



OCT 20 2015

Ms. Jackie Hornig
President
Xenon International Academy III
2231 South Peoria
Aurora, CO 80014-1193

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Dear Ms. Hornig:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Xenon International Academy (Xenon) a total of \$57,500 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV, HEA programs). As applicable here, under the Department's regulations, the Department may impose a fine of up to \$27,500 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on Xenon's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), as reflected in 34 C.F.R. §§ 668.41 and 668.46 (2010), and the Drug-Free Schools and Communities Act Amendments of 1989 (DFSCA) as reflected in 34 C.F.R. Part 86.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). A complete ASR must include all the policy statements listed in 34 C.F.R. § 668.46(b). In addition, the ASR must report statistics for the three most recent calendar years concerning the occurrence of certain crimes on campus, in or on certain non-campus buildings or property, and on public property. 34 C.F.R. § 668.46(c). An institution must compile and publish crime statistics for each separate campus. 34 C.F.R. § 668.46(d). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. The ASR must be distributed to current students and employees and must be made available to applicants for admission and employment to provide them with accurate, complete and timely information about crime and safety on campus. 34 C.F.R. § 668.41(e). Institutions must submit the crime statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(e)(5).

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
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Under the DFSCA and the Department's regulations, institutions participating in the Title IV, HEA programs must adopt and implement a drug prevention program for its students and employees that, at a minimum, includes the annual distribution in writing to each employee, and to each student who is taking one or more classes for any type of academic credit (except continuing education units) standards of conduct. In addition, an institution must conduct a biennial review of its program to determine its effectiveness and implement changes to the program if they are needed. 34 C.F.R. § 86.100.

The Department conducted a program review at Xenon from December 12, 2011 to December 16, 2011. The focus of the review was Xenon's compliance with the statutes and Federal regulations as they pertain to the institution's administration of the Title IV, HEA programs, including the institution's compliance with the Clery Act and the DFSCA. The review consisted of, but was not limited to, an examination of Xenon's policies and procedures regarding institutional and student eligibility, individual student financial aid and academic files, attendance records, student account ledgers, and fiscal records.

On September 26, 2012, the Department issued a Program Review Report (PRR) to Xenon. Among other violations, the review found that Xenon had not complied with the Clery Act, the DFSCA and the Department's implementing regulations. Xenon responded to the PRR on October 17, 2012. After reviewing Xenon's responses, the Department issued its Final Program Review Determination (FPRD) letter to Xenon on June 10, 2013¹. The FPRD is incorporated by reference into this fine action. (Enclosure 1).

The Department is taking this fine action based on the findings in the FPRD, which concluded that Xenon failed to include numerous policy statements in its 2011 ASR; failed to include numerous categories of crime in its 2011 ASR; and failed to comply with the drug and alcohol abuse prevention regulations as reflected in 34 C.F.R. Part 86.

XENON'S 2011 ASR OMITTED REQUIRED POLICY STATEMENTS

The Clery Act and the Department's regulations require that participating institutions prepare an ASR that contains, among other things, the institution's statement of current campus crime and safety policies. 34 C.F.R. § 668.46(b)(2).

The Department's reviewers determined that:

- Xenon's 2011 ASR did not contain a statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a

¹ The Department's FPRD was inadvertently dated June 7, 2013 but the FPRD cover letter is correctly dated June 10, 2013.

sex offense occurs. In particular, Xenon's ASR did not include the following required information :

- (i) A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses;
 - (ii) Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported;
 - (iii) Information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel;
 - (iv) Notification to students of existing on- and off-campus counseling, mental health, or other student services for victims of sex offenses;
 - (v) Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available;
 - (vi) Procedures for campus disciplinary action in cases of an alleged sex offense, including a clear statement that—
 - (A) The accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; and
 - (B) Both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense; and
 - (vii) Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses.
- The reported crime statistics in Xenon's 2011 ASR did not include the following categories of crime:
 - (i) Criminal Homicide:
 - (A) Murder and non-negligent manslaughter
 - (B) Negligent manslaughter
 - (ii) Sex offenses:
 - (A) Forcible sex offenses
 - (B) Non-forcible sex offenses
 - (iii) Arson
 - (iv) Persons who were referred for campus disciplinary action for liquor law violations, drug law violations, and illegal weapons possession².

² The FPRD also noted that Xenon's 2011 ASR did not include a separate listing for hate crimes. The Department is not basing its proposed fine on that violation.

In its response to the PRR, Xenon admitted that its 2011 ASR did not comply with the requirements of the Clery Act and the Department's regulations in the areas noted above. Xenon submitted a revised 2011 ASR. However, these efforts do not excuse Xenon's failure to disclose its policies in these areas to students and employees and prospective students and employees in its 2011 ASR, as required by the Clery Act and the Department's regulations.

