



MAR 11 2015

Mr. Scott Rich
President
Sterling College
125 West Cooper
Sterling, KS 67579-1533

Sent: United Parcel Service
Tracking #: 1Z A87 964 01 9021 2864

OPE-ID: 00194500

Dear Mr. Rich:

In a letter dated November 7, 2014, the U.S. Department of Education (Department) notified Sterling College (Sterling) of its intent to fine Sterling \$165,000 for its failure to comply with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in §485(f) of the Higher Education Act of 1965, as amended (HEA). The proposed fine was based on the findings in a Final Program Review Determination (FPRD) issued on January 29, 2014. The FPRD found that Sterling had failed to comply with the Clery Act and the Drug-Free Schools and Communities Act Amendments of 1989 (DFSCA).

In an undated letter received by the Department on November 25,, 2014, you submitted a written response to that fine notice on Sterling's behalf and requested that the Department not impose the proposed fine. You also requested that "consideration be given to our small reach and influence in the community, and our small size." Sterling did not request for a hearing on the proposed fine.

The Department has considered the arguments and facts presented in your letter. This letter provides the Department's final decision on Sterling's request that the proposed fine not be imposed.

In the November 7, 2014 fine notice, the Department proposed to fine Sterling a total of \$165,500 based on six findings.

1. The Department proposed to impose a fine of \$27,500 for Sterling's failure to publish and distribute an Annual Security Report (ASR) for calendar year 2009 and for prior years in violation of the Clery Act and 34 C.F.R. §668.41(e) (2009)¹.
2. Sterling failed to include eleven (11) required policy statements in the ASR it distributed in 2010. Sterling's 2010 ASR did not include the following required policy statements:

¹ The Department published new regulations for the Clery Act on October 20, 2014. However, the findings on which the proposed fines are based rely on the regulations in place at the time of the violation as reflected in this citation. Unless otherwise noted, all of the regulations cited are dated 2009.

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

Administrative Actions and Appeals Service Group
830 First St., N.E. Washington, D.C. 20002-8019
StudentAid.gov

- A statement of current policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus. This policy must include: its policy governing its response to such reports; its policy for making timely warning reports to the campus community; policies for preparing the annual crime report; and a list of the titles of each person or organization to whom students and employees report crimes. 34 C.F.R. § 668.46(b)(2).
- A statement of current policies regarding campus law enforcement that addresses the authority of campus security personnel, the campus security personnel's relationship with other State and local law enforcement agencies, and whether campus security personnel have the authority to arrest individuals. 34 C.F.R. § 668.46(b)(4).
- A statement that clearly describes the institution's programs designed to inform students and employees about campus security procedures and practices. 34 C.F.R. § 668.46(b)(5).
- A statement that describes the programs available to inform students and employees about the prevention of crime. 34 C.F.R. § 668.46(b)(6).
- Statements of policy regarding the enforcement of underage drinking laws or enforcement of federal or state drug laws. 34 C.F.R. § 668.46(b)(8) and 668.46(b)(9).
- A description of the drug and alcohol education programs offered as required by the DFSCA. 34 C.F.R. § 668.46(b)(10).
- A statement of the institution's policies regarding its campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs. 34 C.F.R. § 668.46(b)(11) including:
- A description of educational programs to promote the awareness of rape, acquaintance rape and nonforcible sex offenses.
- A statement of policy regarding procedures for campus disciplinary action in cases of an alleged sex offense, including clear statements that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding; both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense; and 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. C.F.R. § 668.46(b)(11)(vi).

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- A statement of policy regarding emergency response and evacuation procedures. 34 C.F.R. § § 668.46(b)(13) and 668.46(g).
- A statement of policy regarding procedures to test the emergency response and evacuation procedures on at least an annual basis. 34 C.F.R. § 668.46(g)(6).

The Department proposed to impose a fine of \$27,500 for Sterling's failure to include these policy statements in the ASR it distributed in 2010.

3. Sterling failed to maintain a daily crime log for calendar year 2009 and prior years in violation of 34 C.F.R. §668.46(f). The Department proposed to impose a fine of \$27,500 for this violation.
4. Sterling failed to publish and distribute a complete 2010 Annual Fire Safety Report (AFSR) as required by 34 C.F.R. §668.49(d). The Department proposed to impose a fine of \$27,500 for this violation.
5. Sterling failed to maintain a fire log as required by 34 C.F.R. §668.49(d). The Department proposed to impose a fine of \$27,500 for this violation.
6. Sterling did not comply with the requirements of the DFSCA and 34 C.F.R. Part 86. The Department proposed to impose a fine of \$27,500 for these violations.

The Department's letter notifying Sterling of the proposed fine also notified the institution that it could request a hearing or submit written material contesting the proposed fine. Sterling did not request a hearing, but in your undated letter, Sterling argued that a fine should not be imposed. Sterling did not contest any specific finding; however, Sterling raised a number of points and requested that a fine not be imposed. We address each of Sterling's points below.

1. Sterling contended that the violations "were not a willful disregard of the law" and that some of the missing information required was readily available.

