



JUL - 3 2014

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University of Nebraska-Kearney  
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Kearney, NE 68849-0001

Sent: United Parcel Service  
Tracking #: 1Z A87 964 01 9091 0770

OPE-ID: 00255100

Dear Dr. Kristensen:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine the University of Nebraska-Kearney (UNK or the University) a total of \$65,000 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 or all 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 UNK'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), and the Department's regulations in 34 C.F.R. §§ 668.41 and 668.46.

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). In addition, the ASR must include statistics for the three most recent calendar years concerning the occurrence of certain crimes on the institution's 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  
StudentAid.gov

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The Department conducted an on-site program review at UNK from April 20, 2010 to April 22, 2010. The focus of the review was UNK's compliance with the Clery Act. The review consisted of an examination of UNK's police incident reports, arrest records, and disciplinary files and a review of the institution's policies and procedures related to the Clery Act. The review also included a comparison of the crime statistics submitted by UNK to the Department and those reported in the ASR. In addition, the review team interviewed institutional officials with Clery Act responsibilities.

On January 4, 2011, the Department issued a Program Review Report to UNK. The review found that UNK had not complied with the Clery Act and the Department's implementing regulations. UNK responded to the report on February 23, 2011. After reviewing UNK's response, the Department issued its Final Program Review Determination (FPRD) letter to UNK on January 30, 2014. 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 UNK failed to compile and report accurate campus crime statistics to the Department or in its 2009 ASR. Additionally, UNK failed to properly notify prospective employees/graduate students about the availability of the 2009 ASR, as well as reports for prior years.

### **UNK FAILED TO PROPERLY COMPILE AND DISCLOSE CRIME STATISTICS**

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must make available statistical information related to certain reported crimes and arrest/campus disciplinary referrals for alcohol, drug and illegal weapons possession violations. The statistical information must be disclosed by location – on campus (dormitories vs. residential facilities), in or on non-campus buildings or property, and on public property – and must be provided for the three most recent calendar years. C.F.R §§ 668.46(a), 668.46(c)(1) – (c)(4).

The statistics reporting must be included in the institution's ASR which must be available to students, employees and potential students and employees by October 1 of each year, and it must be electronically submitted to the Department for inclusion in the Campus Crime and Security Website. The Department has established timeframes within which institutions must electronically submit information. C.F.R § 668.41(e)(1)-(e)(5).

UNK's 2009 ASR did not provide crime statistics in the manner required by the Clery Act and the Department's regulations. Specifically, UNK's 2009 ASR did not provide an accurate geographic breakdown of crime statistics based on where the crimes occurred. Instead, UNK calculated its crime statistics based on to whom the crime was reported rather than where the crime occurred in violation of the Clery Act. 34 CFR §668.46(c). In addition, UNK did not properly report the number of liquor, drug, and illegal weapons violations, and the statistics did not indicate whether the violation resulted in an arrest or a referral. UNK instead provided a list

of different types of liquor, drug and illegal weapons violations categorized according to whom the crime was reported, in violation of the Clery Act requirements. 34 CFR §668.46(c)(1) and (4).

The Department also determined that UNK improperly excluded one incident (Incident #UN08000101) from the crime statistics. UNK incorrectly categorized this incident as a larceny (which is not included in the Clery statistics) rather than as a burglary (a category that is included in reported Clery statistics). The narrative description of this incident in UNK's records indicated that an unknown subject took several items from a custodial office. This crime occurred in an office, not an area of public access and, therefore, the incident should have been coded as a burglary. UNK's incorrect characterization of this crime resulted in its exclusion in UNK's statistical data for calendar year 2008. As a result, the 2009 ASR underreported one burglary. UNK's response noted that the University took the appropriate corrective action after the program review report was issued.

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the data when it is presented to students and employees who can use the data to make decisions affecting their personal safety. Students and employees must be able to rely on the institution's reported statistics. UNK's correction of the crime statistics only after the Department alerted the University of its obligations does not excuse its earlier failure to comply with its legal obligations. The correction of violations does not diminish the seriousness of not properly and correctly reporting crime incidents at the time they occurred.

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### **UNK DID NOT PROPERLY DISTRIBUTE ITS 2009 ASR TO PROSPECTIVE EMPLOYEES AND PROSPECTIVE GRADUATE STUDENTS**

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must distribute its ASR to all enrolled students and current employees through appropriate publications and mailings. The ASR must be distributed by October 1 of each year. The ASR must be distributed by an appropriate method including by: direct mailing to each individual through the U.S. Postal Service, campus mail, or electronic mail; a publication or publications provided directly to each individual; or posting on an Internet website or an Intranet website. 34 C.F.R. § 668.41(e).

