



December 19, 2011

Dr. Robert O. Kelley, President
University of North Dakota
264 Centennial Drive, Stop 8193
Grand Forks, North Dakota 58202-8193

Certified Mail
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RE: **Final Program Review Determination**
OPE ID: 00300500
PRCN: 201040827298

Dear Dr. Kelley:

The U.S. Department of Education's (the Department's) Chicago/Denver School Participation Team issued a program review report on April 26, 2011 regarding the University of North Dakota's (UND; the University) compliance with the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)*. UND's final response was received on August 15, 2011. Copies of the program review report (and related attachments) and UND's response are attached. Any supporting documentation submitted with the response is being retained by the Department and is available for inspection by UND upon request. Additionally, this Final Program Review Determination (FPRD), related attachments, and any supporting documentation may be subject to release under the Freedom of Information Act (FOIA) and can be provided to other oversight entities after this FPRD is issued.

Purpose:

Final determinations have been made concerning all of the violations and weaknesses identified during the program review and are detailed in the attached FPRD. The purpose of this letter is to notify UND of the Final Determinations.

Final determinations have been made concerning all of the outstanding findings of the program review report. The purpose of this letter is to notify UND of a possible adverse administrative action. This FPRD is being referred to the Administrative Actions and Appeals School Group (AAASG) for consideration of possible adverse administrative action. Such action may include a fine, or the limitation, suspension or termination of the eligibility of the institution pursuant to 34 C.F.R. Part 668, Subpart G. If AAASG initiates any action, a separate notification will be

Federal Student Aid, Chicago/Denver School Participation Team
1244 Speer Boulevard, Suite 201, Denver, CO, 80204
www.FederalStudentAid.ed.gov

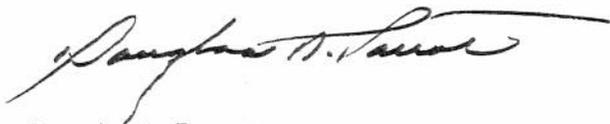
provided which will include information on institutional appeal rights and procedures to file an appeal.

Record Retention:

Program records relating to the period covered by this program review must be retained until the later of: resolution of the violations, weakness, and other issues identified during the program review or the end of the applicable retention period under 34 C.F.R. § 668.24 (e)(1) and (e)(2).

The Department expresses its appreciation for the courtesy and cooperation extended during the review. If the institution has any questions regarding this letter, please contact Ms. Fran Susman at (303) 844-3682.

Sincerely,



Douglas A. Parrott
Area Case Director

cc: Mr. Duane Czapiewski, Chief of Police
Ms. Diane Fore, Administration, UND Police Department
Ms. Julie Ann Evans, General Counsel
North Central Association of Colleges and Schools - CIHE (Higher Educ)
North Dakota State Board of Higher Education



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Prepared for:
University of North Dakota

OPE ID: 00300500
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Prepared by
U.S. Department of Education
Federal Student Aid
Chicago/Denver School Participation Team

Final Program Review Determination
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A. Institutional Information

University of North Dakota
264 Centennial Drive
Grand Forks, North Dakota 58202

Type: Public

Highest Level of Offering: Master's or Doctor's Degree

Accrediting Agency: North Central Association of Colleges and Schools – CIHE

Current Student Enrollment: 13,172

% of Students Receiving Title IV: 65%

Title IV participation, Per PEPS Data Base:

2008-2009 Award Year

Federal Family Education Loan Program	\$71,198,784
Federal Pell Grant Program	\$ 5,732,903
Federal Work-Study Program	\$ 1,140,625
Federal Perkins Loan Program	\$ 1,026,012
Federal Supplemental Education Opportunity Grant Program	\$ 859,469
National SMART Grant	\$ 220,000
Academic Competitiveness Grant	\$ 250,475
TEACH Grant	\$ 85,500
Total:	<u>\$80,513,768</u>

FFEL Default Rate:

2008 – 2.0%
2007 – 2.3%
2006 – 1.6%

Perkins Default Rate:

As of:
6/30/2009 – 13.8%
6/30/2008 – 4.6%
6/30/2007 – 5.0%

Founded in 1883, the University of North Dakota (UND) is a comprehensive public university that offers undergraduate, masters and doctoral programs in 217 fields of study. Situated on 549 acres in Grand Forks, UND is comprised of more than 223 buildings and parcels of land. The UND Police Department (UNDPD) consists of 12 sworn officers that patrol the campus 24 hours a day, 7 days a week. The UNDPD

entered into a mutual aid agreement with the City of Grand Forks that allows the UNDPD and Grand Forks Police Department to assist each other in the conduct of law enforcement activities on an as-needed basis. UND police officers have citywide jurisdiction with the power to enforce all city ordinances and state laws. Under state law, UND police officers, along with all other campus police officers in North Dakota, have jurisdiction on any campus in the state that is under the control and direction of the North Dakota Board of Higher Education.

B. Scope of Review

The U.S. Department of Education (the Department) conducted a focused campus security program review at UND from September 14, 2010 to September 16, 2010. The review was conducted by Ms. Fran Susman and Mr. James L. Moore, III.

The focus of the review was to examine UND's compliance with the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)*. The *Clery Act* is in Section 485(f) of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. § 1092(f). The Department's implementing regulations are at 34 C.F.R. §§ 668.41 and 668.46.

UND was selected from a list of institutions of higher education in the state of North Dakota with sworn police departments. The review was not the result of any specific complaint or allegation of non-compliance. The review consisted of an examination of UND's police incident reports, arrest records, and disciplinary files as well as policies and procedures related to the *Clery Act*. The review also included a comparison of the campus statistics submitted by UND to the Department and reported to students and employees. The reviewers also interviewed institutional officials with *Clery Act* responsibilities.

The Department's program review coincided with the Quality Assurance Review (QAR) that the Federal Bureau of Investigation (FBI)'s Criminal Justice Information Service (CJIS) Audit Unit conducted at UND. The Department is partnering with the CJIS Audit Unit (CAU) to ensure more accurate crime reporting on America's college campuses. The CAU reviews law enforcement agencies' reporting practices and audits crime statistics that are reported by the states through their participation in the Uniform Crime Reporting (UCR) program. The results of the QAR are shared with the Department for a comparative analysis of the annual crime statistics data received from participating postsecondary institutions. The CAU reviewed a total of 30 Group A Offenses and 27 Group B Arrests reported to the UND PD during calendar year 2009. The CAU identified three classification errors. Correctly classified, these offenses are not reportable for Clery Act purposes. As such no further action is required of this report as it relates to the QAR discrepancies. A copy of the CJIS report is included with the program review report.

The Department reviewed 30 campus police incident reports for Part I Offenses, 70 disciplinary reports, and an additional 90 miscellaneous campus police incident reports

from calendar year 2009. The files were selected randomly from a list of all incidents of crime reported to the UNDPD or another campus security authority and from a listing of all arrests and disciplinary referrals for law violations involving alcohol, illegal drugs, illegal usage of legal controlled substances and weapons during the same calendar year. Both random and judgmental sampling techniques were used to select reports for this review. Approximately 25 incident reports from the initial sample also were cross-checked against the daily crime log to ensure that crimes occurring within the patrol jurisdiction were entered properly on the log.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning UND'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 UND of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs including the *Clery Act*.

C. Findings and Final Determinations

At the conclusion of each finding is a summary of UND's response to the finding and the Department's final determination for that finding. A copy of the Program Review Report (PRR) issued on April 26, 2011, is attached as Appendix B.

Finding 1: Failure to Properly Classify and Disclose Crime Statistics

Citation Summary:

The Clery Act and the Department's regulations require Title IV participating institutions to compile, publish, and distribute statistics concerning the occurrence on campus of the following crimes during the three most recent calendar years: criminal homicide, manslaughter, forcible and non-forcible sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, and arson. In addition, institutions are required to disclose arrests and disciplinary referrals involving violations of Federal or State drug, liquor and weapons laws. 34 C.F.R. § 668.46(c)(1). For Clery Act reporting purposes, participating institutions must classify incidents of crime based on the definitions in Appendix A to Subpart D of Section 668 of the General Provisions Regulations. 34 C.F.R. § 668.46 (c)(7).

Each participating institution must also submit its crime statistics to the Department for inclusion in the Office of Postsecondary Education's (OPE) online campus crime statistics database. 34 C.F.R. § 668.41 (e)(5).

