APR 1 9 2013

Dr. Richard Levin
President
Yale University
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New Haven, CT 06520-8288

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Dear Dr. Levin:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Yale University (Yale) a total of $165,000 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 Yale'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; policies for preparing the annual disclosure of crime statistics; policies encouraging prompt reporting of crimes to the police; statements with a description of type and frequency of campus safety programs; a description of crime prevention programs; a statement explaining the importance of preserving evidence in cases of alleged sex crimes and an explanation of how to preserve the evidence; and a statement that describes procedures on voluntary, confidential reporting of crimes. 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 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 initiated an off-site program review of Yale's compliance with the Clery Act requirements after reviewing an article published in the July/August 2004 edition of the Yale Alumni Magazine entitled "*Lux Veritas and Sexual Trepass.*" The article raised questions regarding Yale's compliance with campus security requirements. In a letter dated October 15, 2004, the Department requested information from Yale addressing the questions raised in the Yale Alumni Magazine. Yale responded to the Department's letter on November 15, 2004.

The Department conducted an on-site program review at Yale from June 18, 2007 to June 22, 2007. The focus of the review was Yale's compliance with the Clery Act, specifically the accuracy and completeness of campus crime statistics and policy disclosures published in Yale's 2004, 2005, and 2006 ASRs, and to investigate the concerns identified during the off-site review.

The review consisted of an examination of a sample of incident reports maintained by the Yale Police Department and a sample of files relating to student disciplinary actions adjudicated under the University's disciplinary process for calendar years 2001, 2002, 2003, 2004 and 2005. In addition, the review team interviewed certain Yale staff members and students.

On April 12, 2010, the Department issued a Program Review Report to Yale. The review found that Yale had not complied with the Clery Act and with the Department's implementing regulations. Yale responded to the report on July 9, 2010. After reviewing Yale's response, the Department issued its Final Program Review Determination (FPRD) letter to Yale on May 23, 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 Yale failed to accurately report campus crime statistics by omitting two (2) forcible sex offenses for the 2001 calendar year, and two (2) forcible sex offenses for the 2002 calendar year. Additionally, Yale failed to properly define its campus and, therefore, failed to report statistics for seven (7) additional spaces within the Yale New Haven Hospital (YNHH); and Yale's ASR for calendar year 2004 lacked required policy statements.[1]

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[1] The FPRD included an additional finding (Finding #2) regarding the institution's timely warning and crime log practices. The Department has decided not to impose a fine relating to that Finding.

YALE FAILED TO PROPERLY COMPILE AND DISCLOSE CRIME STATISTICS

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

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

Yale did not provide accurate crime statistics to its students and employees in the ASRs for calendar years 2001 and 2002. Specifically, Yale did not include two (2) forcible sex offenses in its campus crime statistics for calendar year 2001; and two (2) forcible sex offenses for calendar year 2002. Yale 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. In a letter dated October 15, 2004, the Department required Yale to re-examine its crime statistics and report to the Department. The Department notes that in its November 15, 2004 response, Yale acknowledged that its Institutional Self-Study Report identified and disclosed the <u>four</u> (4) forcible sex offenses that were not reported in calendar years 2001 and 2002. (Enclosure 2). Yale's response noted that the University took the appropriate corrective action six years before the date the Yale response was submitted to the Department.

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the data when it is presented to students and employees who can use the data to make decisions affecting their personal safety. Students and employees must be able to rely on the institution's reported statistics. Yale's correction of the crime statistics only after the Department alerted the University of its obligations in 2004 does not excuse its earlier failure to comply with its legal obligations. The correction of violations does not diminish the seriousness of not correctly reporting these incidents at the time they occurred.

YALE FAILED TO PROPERLY DEFINE THE CAMPUS AND REPORT CRIME STATISTICS FOR YNHH

The Clery Act and the Department's regulations require an institution participating in the Title IV, HEA programs to include in the crime statistics in its ASR, reportable crimes that occur in areas defined as "Campus" and "Non-campus Buildings or Property," C.F.R §§ 668.46(a), 668.46(c), (c)(4), (c)(8). Specifically, an institution must include crime statistics from any building or property owned or controlled by the institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls. C.F.R § 668.46(a)(1). An institution must include the crime statistics in its ASR for each separate campus. C.F.R § 668.46(d).

