



May 19, 2015

Lt. Gen. Tom Case (Ret.)
Chancellor
University of Alaska Anchorage
3211 Providence Drive, ADM 216
Anchorage, Alaska 99508

UPS Tracking #
1ZA879640297147975

RE: Final Program Review Determination (FPRD)
OPE ID: 01146200
PRCN: 201140327700

Dear Chancellor Case:

From July 1, 2011 to November 5, 2011, the U.S. Department of Education's (the Department) Clery Act Compliance Team (CACT) conducted an off-site campus crime program review of the University of Alaska Anchorage's (UAA; the University) administration of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (*Clery Act*) included in *Section 485(f)* of the Higher Education Act of 1965, as amended (HEA), *20 U.S.C. §1092(f)* and the Department's implementing regulations at *34 C.F.R. §§668.41-668.46*. The University's compliance with the requirements of the Drug-Free Schools and Communities Act (*DFSCA*) and Part 86 of the Department's General Administrative Regulations was also examined.

UAA was selected for review from a list of all institutions of higher education in the state of Alaska with sworn police departments. The review was not the result of any specific complaint or allegation of noncompliance. The review consisted of an examination of UAA's police incident reports, arrest records, disciplinary files, campus safety and crime prevention publications, and internal policies and procedures related to the *Clery Act*. The review also included a comparison of the campus crime statistics submitted by UAA to the Department and those provided to students and employees in the Annual Security Report (ASR). The review team also interviewed several institutional officials with *Clery Act* responsibilities.

The Department's program review coincided with the Quality Assurance Review (QAR) that the Federal Bureau of Investigation's (FBI) Criminal Justice Information Service (CJIS) Audit Unit conducted at UAA. The Department is partnering with the CJIS Audit Unit (CAU) to improve crime reporting and overall public safety on America's college campuses. The CAU reviews the crime classification and reporting practices of law enforcement agencies and audits crime statistics that are reported by the states through their participation in the Uniform Crime Reporting program. The results of the QAR are shared with the Department and are used to conduct comparative analyses of the annual crime statistics submitted to the Department by participating postsecondary institutions.

The Department reviewed samples of UAA police incident reports, arrest records, and student conduct files regarding incidents of crime reported to law enforcement or other campus security authorities (CSAs) during calendar years 2009 and 2010. These records pertained to reports of Part I offenses as well as Part II offenses that resulted in an arrest or referral for disciplinary action for certain liquor, drug, and weapons offenses. Random and judgmental sampling techniques were used to select reports for this review.

The purpose of this FPRD is to advise UAA about the sole finding and to close the review.

Disclaimer:

Although the review was thorough, it cannot be assumed to be all-inclusive. The absence of statements in the report concerning UAA's specific practices and procedures must not be construed as acceptance, approval, or endorsement of those specific policing and campus safety practices, procedures, and policies. Furthermore, it does not relieve UAA of its obligation to comply with all of the statutory or regulatory provisions governing the Title IV, HEA programs including the *Clery Act*. Finally, the Department emphasizes that this FPRD only addresses violations and weaknesses that were identified as occurring during the stated review period.

Findings and Final Determinations:

One area of noncompliance was identified during the program review. This finding of noncompliance is referenced to the applicable statutes and regulations and specifies the actions that were required to come into compliance with the statutes and regulations. The Department has made a Final Determination regarding this violation. The following is an explanation of the violation and its resolution:

Finding #1: Failure to Properly Classify and Disclose Crime Statistics

Citation:

The *Clery Act* and the Department's regulations require institutions participating in the Federal student financial aid programs under Title IV of the HEA to compile and publish statistics concerning the occurrence on campus of the following reported offenses: 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 actions related to violations of certain Federal or State drug, liquor and weapons laws. Crime statistics must be disclosed in the annual security report for the three most-recent calendar years and be broken down by the following geographical categories: 1) On-Campus (including student residential facilities); 2) Non-Campus Buildings and Properties; and 3) Public Property. Moreover, the *Clery Act* requires institutions to separately disclose arrest and disciplinary referral statistics in the ASR. *34 C.F.R. §668.46 (c)(1)*.