Noncompliance Summary:

A. Improper Crime Classifications

UND failed to properly classify one reported incident in the 2009 statistics in accordance with the Clery Act's crime categories. Specifically, case # 200931055 was improperly coded as a "Simple Assault." In this incident, two students, one from UND and another from Northland College, were injured during an attack. According to the UNDPD incident report, the first victim stated that, "she had been sprayed with mace, hit, and pushed to the ground." The second victim was also sprayed with mace. Based on our review of this case, this incident should have been coded as an "Aggravated Assault" and should have been included in UND's campus crime statistics.

B. Inaccurate Disciplinary Referral Statistics

UND failed to disclose accurate disciplinary referral statistics for the calendar year 2009. UND reported a total of 602 on-campus liquor law violations referred for disciplinary action. During a review of the audit trail, UND discovered one additional incident report (Residence Services Report No. 090520) that had not been included in the original statistics.

Although calendar year 2008 was not the focus of this review, the reviewers noted that the disciplinary referral statistics for calendar year 2008 (184) were considerably less than for calendar year 2009 (607). UND indicated that it appears that the statistics for 2008 were reported by the number of incidents instead of by the number of individuals referred for disciplinary action.

Required Action Summary:

UND must correct all errors in its crime statistics. This requirement applies to the exceptions noted above and any other errors identified during the preparation of the University's response. UND must reclassify the crimes and violations identified above and correct the errors in its crime statistics as published in the Annual Security Report (ASR) and as submitted to the online database administered by the Department. UND is also required to make all necessary corrections to the audit trail provided to the review team.

UND must provide an audit trail for on-campus liquor law violation disciplinary referral statistics for calendar year 2008. UND may provide any additional documentation that might change the number of reportable disciplinary referrals for consideration by the review team. If UND concurs that its disciplinary referral statistics were not accurate for 2008, the University has to correct its statistics for that year as published in its ASR and as submitted to the Department's online database.

Finally, UND must examine and improve its policies, procedures, internal controls, and training programs to ensure that all incidents of crime reported to UNDPD, non-law enforcement campus security authorities, and other local law enforcement agencies are properly classified and included in UND's ASR.

UND's Response:

- A. Improper Crime Classifications: In its response, UND agreed with the review team regarding the simple assault that should have been classified as aggravated assault. UND revised its 2009 ASR to include this incident in the campus crime statistics as an aggravated assault on public property.
- B. Inaccurate Disciplinary Referral Statistics:
- (1) 2009 ASR (Residence Services Report No. 090520): In its response, UND indicated that it reviewed the records for the eleven students involved in the incident described in Residence Services Report No. 090520.
- Eight of the eleven students lived in the residence hall. Of the eight, four received sanctions under UND's *Code of Student Life*. The remaining four residents were not present at the time of the incident and were not cited. Based on this information, four students were counted in the *Clery* reporting in the on-campus student housing facilities category.
 - Three of the eleven students were referred to the Dean of Students (DOS) for review and adjudication. Of the three individuals identified, one person was determined to be a student residing off-campus (the disciplinary action against this student was already included in the *Clery* statistics), one was not a student (not required to be included in the *Clery* statistics), and one person was not fully identified in the report but the DOS eventually determined the last name of the person and discovered that person was a UND student and the disciplinary action should have been included in the statistics.
- UND revised its liquor law violation disciplinary referral statistics in its 2009 ASR accordingly.
- (2) 2008 and 2009 ASRs: In its response, UND stated that it conducted a complete and thorough review of all Residence Services Reports for the 2008 and 2009 reporting years. UND explained that an initial report was created in the software system used by sorting incidents between the dates January 1, 2008 through December 31, 2008 and January 1, 2009 through December 31, 2009. Additionally, hard file copies of incident reports were reviewed and cross-referenced with information from the software system, and any disciplinary reports not in the system were added. UND also reviewed the master list of disciplinary referrals to DOS.

A final report was generated resulting in a total of 582 liquor law violation disciplinary referrals (an increase of 398 mainly due to the original counting of incidents instead of number of individual referrals) and 2 drug law violation disciplinary referrals for the calendar year 2008.