In its response to the notice of the proposed fines, Sterling argued that a fine should not be imposed because it did not intend to conceal or mislead the public or the college community. Sterling also claimed that some of the information required by the regulations was available to the campus community.

Both the Program Review Report (PRR) and the FPRD found that Sterling did not publish and distribute an ASR for calendar year 2009 or any prior years as required by 34 C.F.R. § 668.41(e). Sterling concurred with the PRR determination that the ASR it distributed in 2010 omitted 11 required policy statements. In its response to the PRR, Sterling acknowledged that it did not maintain a daily crime log for 2009, and did not publish and distribute a complete AFSR in 2010.

Moreover, Sterling acknowledged that it did not maintain a fire log at the time of the review, and its DAAPP did not meet the requirements of the DFSCA as reflected in 34 C.F.R. Part 86. Both the HEA and the Department's regulations require that institutions provide a complete and comprehensive ASR that includes all the required policies and statistics. See §485(f) of the HEA, 34 C.F.R. §§ 668.41 and 668.46 and *The Handbook for Campus Crime Reporting*, U.S. Department of Education, 2005 at 85-114. The DFSCA as reflected in 34 C.F.R. Part 86 requires institutions of higher education to adopt and implement a drug prevention program for its students and employees. In its response to the letter proposing the fine, Sterling did not question these findings and did not specifically claim that any of this information was available to students, employees and prospective students and employees as required by the Clery Act and the DFSCA. Despite its claim that some of the information was available, Sterling did not identify what information it was referring to or where that information was available. Thus, Sterling did not provide any basis for reducing or eliminating the proposed fines.

2. Sterling contended that if it had complied with the law, the information would not have portrayed Sterling in negative light.

Sterling argues that the information that should have been distributed to students/employees and prospective students/employees would not have portrayed Sterling in negative light and that it would have shown Sterling to be a safe place.

Sterling's argument, however, misses the point of the Clery Act and the DFSCA. The purpose of these laws is to ensure that students, employees and prospective students and employees have the necessary information about crimes and security procedures to evaluate an institution's security. Sterling's failure to comply with its obligations under the Clery Act and the DFSCA denied students and employees and prospective students and employees important statistics and information on security, fire and drug and alcohol policies. The campus community could not make informed safety decisions based upon incomplete or completely unavailable information.

3. Sterling claims that it took immediate and significant steps to correct deficiencies.

Sterling stated that it took immediate and significant steps to correct the deficiencies when they were identified by the Department. However, the record indicates that Sterling never fully complied with the Clery Act or the DFSCA from the enactment of those laws. Sterling's efforts to comply after the fact does not excuse its earlier failures to comply with the requirements of the Clery Act and the Department's regulations.

4. Sterling requested that the Department consider its small size in imposing a fine.

As discussed in our letter of November 7, 2014, the Secretary has established the rule that in determining the amount of a fine to be imposed, 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

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participates. See In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993). The Department determined that Sterling is a large institution because the amount of funding it received through the Federal Direct Loan program, and the Campus-Based programs using the most recent complete year for which data is available (2012-2013) are above the median funding levels for those programs. Sterling did not challenge that conclusion or the data on which we related. Therefore, there is no basis for reducing the fine based on the institution's size.

Final Decision

For the reasons discussed above, the Department affirms the proposed fines identified in our letter of November 7, 2014 which included: \$27,500 for Sterling's failure to publish and distribute an ASR for calendar year 2009 and for prior years; \$27,500 for Sterling's failure to include 11 required policy statements in the ASR distributed in 2010; \$27,500 for Sterling's failure to maintain a daily crime log for calendar year 2009 and prior years; \$27,500 for Sterling's failure to publish and distribute a complete 2010 AFSR; \$27,500 for Sterling's failure to maintain a fire log at the time of the review; and \$27,500 for Sterling's multiple violations of the DFSCA and Part 86 of the Department's regulations.

Therefore, Sterling must pay a total fine of \$165,000.

The \$165,000 fine is due to the Department within 30 days of the date of this letter. Payment must be in the form of a certified or cashier's check, and made payable to the U.S. Department of Education. If payment is not received by the Department within that 30-day time period, interest will accrue in monthly increments until payment is received. Please send your fine payment to me **to the attention of Lawrence Mwethuku** at the following address:

Administrative Actions and Appeals Service Group
U.S. Department of Education
Federal Student Aid/Program Compliance
830 First Street, NE – UCP-3, Room 84F2
Washington, DC 20002-8019

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Please identify the payment as Bill No. AAA201502018 to ensure proper crediting of your payment account.

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

Sincerely,

Robin S. Minor, Acting Director
Administrative Actions and Appeals Service Group
Federal Student Aid/Program Compliance
U.S. Department of Education

cc: Ms. Karen Solomon, Vice President for Accreditation Relations, Higher Learning Commission, via ksolomon@hlcommission.org
Carrie Caine, Assistant to the Vice President for Legal and Governmental Affairs, HLC, via ccaine@hlcommission.org
Dr. Diane DeBacker, Kansas Commissioner of Education, KSDE, via ddebacker@ksde.org