XENON DID NOT COMPLY WITH THE DRUG AND ALCOHOL ABUSE PREVENTION REQUIREMENTS

The DFSCA and the Department's regulations require institutions of higher education to adopt and implement a drug prevention program for its students and employees that, at a minimum, includes the annual distribution in writing to each employee, and to each student who is taking one or more classes for any type of academic credit (except continuing education units) 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; describe the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol; describe the health risks associated with the use of illicit drugs and the abuse of alcohol; describe any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and include a clear statement that the institution will impose disciplinary sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions for violation of the standards of conduct. In addition, an institution must conduct a biennial review of its program to determine its effectiveness and implement changes to the program if they are needed and ensure that the disciplinary sanctions mentioned above are consistently enforced. 34 C.F.R. § 86.100.

The Department found that Xenon failed to comply with the DFSCA and 34 C.F.R. Part 86. Specifically, Xenon failed to develop and implement a substantive drug and alcohol abuse prevention program (DAAPP) that contained all of the required elements and failed to distribute a DAAPP disclosure to all employees and students enrolled for academic credit on an annual basis. In addition, Xenon failed to conduct a biennial review of the DAAPP's effectiveness and produce a report of findings. The biennial review components of this violation necessarily follow from the DAAPP deficiencies 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 materially-complete and fully-functional DAAPP in place.

In its response to the PRR, Xenon claimed that it had published an adequate statement of its drug policies in its School Catalog and Handbook but did not present any evidence that it distributed the policies to its employees. Xenon also acknowledged that it did not have policies in all of the areas required by the DFSCA and the Department's regulations, and did not present any evidence that it conducted the required biennial review of the DAAPP.

In determining the amount of a fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R § 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates. The latest year for which complete funding data is available for Xenon is 2013-2014 award year. According to the Department records, Xenon received approximately \$254,283 in Federal Pell Grant (Pell) funds and \$639,360 in Federal Direct Loan funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,571,915, and for institutions participating in the Federal Direct Loan programs, the median funding level is \$2,408,978. Accordingly, Xenon is a small institution because its funding levels for the Federal Pell Grant program and the Federal Direct Loan program are below the median funding levels for those programs.

As detailed in this letter, Xenon's violations of the Clery Act, the DFSCA and the implementing regulations are very serious. These failures could have endangered Xenon's students and employees who must be able to rely on the disclosures of campus crime statistics, policies and statements. Congress enacted the DFSCA to ensure that students and employees had vital information about drugs and alcohol prevention program at their institution. Moreover, a DAAPP that has not been tested in a biennial review is unlikely to be reliable and effective. Xenon's students and employees were not given drug and alcohol program information that would have helped them to understand the standards and code of conduct expected of them with regard to drugs and alcohol use, and sanctions to be imposed if the code of conduct is violated. Moreover, the Department considers an institution's compliance with the Clery Act, and the DFSCA requirements to be part of its administrative capability, and Xenon's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

I have assessed \$27,500 for Xenon's failure to include seven (7) required policy statements in its 2011 ASR. These are serious violations. By failing to include these required policy statements in its ASR, Xenon denied the campus community important information about its campus security policies, rendering the distributed ASR incomplete and unreliable. Students and employees cannot take advantage of information that has not been provided to them. I impose a fine of \$5,000 for each missing policy statement up to a maximum of \$27,500. In this case, Xenon failed to include seven (7) policy statements so I have assessed the maximum amount.

I have assessed \$15,000 for Xenon's failure to include four (4) required categories of crime in its 2011 ASR. These are serious violations. By failing to include these required categories of crime in its ASR, Xenon denied the campus community important information about its campus crime statistics, rendering the distributed ASR incomplete and unreliable. Students and employees cannot be expected to make their own personal safety decisions based upon an incomplete ASR.

Ms. Jackie Hornig
Xenon International Academy III

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I have assessed a fine of \$15,000 for Xenon's failure to distribute a complete DAAPP to its students and employees, and its failure to conduct a biennial review to evaluate the effectiveness of its DAAPP and to assess the consistency of sanctions imposed for violations of its disciplinary standards and codes of conduct related to drugs and alcohol. This is a serious violation because students and employees cannot be expected to understand a DAAPP that has not been distributed to them. Moreover, the failure to conduct a biennial review rendered Xenon's DAAPP woefully unreliable and unhelpful to its students and employees.

The fine of \$57,500 will be imposed on **November 10, 2015**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Xenon may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If Xenon chooses to request a hearing or submit written material, you must write to me at:

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

If Xenon requests a hearing, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of Xenon's case to a hearing official who will conduct an independent hearing. Xenon is entitled to be represented by counsel during the proceedings. If Xenon does not request a hearing but submits written material instead, I will consider that material and notify Xenon of the amount of fine, if any, that will be imposed.


ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT XENON SUBMITS MUST BE RECEIVED BY NOVEMBER 10, 2015; OTHERWISE, THE \$57,500 FINE WILL BE EFFECTIVE ON THAT DATE.

Ms. Jackie Hornig
Xenon International Academy III

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If you have any questions or desire any additional explanation of Xenon's rights with respect to this action, 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

Enclosure

cc: Tony Mirando, Executive Director, NACCAS, via amirando@naccas.org
Ms. Jennifer sobanet, Chief Operating Officer, CO State Department of Higher Education,
via Jennifer.sobanet@dhe.state.co.us