



NOV 14 2014

Dr. D. Clay Perkins
President
Mid-Atlantic Christian University
715 N Poindexter Street
Elizabeth City, NC 27909-4054

Sent: United Parcel Service
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Dear Dr. Perkins:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Mid-Atlantic Christian University (Mid-Atlantic) a total of \$90,000 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 Mid-Atlantic'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 § 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). 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
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Administrative Actions and Appeals Service Group
830 First St., N.E. Washington, D.C. 20002-8019
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The Clery Act and the Department's regulations require that an institution that maintains a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on-campus, on a non-campus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. 34 C.F.R. § 668.46(f).

In addition, beginning October 1, 2010, an institution that maintains any on campus student housing facility, must prepare an Annual Fire Safety Report (AFSR). 34 C.F.R. §668.49(b). An institution that maintains on-campus student housing facilities must maintain a written, easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. 34 C.F.R. §668.49(d).

The Drug-Free Schools and Communities Act Amendments of 1989 (DFSCA) and the Department's regulations require an institution of higher education to adopt and implement a drug prevention program for its students. 34 C.F.R. § 86.100.

The Department conducted an off-site program review of Mid-Atlantic from October 28, 2010 to March 5, 2011. The Department initiated the review after a shooting incident on Mid-Atlantic's campus. The review was limited to Mid-Atlantic's compliance with the Clery Act. The review consisted of an examination of Mid-Atlantic's campus police incident reports, arrest records, disciplinary files, policies and procedures relating to campus safety and security, and drug and alcohol abuse prevention. The review team also spoke with Mid-Atlantic officials with responsibilities in these areas.

On July 25, 2011, the Department issued a Program Review Report (PRR) to Mid-Atlantic. The review found that Mid-Atlantic had not complied with the Clery Act and the Department's implementing regulations. Mid-Atlantic responded to the report on November 4, 2011. After reviewing Mid-Atlantic's responses, the Department issued its Final Program Review Determination (FPRD) letter to Mid-Atlantic 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 Mid-Atlantic did not properly distribute ASRs in 2009, and 2010; failed to maintain a daily crime log for calendar years 2009 and 2010; failed to publish and distribute the AFSR for calendar year 2010; failed to maintain a fire log; and failed to comply with the drug and alcohol abuse prevention regulations.

MID-ATLANTIC FAILED TO PUBLISH AND DISTRIBUTE ITS 2009 AND 2010 ASRs

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must make available to students, employees and potential students and employees statistical information related to certain reported crimes and arrest and 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 crime statistics reports must be disclosed to students and employees and made available as part of the institution's ASR by October 1 of each year, and 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).

Mid-Atlantic's 2009 and 2010 ASRs did not meet the requirements of a complete and accurate ASR. In response to the Department's October 20, 2010 letter requesting ASRs for the two most recent years, the University provided what it characterized as "the two most recent Campus Security Reports." The University also said that "a summary of these reports is included in the Crime Prevention and Sex Offense handbooks, which are distributed during Registration at the beginning of each semester."

The Department examined the Crime Prevention Handbook for 2010-2011 provided by Mid-Atlantic and determined that, although it contained some of the required policies and procedures, and some campus crime statistics for 2006-07 through 2009-10, it did not meet the requirements of the Clery Act. Similarly, the University's Sex Offenses Handbook for 2010-2011 also did not meet those requirements. The Department concluded that Mid-Atlantic's distribution of summary information in pamphlets and its publication of statistical data in two separate handbooks did not satisfy the statutory and regulatory requirement that an institution distribute a complete ASR as required by the Clery Act and the Department's regulations. The Clery Act requires that the ASR must be contained in a single document which is then distributed to the entire campus community.

In addition, the Department's review of the document Mid-Atlantic described as its ASR found that it failed to include numerous required policy statements including:

- A statement of current policies regarding campus law enforcement that addresses the authority of campus law enforcement, the campus law enforcement's relationship with other State and local law enforcement agencies, and whether campus law enforcement officers have the authority to arrest individuals.
- A statement that clearly describes all the programs available to inform students and employees about campus security procedures and practices.
- A statement of policy for making timely warning reports to members of the campus community regarding the occurrence of Clery Act crimes.