The reviewers found that at the time of the review, Yale was not properly defining its campus for the purposes of reporting crime statistics. Specifically, Yale failed to properly define seven (7) spaces in YNHH as campus property for Clery Act purposes. As a result, Yale's ASRs did not include crime statistics for the 7 spaces in YNHH. YNHH is located across the street from Yale's School of Medicine and is linked by crosswalks, thoroughfares, and hallways. In addition, formal affiliation agreements have been established between the hospital and the University that establish that the property can be used for educational purposes. Yale uses these 7 spaces for the purposes of faculty office visits, seeing patients and/or conducting clinical training for students.

Yale identified the 7 spaces in its Self-Study Report and has added them to its property list for the purposes of reporting crime statistics. Yale continues to maintain, however, that it is not required to include these 7 spaces in its Clery Act Reporting under the HEA and the regulations.

The correction of violations does not diminish the seriousness of not properly defining the campus, and correctly reporting crime statistics at the time they occurred.

YALE'S CAMPUS SECURITY REPORTS OMITTED REQUIRED POLICY STATEMENTS

The Department's regulations require that participating institutions prepare an ASR that contains the institution's statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses; policies for preparing the annual disclosure of crime statistics; policies encouraging prompt reporting of crimes to the police; statements with a description of type and frequency of campus safety programs; a description of crime prevention programs; a statement explaining the importance of preserving evidence in cases of alleged sex crimes and an explanation of how to preserve the

evidence; and a statement that describes procedures on voluntary, confidential reporting of crimes. 34 C.F.R. § 668.46(b)(2).

Yale's 2004 ASR lacked critical information required by 34 C.F.R 668.46(b)(2). The CSR did not contain a statement of current campus policies for making timely warning reports to members of the campus community regarding crimes, such as forcible sex offenses; policies for preparing the annual disclosure of crime statistics; policies encouraging prompt reporting of crimes to the police; statements with a description of type and frequency of campus safety programs; a description of crime prevention programs; a statement explaining the importance of preserving evidence in cases of alleged sex crimes and an explanation of how to preserve the evidence; and a statement that describes procedures on voluntary, confidential reporting of crimes.

Yale has since revised its policies and its statements regarding campus safety to address policies that were not previously included. However, these efforts do not excuse Yale's failure to have required policy statements in its 2004 ASR, as required by the Clery Act and the Department's regulations.

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 Yale is 2011-2012 award year. According to the Department records, Yale received approximately $3,098,555 in Federal Pell Grant (Pell) funds, $44,779,448 in Federal Direct Loan funds and $10,373,499 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 $1,621,679, for institutions participating in the Federal Direct Loan programs, the median funding level is $3,208,278, and for institutions participating in the Campus-Based programs, the median funding level is $278,107. Accordingly, Yale 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 Yale are very serious and numerous. These failures endangered Yale'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 statistics 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 Yale'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 each of the four (4) forcible sex offenses that were not reported in the crime statistics for the 2001 and 2002 calendar years. This is a serious violation because current and prospective students/employees must be able to rely on accurate and complete campus crime information.

I have assessed $27,500 for Yale's failure to define YNHH as campus and report crime statistics for that site. This is a serious violation because current and prospective students and employees were denied accurate information to make informed safety decisions. Current and prospective students and employees cannot be expected to rely on statistical data, with regard to crime scenes, when information available to them improperly defines the campus property. A maximum fine is appropriate in this case.

I have assessed $27,500 for Yale's failure to include seven (7) required policy statements in its calendar year 2004 ASR. This is a serious violation because by failing to include these required policy statements in its ASR, Yale denied the campus community important information, rendering the distributed ASR incomplete and unreliable. Students and employees cannot take advantage of information that has not been provided to them. I impose a fine of $5,000 for each missing policy statement up to a maximum of $27,500. In this case, Yale failed to include seven (7) policy statements so I have assessed the maximum amount.

The fine of $165,000 will be imposed on **May 9, 2013**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Yale may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If Yale 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 Yale's case to a hearing official who will conduct an independent hearing. Yale is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If Yale does not request a hearing but submits written material instead, I will consider that material and notify Yale of the amount of fine, if any, that will be imposed.

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT YALE SUBMITS MUST BE RECEIVED BY MAY 9, 2013; OTHERWISE, THE $165,000 FINE WILL BE EFFECTIVE ON THAT DATE.

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

Sincerely,

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

Enclosures

cc: Dr. Barbara E. Brittingham, President, NEASC's Commission on Institutions of Higher Education (CIHE), via bbrittingham@neasc.org
Ms. Jane A. Ciarleglio, Executive Director, Office of Higher Education, Connecticut, via jciarleglio@ctohe.org