



MAR 9 2012

Dr. Andrew J. Bramley, Ph.D.  
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University of Vermont  
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Burlington, VT 05405-0160

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Dear Dr. Bramley:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine the University of Vermont (UVM) 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). 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 UVM'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). Specifically, the ASR must include a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses; a statement of policy regarding the institution's campus sexual assault programs to prevent sex offenses, and procedures to follow when a sex offense occurs; procedures for campus disciplinary actions in the case of an alleged sexual assault, including a clear statement that both the accuser and the accused have the opportunity to have others present during a disciplinary proceeding. 34 C.F.R. § 668.46(b)(2).

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

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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).

The Department conducted a program review at UVM from July 7, 2009 to July 10, 2009. The focus of the review was UVM's compliance with the Clery Act. The review consisted of an examination of UVM's police incident reports, arrest records, and disciplinary files as well as policies and procedures related to campus safety. Staff interviews were also conducted. On May 10, 2010, the Department issued a Program Review Report (PRR) to UVM. The review found that UVM had not complied with the Clery Act and with the Department's implementing regulations. UVM responded to the report on June 25, 2010. After reviewing UVM's responses, the Department issued its Final Program Review Determination (FPRD) letter to UVM on April 25, 2011. 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 UVM did not report accurate crime statistics to the Department for calendar year 2007; failed to maintain an accurate crime log for calendar year 2007; failed to include in its 2007 ASR a clear statement that, in a disciplinary proceeding involving an alleged sexual offense, the accuser and the accused are entitled to the same opportunities to have others present during the proceeding; and failed to properly distribute its ASR for calendar year 2007.<sup>1</sup>

### **UVM FAILED TO REPORT ACCURATE 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 statistical report must be disclosed and made available as part of the institution's ASR by October 1 of each year, and it must be electronically submitted to the Department for its inclusion in the Campus Crime and Security Website. The

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<sup>1</sup> The FPRD included an additional finding (Finding #3) regarding the institution's timely warning practices. FSA has decided not to impose a fine relating to that Finding.

Department has established timeframes within which institutions must electronically submit information. C.F.R § 668.41(e)(1)-(e)(5).

UVM did not include 20 sex offenses in the statistics it reported to the Department for the 2007 calendar year. The 2008 ASR UVM distributed to its students and staff identified 20 sex offenses reported under the heading "Sex Offenses-Nonforcible, Sexual Assaults (anonymous)" for calendar year 2007. However, the statistics reported by UVM to the Department for calendar year 2007 did not include the 20 anonymously reported sex offenses. The FPRD noted that the 20 reports were made to the Women's Center. Under 34 C.F.R. §668.46(c)(6), an institution is not required to report statistics for crimes reported to a pastoral or professional counselor if the counselor is functioning within the scope of a license or certification. The staff members at the Women's Center were not licensed counselors providing mental health counseling.

In its response to the PRR, UVM acknowledged that it did not include the 20 "anonymous" sexual assaults in the statistics provided to the Department. UVM contends that the failure resulted from the mistaken believe that such anonymous reports were not required to be included in the crime statistics provided to the Department. The FPRD notes that UVM has taken corrective actions to prevent future reporting omissions.

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the data when it is presented to current students and employees, and prospective students and employees who can use the data to make decisions affecting their personal safety. Current students and employees, and prospective students and employees must be able to rely on the institution's reported crime statistics. While the University's ASR showed the 20 sex offenses reported under the heading "Sex Offenses-Nonforcible, Sexual Assaults (anonymous)," UVM did not include the same data in the information provided to the Department and the public. Statistical data posted on the Department's website must be accurate and reliable.

### **UVM DID NOT MAINTAIN A PROPER AND ACCURATE CRIME LOG**

The Department's regulations require that institutions participating in the 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 noncampus building or property, on public property, or within the patrol jurisdiction of the campus police or the campus security department and that 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. 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).