- A statement of policy for preparing the annual disclosure of crime statistics.
- A list of titles of each person or organization to which students and employees should report criminal offenses described in the law for the purpose of making timely warning reports and the annual statistical disclosure.
- A statement that describes the programs available to inform students and employees about the prevention of crime.
- A statement of policy regarding the enforcement of underage drinking laws or enforcement of federal or state drug laws.
- A full description of the drug and alcohol education programs offered.
- A statement of policy regarding emergency response and evacuation procedures.
- A statement of policy regarding procedures to test the emergency response and evacuation procedures on at least an annual basis.
- A statement of the institution's policies regarding its campus sexual assault programs to prevent sex offenses and to promote the awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses.

In its response to the PRR, Mid-Atlantic concurred with the finding and claimed that it had made the necessary changes to comply with the Clery Act in the future; however, the revision of procedures after the Department alerted the University of its legal obligations does not excuse its earlier failure to comply with the law. Mid-Atlantic's failure to prepare and distribute an accurate and complete ASR to current students and employees and to make that information available to prospective students and employees deprived the campus community of timely access to important campus crime information and violated the Clery Act.

MID-ATLANTIC DID NOT MAINTAIN A DAILY CRIME LOG FOR 2009 AND 2010

Institutions participating in Title IV, HEA programs that maintain a campus police or a campus security department must maintain a written, easily understood daily crime log that records, by the date the crime was reported, any crime that occurred on campus, on a non-campus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and is reported to the campus police or the campus security department. This log must include the nature, date, time, and general location of each crime; and the disposition of the complaint, if known. The institution must make an entry or an addition to an entry to the log within two business days of the report of the information to the campus police or the campus security department, unless that disclosure is prohibited by law or would jeopardize the confidentiality of the victim. An institution may withhold information if there is

clear and convincing evidence that the release of the information would jeopardize an ongoing criminal investigation or the safety of an individual; cause a suspect to flee or evade detection; or result in the destruction of evidence. §485(f)(4) of the HEA; 34 C.F.R. § 668.46(f). The institution must make the crime log for the most recent 60-day period open to public inspection during normal business hours. The institution must make any portion of the log older than 60 days available within two business days of a request for public inspection. 34 C.F.R. § 668.46(f)(5).

Mid-Atlantic acknowledged that it did not maintain a daily crime log at the time of the review. Mid-Atlantic contended, however, that it did not have a police or security department and, therefore, was not required to maintain a crime log.

The Department has reviewed the evidence relating to the issue of whether Mid-Atlantic should be considered to have a police or security department for purposes of the Clery Act. At the time of the review, Mid-Atlantic's officials told the reviewers that the University had a security officer who was assigned to the Students Affairs Office and assisted law enforcement on behalf of the University. In addition:

- 1) The institution's response to the Department's letter announcing the review included a list of Campus Security Authorities. That list included Phillip Jones, Security, Located in Harold C. Turner Hall. (Harold C. Turner Hall houses the Student Life Office). The University also provided a description of the duties of the Security Officer and stated that security staff are responsible for securing the buildings at 5pm and then monitoring the buildings in the evenings to make sure that the facilities were locked and secure.
- 2) Page 40 of Mid Atlantic's Residence Assistance Manual states: "The Police Department should only be contacted directly by staff or students when referred by appropriate campus authority or when Campus Security is unable to respond to calls for assistance. If possible, all incidents requiring the police should first be communicated to Campus Safety. They can aid in assessing the situation as to whether the police should be involved, and in communicating with the police department. If it is after hours, the Resident Hall Director and Campus Security should always be contacted."
- 3) A staff manual states: "staff and students should contact Campus Security" in case of emergency and also lists security as one of the institution's Campus Security Authorities.

Mid-Atlantic stated that it has developed a daily crime log which the Student Life Department will use in the future. However, the revision of procedures after the Department alerted the University of its obligations does not excuse its earlier failure to comply with its legal obligations. Mid-Atlantic's failure to maintain a crime log for 2009 and 2010 was a serious violation of the Clery Act and the Department's regulations.