A final report was generated resulting in a total of 516 liquor law violation disciplinary referrals on campus (a decrease of 86); 2 liquor law violation disciplinary referrals on campus (an increase of 1); and 6 drug law violation disciplinary referrals non-campus (a decrease of 1) for the calendar year 2009.

UND revised its liquor law and drug law violations disciplinary referral statistics for 2008 and 2009 in its 2009 ASR, on the UND Web site, and on the Department's Web site. UND also notified all students and staff by e-mail of the availability of the corrected 2009 ASR.

UND provided the following information on its revised policies, procedures, internal controls, and training programs as they relate to the collection and reporting of crime statistics.

Collection and Reporting of Crime Statistics: The detailed description included the responsibilities of the UNDPD, Housing, and DOS. UNDPD is identified as the collector and reporter for the annual crime statistics. Both Housing and the DOS Office provide statistics to UNDPD to assist in the annual crime statistics.

Training Measures: Training is provided to UND staff on the software utilized to record crime statistics. A copy of the training document was provided as an exhibit to the response to the PRR.

Internal/External Controls: UND has a Memorandum of Agreement (MOA) with the Grand Forks Police Department. This MOA establishes the responsibilities for each department as it relates to law enforcement authority.

Final Determination:

UND concedes that it did not properly classify and disclose crime statistics. Specifically, UND concedes that it did not include an Aggravated Assault in its calendar year 2009 crime statistics. Additionally, UND concedes that it failed to include one student identified in Resident Services report No. 090520 in the disciplinary referral category in its 2009 crime statistics.

The Department notes that UND corrected its campus crime statistics in its ASRs for calendar years 2008 and 2009 and on the Department's online database to reflect the corrections noted in this finding. UND also provided information on its revised procedures to ensure that campus crime statistics are compiled, reviewed, analyzed, and

reported correctly. UND notified its students and staff of the availability of the revised 2009 ASR. No further action is required and this finding may be considered closed. However, this does not eliminate the finding of failure to compile and disclose crime statistics for the calendar years 2008 and 2009.

Finding 2: Failure to Report Crimes for Non-Campus Buildings/Property

Citation Summary:

An institution's ASR must include statistics of incidents of Clery-reportable crimes that occurred in any buildings or on any property covered by the definitions in 34 C.F.R. § 668.46(c)(4). The geographical categories are on campus including residence halls, non-campus buildings and property, and certain public property.

An institution also must comply with the Clery Act statistical disclosure requirements for each separate campus. 34 C.F.R. § 668.46(d).

Noncompliance Summary:

UND failed to include crime statistics for certain non-campus sites in its 2009 ASR. Specifically, the review team identified several properties that are listed as additional locations on UND's Eligibility and Certification Approval Report for which crimes were not reported.

In addition, UND did not report crime statistics for the ten sites throughout the state of North Dakota where UND students attend classes provided by UND via the Interactive Video Network (IVN).

Required Action Summary:

UND must conduct a review of all real estate and land parcels that it owns or controls to determine the use(s) of each holding, and apply the definition of "campus" in 34 CFR §668.46(a) to each building or property. UND must then request, compile, and publish crime statistics for the locations in the chart on page 7 of the Program Review Report and any other buildings and properties that fall under any part of the definition of campus. If any or all of the locations met the definition of a non-campus building for the calendar year 2009, UND must attempt to obtain statistics of incidents of crime reported to local law enforcement as occurring at these locations and disclose such statistics in the manner required by the Clery Act. Specifically, UND must correct its 2009 campus crime statistics on its Web site and in the Department's on-line database, and distribute the modified campus security report to all students and employees.

If UND is unable to obtain statistics for any of these locations for 2009, UND must provide the review team with an explanation and supporting documentation detailing its efforts to obtain the statistics.

Finally, UND must review and revise its policies and procedures for preparing its campus security report to ensure that crime statistics are gathered and reported for non-campus properties.

UND's Response:

In its response, UND indicated that it completed a review of all of its campus buildings, public property, and other locations to determine which facilities meet the definition of non-campus buildings or property and must be included in *Clery* reporting. UND also requested data from the appropriate law enforcement agencies where it was determined that UND had buildings/real estate that met the definition of non-campus buildings.