If an institution chooses to distribute its ASR to enrolled students by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a

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<sup>1</sup> The FPRD included an additional finding (Finding #2) regarding the institution's failure to obtain crime statistics for additional locations. The Department has decided not to impose a fine relating to that Finding.

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statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(c)(2) and (e)(2).

If an institution chooses to distribute its ASR to current employees by posting the disclosure on an Internet website or an Intranet website, the institution must, by October 1 of each year, distribute to all current employees a notice that includes a statement of the report's availability, the exact electronic address at which the report is posted, a brief description of the report's contents, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(e)(3).

If the institution chooses to provide its ASR to prospective students and prospective employees by posting the disclosure on an Internet website, the notice must include the exact electronic address at which the report is posted, a brief description of the report, and a statement that the institution will provide a paper copy of the report upon request. 34 C.F.R. § 668.41(e)(4).

UNK did not properly distribute its 2009 ASR to prospective employees and prospective graduate students. UNK provided notification about the availability of the 2009 ASR to undergraduate students through a statement in the undergraduate catalog; however, UNK acknowledged that it did not provide a notification to prospective employees or prospective graduate students. UNK's February 23, 2011 response to the Program Review Report included a copy of the University's revised procedures which are designed to ensure that its ASR is timely and properly distributed. However, the revision of procedures after the Department alerted the University of its obligations does not excuse its earlier failure to comply with the law. UNK's prospective employees/graduate students must be provided with timely crime statistics to make informed decisions about their personal safety.

In determining the amount of 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 UNK is 2012-2013 award year. According to the Department records, UNK received approximately \$7,715,209 in Federal Pell Grant (Pell) funds, \$28,308,918 in Federal Direct Loan funds and \$880,670 in Campus-Based funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,583,853, for institutions participating in the Federal Direct Loan programs, the median funding level is \$3,105,978, and for institutions participating in the Campus-Based programs, the median funding level is \$275,987. Accordingly, UNK is a large institution because its funding levels for Federal Pell Grant, Federal Direct Loan, and Campus-Based funds exceeds the median funding levels for those Title IV, HEA programs.

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As detailed in this letter, the Clery Act violations identified at UNK are very serious. As a result of these violations, students, employees and potential students and employees were deprived of information that would help them take precautions for their safety. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and UNK's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

After considering the gravity of the violations and size of the institution, I have assessed \$27,500 for UNK's failure to compile a complete and accurate 2009 ASR. UNK's 2009 ASR did not contain an accurate geographic breakdown of crime statistics and accurate statistics about the arrest or referral in the case of the liquor, drug, and illegal weapons violations. This is a serious violation because the campus community was denied an opportunity to know where crimes were occurring to help them make informed decisions about personal safety. Additionally, current and prospective students/employees must be able to rely on accurate and complete campus crime information. A maximum fine is appropriate in this case.

I have assessed \$10,000 for UNK's failure to include one burglary (Incident #UN08000101) in its crime statistics for calendar year 2008. This is a serious violation because the campus community was denied an opportunity to know that a burglary had taken place in 2008. Current and prospective students/employees must be able to rely on accurate and complete campus crime information.

I have assessed \$27,500 for UNK's failure to properly distribute its 2009 ASR to prospective employees and prospective graduate students. This is a serious violation because prospective employees and graduate students were denied information about campus safety that would help them make informed decisions about where to study or work. A maximum fine is appropriate in this case.

The fine of \$65,000 will be imposed on **July 23, 2014**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. UNK may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If UNK 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

Upon receipt of such a request, 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

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UNK's case to a hearing official who will conduct an independent hearing. UNK is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If UNK does not request a hearing but submits written material instead, I will consider that material and notify UNK of the amount of fine, if any, that will be imposed.

**ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT UNK SUBMITS MUST BE RECEIVED BY JULY 23, 2014; OTHERWISE, THE \$65,000 FINE WILL BE EFFECTIVE ON THAT DATE.**

If you have any questions or desire any additional explanation of UNK's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,



Mary E. Gust, Director  
Administrative Actions and Appeals Service Group  
Federal Student Aid/Program Compliance  
U.S. Department of Education

Enclosures

cc: Ms. Karen Solomon, Vice President for Accreditation Relations, Higher Learning Commission, via [ksolomon@hlcommission.org](mailto:ksolomon@hlcommission.org)  
Mr. Scott Swisher, Contact, Nebraska State Board of Education, via [scott.swisher@nebraska.gov](mailto:scott.swisher@nebraska.gov)