Participating institutions must also separately disclose statistics for Clery-reportable crimes and incidents of simple assault, larceny/theft, intimidation, and vandalism/destruction of property that manifest evidence that a victim was intentionally targeted due to their actual or perceived membership in one or more of the following categories of bias: race, gender, religion, sexual orientation, ethnicity or National origin, and disability. *34 C.F.R. §668.46(c)(3)*. Please note that recent amendments to the *Clery Act* expanded hate crime reporting requirements to include the categories of gender identity and perceived gender.

Finally, participating institution must submit crime statistics to the Secretary for inclusion in the Department's online campus crime statistics database. *34 C.F.R. §668.41(e)(5)*.

Noncompliance:

UAA failed to accurately disclose campus crime statistics in its 2011 ASR. The University identified several data discrepancies during the preparation of documents requested by the Department's program review team. UAA officials attributed the problem to malfunctioning software that was used to compile statistical data.

Specifically, University officials stated that the reporting errors fell into two categories: 1.) The location of certain crimes was identified incorrectly. For example, nine arrests were incorrectly listed as occurring in non-campus buildings but actually took place on adjacent and accessible public property. 2.) More importantly, the systems error mentioned above caused certain incidents of crime to double-counted. In one such case, officers arrested four individuals for drug and alcohol-related offenses; however, the system recorded eight arrests.

Required Action:

In response to this finding, UAA was required to review and revise its policies, procedures, training, and internal controls related to ASR production and distribution and general *Clery Act* compliance and to develop and implement new policies and procedures as needed to ensure that these violations do not recur. Then, in accordance with its new and revised policies and procedures, the University was required to reconcile its crime statistics to eliminate any discrepancies and make all necessary edits to its 2011 ASR and CSSDACT submissions. This requirement applied to the exceptions noted during the review and to all others identified by UAA during its internal review to ensure that all incidents of crime reported to UAA Police Department, other Campus Security Authorities, and/or local law enforcement agencies were identified, classified, and disclosed in the required manner. Finally, the University was required to distribute the revised ASR to all enrolled students and current employees.

Final Determination and Resolution:

Upon learning of the systems issue, UAA self-reported it to the Department and took immediate action to identify and correct discrepancies in its campus crime statistics. The University provided a detailed response wherein officials concurred with the finding and asserted that

remedial action was taken. UAA also submitted documents in support of its corrective action claims. Based on thorough review of UAA's response, the Department determined that the identified discrepancies in the University's crime statistics were addressed adequately. Because the reporting errors in question resulted primarily in the over-reporting of crime statistics the Department did not find that a substantial misrepresentation occurred. Corrective action was initiated quickly and additional program improvements were incorporated into the 2012 ASR and future reports. For these reasons, it was determined that this program review could be resolved without the issuance of a formal program review report and a second institutional response. UAA officials and the review team also discussed policy and procedural changes that, if implemented and sustained, should continue to improve campus policing operations and *Clery Act* compliance going forward.

The Department carefully examined UAA's narrative response and supporting documentation. Based on that review and UAA's admission of noncompliance, the violations identified in the initial finding are sustained. The review team's examination also showed that the identified violations were satisfactorily addressed by the University's timely response and diligent efforts to diagnose and resolve discrepancies. As such, the Department determined that UAA's remedial action plan and new and revised policies and procedures meet minimum requirements. For these reasons, the Department has accepted UAA's response and considers this finding to be closed for the purposes of this program review. Nevertheless, the officers and directors of UAA are on notice that the University must take any additional actions that may be needed to address any other deficiencies and weaknesses that were detected in its crime statistics compilation and disclosure processes and in its overall campus safety and crime prevention program to ensure that this violation does not recur and to prevent similar violations from occurring in the future.