After a review of all non-campus properties and locations, UND determined there were 18 sites that should have been included in the 2009 crime statistics:

1. Bismarck State College: Schafer Hall, 1500 Edwards Avenue, Bismarck, ND
2. Bismarck State College: Vo-Tech Center, 1200 College Drive, Bismarck, ND
3. Turtle Mountain Community College: Admin Bldg., 10145 BIA Road 7, Bismarck, ND
4. St. Cloud State University: Centennial Hall, 201 8th St. S., St. Cloud, MN
5. Bennett Elementary School, 2000 58th Ave. S., Fargo, ND
6. Casper College: 125 College Drive, Casper, WY
7. Mayo Clinic: Stable Building, Room 3-31, 200 1st St. SW, Rochester, MN
8. Minot Center for Family Practice: 1201 11th Ave SW, Minot, ND
9. Bismarck Family Practice Center: 515 East Broadway, Bismarck, ND
10. Fargo VA Hospital/UND Medical Education: 1919 Elm St, Fargo, ND
11. Belfield Anthropology Building: 107 2nd St SW, Belfield, ND
12. Altru Hospital Property: Altru Health System: 1200 South Columbia Rd, Grand Forks, ND
13. Space Studies Observatory: Oakville Observatory Site, 1652 23rd St NE, Emerado, ND
14. Airport Leased Building: Grand Forks International Airport, 2787 Airport Dr., Grand Forks, ND
15. Dakota Hall: 1050 North 43rd Street, Grand Forks, ND
16. Ralph Engelstad Arena: One Ralph Engelstad Arena Drive, Grand Forks, ND
17. Alerus Center: 1200 S. 42nd St., Grand Forks, ND
18. Apollo Park, 2511 17th Ave S., Grand Forks, ND

Three of the locations mentioned in the Program Review Report are not included in the above list. They are: Continuing Education Outreach in Fargo, North Dakota; Simle Middle School in Bismarck, North Dakota; and Skills Technology Training Center, Fargo, North Dakota. According to UND, UND does not have agreements under which these sites are under UND's ownership or control of the space, nor were the spaces utilized in 2009 by students to access classes or programs affiliated with UND.

UND reviewed all the Interactive Video Network (IVN) sites to determine which locations were utilized by UND students during 2009. The listing of the locations above includes those IVN sites where UND students accessed classes. The remaining IVN sites throughout North Dakota (Bottineau, Devils Lake, Fargo, Mayville, Minot, Valley City, Wahpeton, Williston, and Jamestown) were not used by UND students during 2009 and are not owned or controlled by UND and any crimes in those locations are not included in the *Clery* crime statistics for 2009.

As a result of this additional information, UND has updated its statistics in its 2009 ASR, on its Web site, and on the Department's Campus Security Web site to include the following non-campus locations:

	Aggravated Assault	Arson	Manslaughter	Burglary	Motor Vehicle Theft	Murder	Robbery	Sexual Offenses Forcible	Sexual Offenses Non-Forcible	Personal Injury Hate Crimes Only	Liquor Law Violations	Drug Violations	Weapons Violations
North Dakota													
Turtle Mountain Community College	3	0	0	4	0	0	0	0	0	0	9	0	0
Bismarck State College – Schafer Hall	0	0	0	0	0	0	0	0	0	0	1	1	0
Bismarck State College – Vo-Tech Center	0	0	0	0	0	0	0	0	0	0	0	0	0
Bismarck Family Practice	0	0	0	0	0	0	0	0	0	0	0	0	0
Fargo VA	0	0	0	1	0	0	0	0	0	0	2	1	1
Minot Center Family Practice	0	0	0	0	0	0	0	0	0	0	0	3	0
Other States													
Mayo Clinic, MN	0	0	0	0	0	0	0	0	0	0	0	0	0
Casper College, WY	(Statistics received were more expansive than the space controlled by UND's non-campus reporting requirement.)												
Non-Responding Locations													
North Dakota													
Belfield Anthropology, Belfield													
Bennett Elementary School, Fargo													
Oakville Observatory Site, Grand Forks													
Ralph Englestad Arena, Grand Forks													
Minnesota													
St. Cloud State University, St. Cloud													

The Grand Forks Police Department was unable to provide individual statistics for UND's non-campus locations at Alerus Center, Altru Health System, Apollo Park, Grand Forks International Airport, and Dakota Hall. UND provided on its 2009 ASR all

statistics received from the Grand Forks Police Department for the entire City of Grand Forks.