UVM failed to maintain a proper and accurate crime log for calendar year 2007. Specifically, one burglary listed on the crime log was not included in the crime statistics reported to the Department for calendar year 2007. In addition, the crime log was not updated with current information as required by 34 C.F.R. §668.46(f). The crime log for calendar year 2007 included eighteen (18) crimes that were identified as open incidents coded as larcenies. However, the crime statistics provided by UVM to the Department for calendar year 2007 included these 18 crimes as burglaries. Additionally, three (3) incidents coded as closed "suspicious events" in the 2007 crime log were reported as burglaries in the crime statistics submitted to the Department for calendar year 2007.

UVM's development of adequate procedures to ensure that it maintained an accurate crime log after the Department alerted the University of its obligations does not excuse its earlier failure to comply with its legal obligations. The development of adequate procedures does not diminish the seriousness of the institution's failure to maintain an accurate crime log. The crime log may be an important source of security information for students and employees at the institution and UVM failed to meet its legal obligation to provide accurate information.

#### **UVM'S CALENDAR YEAR 2007 ASR OMITTED A REQUIRED SEXUAL ASSAULT POLICY STATEMENT**

The Department's regulations require that an institution's ASR include a statement that, during a disciplinary hearing involving an alleged sexual offense, the accuser and the accused are entitled to the same opportunities to have others present. 34 C.F.R. § 668.46(b)(11)(vi)(a).

UVM's ASR for calendar year 2007, which was titled "*A Guide for Students, Faculty and Employees 2007-2008*" did not contain the required statement. UVM has since revised its policies and its statements regarding campus safety to address the statement previously omitted. However, the efforts do not excuse UVM's failure to have a required policy statement at the time of review, as required by the Clery Act and the Department's regulations.

#### **UVM FAILED TO PROPERLY DISTRIBUTE ITS ASR FOR CALENDER YEAR 2008**

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must distribute an ASR to all enrolled students and current employees, through appropriate publications and mailings. The distribution must occur by October 1 of each year. The ASR may be distributed through 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 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).

The institution must also provide a notice to prospective students and employees that includes a statement of the report's availability, a description of its contents and an opportunity to request a copy. 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).

UVM failed to distribute its 2008 ASR in accordance with the Department's regulations. UVM met the requirement that it publish its ASR by October 1, 2008. On September 29, 2008, UVM sent an e-mail to the campus community informing them that the report was available. However, the e-mail did not include the exact electronic address at which the report was posted. UVM's failure to properly distribute its 2008 ASR deprived the campus community of critical information that they needed to make important 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 UVM is 2010-2011 award year. According to the Department records, UVM received approximately \$9,344,521 in Federal Pell Grant (Pell) funds, \$94,938,391 in Federal Direct Loan funds and \$4,972,297 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 \$1,831,456, for institutions participating in the Federal Direct Loan programs, the median funding level is \$3,415,923, and for institutions participating in the Campus-Based programs, the median funding level is \$272,450. Accordingly, UVM 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.

As detailed in this letter, the Clery Act violations identified at UVM are serious and numerous. These failures could have endangered UVM's students and employees who must be able to rely on the disclosures of campus crime statistics, policies and statements, and the accurate reporting of crime and statistics in order to 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 UVM'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 UVM's failure to report accurate crime statistics to the Department for calendar year 2007. This is a serious violation because the Department's website contained erroneous crime statistics for public consumption. I have assessed \$27,500 for UVM's miscoding of the 2007 crime log. This is a serious violation because the inaccurate crime log resulted in the reporting of erroneous crime statistics to the Department and the public.

I have assessed \$5,000 for UVM's failure to include in its 2007 ASR a statement that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding. This is a serious violation because the campus community was not informed of a sexual assault policy required by the Department's regulations. I have assessed \$5,000 for UVM's failure to properly distribute its 2008 ASR. This is serious because the campus community was deprived of important crime information to help them make important safety decisions.

The fine of \$65,000 will be imposed on March 29, 2012, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. UVM may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If UVM 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 UVM's case to a hearing official who will conduct an independent hearing. UVM is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If UVM does not request a hearing but submits written material instead, I

Dr. Andrew J. Bramley

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will consider that material and notify UVM of the amount of fine, if any, that will be imposed.

**ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT UVM SUBMITS MUST BE RECEIVED BY MARCH 29, 2012; OTHERWISE, THE \$65,000 FINE WILL BE EFFECTIVE ON THAT DATE.**

If you have any questions or desire any additional explanation of UVM'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