made recommendations to fix the problem. Management also claimed that it recently established an employee assistance program which can arrange for counseling and treatment for employees with substance abuse issues. Ohlone also represented that officials are not aware of any significant drug or alcohol issues on campus and that alcohol is not permitted at any campus event.

Per the response, the committee determined that two distinct disciplinary processes are in effect, one for students and another for employees. As described in the response, a committee of faculty, staff and students oversee the process and hear appeals. For employees, sanctions originate with the supervisor but are processed through the Human Resources. Ohlone officials believe that these processes provide for consistent sanctions.

Final Determination:

Finding #4 of the program review report cited Ohlone for multiple violations of the *DFSCA* and Part 86 of the Department's General Administrative Regulations. Specifically, the Ohlone failed to develop and implement a comprehensive DAAPP that addressed all required subject areas. In addition, the College did not produce an adequate DAAPP disclosure that summarized its program and, as a result, also failed to actively distribute such program materials to required recipients. As a consequence of these failures, Ohlone was not able to conduct a biennial review of the DAAPP's effectiveness.

These separate and distinct violations necessarily follow from each other because the biennial review is primarily a study of the DAAPP's effectiveness. Therefore, an institution cannot conduct a proper biennial review until it has a fully-functional DAAPP in place and program requirements are communicated to members of the campus community. As a result of these violations, Ohlone was required to develop and implement a comprehensive DAAPP, produce and distribute an annual disclosure, and conduct a substantive review of the program's effectiveness. In its response, the College concurred with the finding, claimed that required remedial actions were taken, and submitted documents in support of its claims.

In its response, Ohlone concurred with the violations and stated that the DAAPP was revised to include required content. The Department notes that Ohlone did not actually conduct a biennial review and merely asserted that one would be conducted in the future without any indication of a timeframe for completion. The College did assert that its response to this finding should be considered to be its biennial review. The response to a finding is not a biennial review, and a biennial review will need some form of empirical evidence of its effectiveness and some type of analysis of its consistency in the sanctions levied to students and staff.

In its response, Ohlone concurred with the finding, described its remedial actions, and submitted documents in support of its claims.

The Department carefully examined Ohlone's narrative response and supporting documentation. Based on the Department's review and Ohlone's admission of noncompliance, each of the violations identified in the initial finding are sustained. Indeed, the review team determined that the College failed to comply with any aspect of the *DFSCA* during or prior to the review period. The review team's examination also showed that the identified violations were, for the most part, satisfactorily addressed by Ohlone's new DAAPP, new annual disclosure, two most-recent biennial review reports,

and its new internal policies and procedures. As such, the Department determined that Ohlone's remedial action plan meets minimum requirements. For these reasons, the Department has accepted the response and considers this finding to be closed for program review purposes. Nevertheless, the officials and directors of Ohlone are put on notice that the College must also take any other action that may be needed to address the deficiencies identified by the Department as well as any other deficiencies or weaknesses that were detected during the preparation of its official response, and/or as may otherwise be needed to ensure that these violations do not recur.

In this regard, Ohlone is advised that it must continue to develop its DAAPP. The College also must continue to distribute an accurate and complete DAAPP disclosure to all students and employees in accordance with the Department's regulations and the institution's own procedures. Moreover, Ohlone must conduct comprehensive biennial reviews on the required schedule and ensure that it produces detailed reports about the conduct of each review. The Department reviewed the institution's inaugural report and noted that the document did not clearly show that a substantive review process is in place. This was in part due to the fact that the DAAPP was only in place for a relatively brief time period before the first review was started, thereby requiring officials to make judgements about effectiveness based on very small data sets. Going forward, it is essential that each review be a probative inquiry into the effectiveness of the program and not merely be a conclusory ratification process. All findings must be supported by valid evidence. Finally, each report must indicate that it was approved by Ohlone's President and/or its board.

Although this finding is now closed for the purposes of this program review⁴, Ohlone is specifically 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. Ohlone asserted that it has taken adequate remedial actions and that by doing so; that it is now in compliance with the *DFSCA* as required by its PPA. Nevertheless, Ohlone officials must understand that compliance with the *Clery Act* and the *DFSCA* is essential to maintaining a safe and healthy learning environment. Data compiled by the Department shows that the use of illicit drugs and alcohol abuse are 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 alcohol abuse and illicit drug use and deprive institutions of important information about the effectiveness of any drug and alcohol programming that may have been in place during the review period. For these reasons, Ohlone is advised that its remedial measures 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 remedial measures as a result.

Because of the serious consequences of *DFSCA* compliance failure, the Department strongly recommends that Ohlone re-examine its DAAPP policies and procedures on at

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

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 *DFSCA*. Please be advised that the Department may request information on a periodic basis to test the effectiveness of the College's new policies and procedures.

Appendix A

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

- 1) Copies of Ohlone's 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) A copy of any reports, policies, procedures and/or information about process enhancements and recommendations created by the committees and working groups appointed to review and improve Ohlone's campus safety and *Clery Act* compliance programs.
- 3) A status report on Ohlone's efforts to implement the requirements of Section 304 of the Violence Against Women Reauthorization Act of 2013.
- 4) A copy of the Ohlone'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,

Ohlone's submission must reference the Program Review Control Number, 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, Ohlone officials must clearly communicate that fact to the Department in writing via electronic mail. In this context, Ohlone officials are advised that no new documents are to be created at this time for the purpose of demonstrating 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 administrative actions, in addition to any such referrals that may be made to address the violations identified by the Department during the initial review period.