In its response, UND indicated that UNDPD is responsible for gathering the crime statistics for non-campus activities. UND explains that going forward its Distance Education Department will routinely provide a listing of its sites to UNDPD to ensure the IVN sites are included as appropriate.

Final Determination:

After careful examination of UND's response, the Department has determined that the finding is sustained. UND's self-review determined that UND did not report crime statistics for non-campus sites that should have been included in its 2009 ASR.

The Department notes that UND provided documentation verifying the additional crime statistics for the non-campus locations. The additional crime statistics for 2009 were included on UND's Web site, the 2009 ASR, and the Department's online database. UND is reminded to monitor any additional non-campus locations that may be added at a later date to ensure accurate reporting. No further action is required and this finding may be considered closed. However, this does not eliminate the finding that UND failed to include crime statistics for certain non-campus sites in its 2009 ASR.

Finding 3: Lack of Adequate Policy Statements

Citation Summary:

The Clery Act and the Department's regulations require institutions to include several policy statements in their ASR. These disclosures are intended to inform the campus community about the institution's security policies, procedures, programs and the availability of programs and resources as well as channels to seek recourse. In general, these policies include topics such as the law enforcement authority and practices of campus police and security forces, incident reporting procedures for students and employees, and policies that govern the preparation of the report itself. Institutions are also required to disclose alcohol and drug policies and educational programs. Policies pertaining to sexual assault education, prevention, and adjudication must also be disclosed. All required policies must be included in a comprehensive document. With the exception of the certain drug and alcohol program information, cross referencing to other publications is not sufficient to meet this requirement. § 485(f) of the HEA; 34 C.F.R. § 668.46 (b)(2)-(b)(12)

Noncompliance Summary:

UND failed to provide all of the policy statements required by the Department's regulations in its calendar year 2009 ASR. In addition, the UND ASR was not contained in a single, separate part of UND's Web site. Although the site contained some of the required policies and procedures in various sections of the site, the Department's review

revealed various deficiencies as outlined in the Program Review Report. Specifically UND's ASR for calendar year 2009 did not include policies for making timely warning reports to members of the campus community regarding the occurrence of crimes and policies for preparing the annual disclosure of crime statistics.

Required Action Summary:

As a result of this finding, UND must review and revise its ASR to ensure that it includes all required statements of campus security policies and procedures. UND must also ensure all required information regarding crime prevention and programming is accurate, complete, and sufficient to give actual notice to all readers of the ASR.

UND must provide a copy of the revised document with its response. To meet all of the consumer information and distribution requirements of the Clery Act, UND also must ensure that the ASR is published and distributed as a single, comprehensive document.

UND's Response:

In its response, UND stated it examined its existing policies and revised many of them, as well as adding new policies regarding accurate and timely reporting of criminal offenses, emergency response and evacuation, preparation and disclosure of crime statistics, security awareness and crime prevention programs, addressing criminal activity off-campus, and substance abuse education programs.

UND stated that it has uploaded the 2009 ASR to its Web site and it can be found at Discover UND, which is on every page of the Web site. UND states that it also can be found under the following headings: Future Students; Current Students; Housing; Dean of Students; Emergency management; Environmental Health and Safety; Human Resources and Payroll Services; Families; Admissions; Affirmative Action; and Student Life. UND states that it has further modified the site to provide a "one click" access to the ASR with a clickable table of contents. A hard copy of the 2009 ASR is also available upon request from the UNDPD.

UND states that it has notified students and staff by e-mail of the availability of the revised 2009 ASR.

Final Determination:

UND's original 2009 ASR did not contain all the required policies and procedures. Specifically UND's ASR for calendar year 2009 did not include policies for making timely warning reports to members of the campus community regarding the occurrence of crimes and policies for preparing the annual disclosure of crime statistics. In its response, UND provided a copy of its revised ASR that addresses all the deficiencies outlined in this finding. Therefore, no further action is required and this finding may be considered

closed. However, this does not eliminate the finding that UND's calendar year 2009 ASR did not contain required policy statements.