MID-ATLANTIC DID NOT PUBLISH AND DISTRIBUTE A 2010 AFSR

Under the Clery Act and the Department's regulations all institutions that receive Title IV, HEA funds and maintain an on-campus student housing facility must, by October 1 of each year, prepare, publish and distribute to its current students and employees through appropriate publications and mailings, an AFSR that contains, at a minimum, all of the statistical and policy elements described in 34 C.F.R. § 668.49(b). These institutions must disclose fire statistics for each on-campus student residential facility for the three most-recent calendar years. An institution's statistics must accurately and completely identify the number of on-campus fires and the cause of each fire, the number of persons who sustained fire-related injuries that resulted in treatment at a medical facility (including on-campus health centers), the number of fire-related deaths, and the dollar value of property damage caused by such fires. This requirement became effective on October 1, 2010. 34 C.F.R. § 668.49(c).

The AFSR must include several fire safety information disclosures covering topics such as the type(s) of fire safety systems that are used in each student housing facility, the number of fire drills that were conducted during the previous calendar year and institutional policies, procedures, and programs regarding: 1) the use and/or possession of portable electrical appliances; 2) smoking and the use or presence of open flames in student housing facilities; 3) evacuation procedures to be followed in the case of a fire; 4) fire safety education and training programs; 5) the institutional official(s) and departments to whom students and employees should report the occurrence of fires so that those incidents can be included in the institution's annual fire statistics; and, 6) any plans for future improvements to the institution's fire safety program. 34 C.F.R. § 668.49(b).

The AFSR must be published and distributed through appropriate publications and mailings in the same manner as the ASR. The AFSR must be a comprehensive publication in the same manner as the ASR. If an institution combines the ASR and AFSR and publishes them as a single document, the titles of both reports must conspicuously appear on the cover page. 34 C.F.R. § 668.41(e).

Mid-Atlantic did not prepare or distribute an AFSR for 2010. Mid-Atlantic reported fire statistical data to the Department's Website in accordance with 34 C.F.R. § 668.49(c), but it failed to provide those statistics to its students and employees in accordance with 34 C.F.R. § 668.41(e).

Mid-Atlantic concurred with the finding and stated that it developed an AFSR for 2011 and implemented a fire safety program. However, the University conceded that it failed to comply with the requirement for an AFSR for 2010. Mid-Atlantic's failure to maintain an AFSR for calendar year 2010 is a serious violation of the Clery Act and the Department's regulations.

MID-ATLANTIC DID NOT MAINTAIN A FIRE LOG

An institution that maintains on-campus student housing facilities must maintain a written, easily understood fire log that records, by the date that the fire was reported, any fire that occurred in an on-campus student housing facility. 34 C.F.R. §668.49(d).

Mid-Atlantic failed to maintain a fire log in accordance with the Department's regulations. When the Department requested the University's Fire Log, Mid-Atlantic submitted copies of log sheets from the Elizabeth City Fire Department. Mid-Atlantic acknowledged that it did not maintain a fire log beginning in 2010. Mid-Atlantic's failure to maintain a fire log deprived students and employees of important safety information and is a serious violation of the Clery Act and the Department's regulations.

MID-ATLANTIC DID NOT COMPLY WITH THE DRUG AND ALCOHOL ABUSE PREVENTION REQUIREMENTS

Under the DFSCA and the Department's regulations, an institution of higher education 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, 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. The standards must also include: a description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol; a description of the health risks associated with the use of illicit drugs and the abuse of alcohol; a description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; a clear statement that the institution will impose disciplinary sanctions on student 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 violation of the standards of conduct. The 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 are consistently enforced. 34 C.F.R. § 86.100.

Mid-Atlantic did not meet the requirements of DFSCA. Mid-Atlantic failed to develop and implement a substantive drug and alcohol abuse prevention program (DAAPP) that contained the required elements and also failed to distribute a DAAPP disclosure to all employees and students enrolled for academic credit on an annual basis. The review team determined that at the time of the review, Mid-Atlantic did not have a drug prevention program that meets the following requirements of 34 C.F.R. § 86.100:

- (1) A list of applicable legal sanctions under federal, state or local laws for the unlawful possession or distribution of illicit drugs and alcohol.

- (2) A description of the health risks associated with the abuse of alcohol or use of illicit drugs.
- (3) A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students.