Although the finding is now closed, UAA is reminded that the exceptions identified above constitute violations of the *Clery Act* that by their nature cannot be cured. There is no way to truly "correct" violations of this type once they occur. The requirement to compile and disclose accurate and complete campus crime statistics is fundamental to the goals of the *Clery Act*. UAA asserted that it has taken adequate remedial actions and is now in compliance with the *Clery Act* as required by its Program Participation Agreement. In general, an institution's remedial actions cannot and do not diminish the seriousness of a *Clery Act* violation. In addition, such actions do not as a general rule, reduce the likelihood that the Department will impose an adverse administrative action and/or require additional corrective actions as a result. However, the Department takes note that the effect of these specific exceptions resulted in an overstatement of the University's crime statistics. The Department has consistently emphasized the importance of disclosing accurate and complete crime statistics. While any inaccuracy is a concern, underreporting of crimes is more likely to cause students, parents, employees, and other stakeholders to have a false sense of security. As such, underreporting triggers a special regulatory concern for the Department. In light of the specific facts of this case, the CACT will not recommend that a fine be imposed for this exception.

In light of the potential consequences of *Clery Act* compliance failures, the Department strongly recommends that UAA re-examine its campus safety and general Title IV policies and procedures on an annual basis to ensure that they continue to reflect current institutional

practices and are compliant with Federal regulations. As part of these reviews, UAA officials are encouraged to consult the Department's "Handbook for Campus Safety and Security Reporting" (2011) as a reference guide for *Clery Act* compliance. The Handbook is online at: www2.ed.gov/admins/lead/safety/handbook.pdf. The Department also provides a number of other *Clery Act* training resources. UAA can access these materials at: www2.ed.gov/admins/lead/safety/campus.html. The regulations governing the *Clery Act* can be found at 34 C.F.R. §§668.14, 668.41, 668.46, and 668.49.

UAA management is also reminded that Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA) amended the *Clery Act* to require institutions to compile and disclose statistics for incidents of sexual assault, dating violence, domestic violence, and stalking. VAWA also requires institutions to include new policy, procedural, and programmatic disclosures regarding sexual assault prevention and response in their ASRs. All institutions are currently obligated to make a documented good-faith effort to comply with the statutory requirements of VAWA and were obligated to include all new required content in the 2014 ASR. The Department issued Final Rules on the VAWA amendments on October 20, 2014 and therefore, these regulations will go into effect on July 1, 2015, per the Department's Master Calendar. UAA officials may access the text of the Final Rule at: <http://ifap.ed.gov/fregisters/attachments/FR102014FinalRuleViolenceAgainstWomenAct.pdf>.

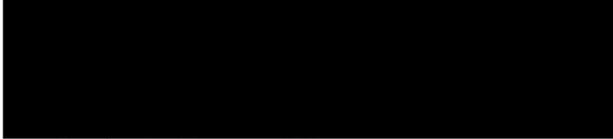
Finally, UAA officials are advised to review the accuracy and completeness of its Drug and Alcohol Abuse Prevention Program (DAAPP) as required by the *DFSCA* and the Department's Part 86 Regulations. FSA is now responsible for monitoring compliance with the *DFSCA*. Therefore, it is essential that the University continue to develop its DAAPP, actively distributes accurate and complete program materials to members of the campus community, and conducts comprehensive biennial reviews on the required schedule. UAA's biennial review reports must include substantive information about the research methods used and outcomes reached during the review. Care must also be taken to ensure that all findings and recommendations are supported by valid evidence. Finally, the report must indicate that it was approved by the University's President and/or its board. For assistance or more information about the *Clery Act* and/or the *DFSCA*, please contact the San Francisco/Seattle School Participation Division.

Record Retention:

Records relating to the period covered by this program review must be retained until the latter of the resolution of the violations identified during the review or the end of the regular retention period applicable to all Title IV records including records that pertain to the University's campus safety and drug and alcohol abuse prevention programs under 34 C.F.R. §668.24(e).

Thank you for the courtesy, patience, and ongoing cooperation extended throughout the review. Please refer to the PRCN noted above on all correspondence related to this FPRD. If you have any questions concerning this document or the program review process, please contact Mr. Keith Ninemire at 202-377-4609 or at keith.ninemire@ed.gov.

Sincerely,



James L. Moore, III
Compliance Manager
Clery Act Compliance Team

CC: Mr. Rick Shell, Chief of Police, UAA
Mr. Michael Votava, Director, Student Conduct and Ethical Development, UAA
Ms. Sonya Stein, Director, Student Financial Assistance, UAA