Moreover, the review team determined that although Mid-Atlantic indicated that it reviews its alcohol and drug abuse prevention standards yearly, the review of the program did not include a determination of the standards' effectiveness and a process to ensure that the disciplinary sanctions are consistently enforced. In addition, the review team found that Mid-Atlantic did not implement changes to the program when they were needed. 34 C.F.R. § 86.100

The University acknowledged that its drug and alcohol policy did not meet Federal requirements. Mid-Atlantic had some of the required DAAPP information in various documents, but that information was never formally sent to students or employees. Moreover, required policy statements were missing required information including: 1. a list of applicable legal sanctions; 2. a description of health risks associated with the use of illicit drugs and the abuse of alcohol; and 3. a description of any counseling or treatment options available to staff and students. Mid-Atlantic asserted that biennial reviews had been conducted, but never provided proof of such reviews. The Department determined that the University failed to actively distribute the deficient DAAPP information to students and staff. As a result of these violations, the University was unable to conduct biennial reviews to fully evaluate the effectiveness of the DAAPP. Mid-Atlantic's failure to have a DAAPP that satisfies legal requirements is a serious violation of DFSCA and the Department's regulations.

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 Mid-Atlantic is the 2012-2013 award year. According to the Department's records, Mid-Atlantic received approximately \$461,379 in Federal Pell Grant (Pell) funds, \$1,256,385 in Federal Direct Loan funds and \$16,566 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, Mid-Atlantic is a small institution because its funding levels for Federal Pell Grant, Federal Direct Loan, or Campus-Based funds are below the median funding levels for those Title IV, HEA programs.

As detailed in this letter, Mid-Atlantic's violations of the Clery Act, the DFSCA, and the Department's regulations are very serious and numerous. As a result of these failures, Mid-Atlantic's students and employees were not provided with accurate campus crime and fire statistics and with information about institutional policies that Congress had determined is

necessary. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and Mid-Atlantic'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 the size of the institution, I have assessed a fine of \$15,000 for each of the two years Mid-Atlantic failed to publish and distribute a complete ASR; a total of \$30,000 for calendar years 2009 and 2010. This is a serious violation because Mid-Atlantic's ASRs for 2009 and 2010 were incomplete, unreliable and misleading. A fine for each year is appropriate in this case because the campus community was denied complete and accurate data for two calendar years.

I have assessed a fine of \$15,000 for Mid-Atlantic's failure to maintain daily crime logs for 2009 and 2010. This is a serious violation because failure to maintain daily crime logs often leads to inaccurate statistical data in the ASR. In addition, the lack of a crime log denies students and employees access to important information about security on campus.

I have assessed a fine of \$15,000 for Mid-Atlantic's failure to publish and distribute its 2010 AFSR. This is a serious violation because the campus community and the public were deprived of important information to help them make important safety decisions with regard to fire safety at Mid-Atlantic. We have imposed less than the maximum fine because Mid-Atlantic is a small institution.

I have assessed a fine of \$15,000 for Mid-Atlantic's failure to maintain a fire log at the time of the review. This is a serious violation because the fire log is the basis for the fire statistics reported by the institution in its AFSR. Failure to maintain an accurate fire log often leads to inaccurate fire statistics in the AFSR and deprives students and employees of important safety information.

I have assessed a fine of \$15,000 for Mid-Atlantic's multiple violations of the DFSCA and the Department's regulations. This is a serious violation because Mid-Atlantic failed to develop and implement a substantive DAAPP and also failed to distribute a DAAPP disclosure to all employees and students enrolled for academic credit on an annual basis. Students and employees cannot benefit from a drug and alcohol prevention program that is deficient and of which they are not aware.

The fine of \$90,000 will be imposed on **December 4, 2014**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Mid-Atlantic may submit both a written request for a hearing and written material indicating why a fine should not be imposed.

Dr. D. Clay Perkins
Mid-Atlantic Christian University

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

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT MID-ATLANTIC SUBMITS MUST BE RECEIVED BY DECEMBER 4, 2014; OTHERWISE, THE \$90,000 FINE WILL BE EFFECTIVE ON THAT DATE.

If you have any questions or desire any additional explanation of Mid-Atlantic'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

Enclosure

cc: Dr. Belle S. Wheelan, President, Southern Association of Colleges and Schools
Commission on Colleges, via bwheelan@sacscoc.org
Thomas W. Ross, President, North Carolina Board of Governors, via
cparrish@northcarolina.edu