



SEP 23 2014

Dr. Marshall White, Jr.
President
Midlands Technical College
1260 Lexington Drive
West Columbia, SC 29170

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Dear Dr. White:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Midlands Technical College (MTC) a total of \$47,500 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 MTC'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). 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 conducted a focused campus security program review at MTC from March 9, 2010 to March 11, 2010. The focus of the review was MTC's compliance with the Clery Act. The review consisted of an examination of MTC's catalog and written agreements, police

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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 crime statistics submitted by MTC to the Department and the data published in the College's ASRs. The review team also interviewed institutional officials with Clery Act responsibilities.

The Department's program review coincided with a Quality Assurance Review of MTC's crime reporting practices conducted by the Federal Bureau of Investigation's (FBI's) Criminal Justice Information Service Audit Unit. The FBI shared the results of its review with the Department and a copy of its report was included as an appendix to the PRR.

On December 28, 2010, the Department issued a Program Review Report (PRR) to MTC. The review found that MTC had not complied with the Clery Act and the Department's implementing regulations. MTC responded to the report on January 27, 2011. After reviewing MTC's response, the Department issued its Final Program Review Determination (FPRD) letter to MTC on January 29, 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 MTC did not include numerous statements of campus security policies in its 2009 ASR, and that MTC failed to properly classify and report two burglaries that should have been reported in crime statistics for 2008 and 2009 respectively, in violation of the Clery Act.

MTC'S 2009 ASR OMITTED REQUIRED POLICY STATEMENTS

The Clery Act and the Department's regulations require that participating institutions prepare an ASR that contains, among other things, 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).

MTC's 2009 ASR did not include numerous statements of institutional policy required by 34 C.F.R. 668.46(b)(2). Specifically, the Department determined that MTC's 2009 ASR did not include policy statements in 18 required areas:

1. Current campus policies regarding procedures for students and others to report criminal actions or other emergencies occurring on campus.
2. Policies for making timely warning reports to members of the campus community regarding the occurrence of crimes.
3. Policies for preparing the annual disclosure of crime statistics.

4. A list of the titles of each person or organization to which students and employees should report the criminal offenses described in 34 C.F.R. § 668.46(c) (1) for the purpose of making timely warning reports and the annual statistical disclosure.
5. Current policies concerning campus law enforcement that: addresses the enforcement authority of security personnel, including their relationship with State and local police agencies and whether those security personnel have the authority to arrest individuals; encourages accurate and prompt reporting of all crimes to the campus police (if any) and the appropriate police agencies; and describes procedures, if any, that encourage pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics.
6. A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.
7. A description of programs designed to inform students and employees about the prevention of crimes.
8. A statement of policy concerning the monitoring and recording through local police agencies of criminal activity in which students engaged at off-campus locations of students organizations officially recognized by the institution, including student organizations with off-campus housing facilities.
9. 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.
10. A description of educational programs to promote the awareness of rape, acquaintance rape, and other forcible and non-forcible sex offenses.
11. Procedures students should follow if a sex offense occurs, including procedures concerning who should be contacted, the importance of preserving evidence for the proof of a criminal offense, and to whom the alleged offense should be reported.
12. Information on a student's option to notify appropriate law enforcement authorities, including on-campus and local police, and a statement that institutional personnel will assist the student in notifying these authorities, if the student requests the assistance of these personnel.
13. Notification to students of existing on and off campus counseling, mental health, or other student services for victims of sex offenses.
14. Notification to students that the institution will change a victim's academic and living situations after an alleged sex offense and of the options for those changes, if those changes are requested by the victim and are reasonably available.
15. Procedures for campus disciplinary action in cases of an alleged sex offense.
16. A statement that the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary proceeding.
17. A statement that both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense.

18. Sanctions the institution may impose following a final determination of an institutional disciplinary proceeding regarding rape, acquaintance rape, or other forcible or non-forcible sex offenses.

In its January 27, 2011 response to the PRR, MTC claimed that it did have policy statements in some of these areas that the PRR had described as inadequate or missing from the ASR. MTC conceded that all the policy statements mentioned above were not published in its 2009 ASR, in violation of the Clery Act. MTC claimed that it now provides the required statements of policy that were missing from its 2009 ASR. However, these efforts do not excuse MTC's failure to have required policy statements in its 2009 ASR, as required by the Clery Act and the Department's regulations.

MTC FAILED TO PROPERLY CLASSIFY, COMPILER 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. 34 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. 34 C.F.R § 668.41(e)(1)-(e)(5).

MTC did not properly compile and publish accurate crime statistics. As a result, students, employees, and the public were not provided with accurate crime statistics in MTC's 2009 ASR; and MTC did not report accurate information to the Department's Campus Crime and Security Website for calendar years 2008 and 2009. Statistical data published in the institution's ASR and provided to the Department's website must be accurate and reliable.

Specifically, MTC improperly classified a burglary as an "Investigation of Funds". Incident report # AP-08-09-069 indicated that on September 2, 2008, an unknown person(s) entered the Subway Restaurant in MTC's Student Center and took \$200 from a grey lockbox. The complainant stated that her keys were stolen and someone had entered the facility and taken the money. MTC classified the incident as an investigation of funds; however, it should have been classified as a burglary. In its January 27, 2011 response to the PRR, MTC acknowledged that it improperly classified incident report # AP-08-09-069. As a result of MTC's incorrect classification, this crime was not included in the crime statistics included in the ASR and reported to the Department, and MTC understated the number of burglaries on campus.

Additionally, in the report of its review, the FBI identified one case in which MTC incorrectly characterized a crime and did not include it in its campus crime statistics in the ASR and in the report to the Department. Specifically, the FBI found that the crime recorded in incident report #AP-09-03-019 had been incorrectly classified by MTC as a larceny-theft from a building when it should have been classified as a burglary. Since larceny-thefts are not included in the general campus crime statistics (they are included if they are hate crimes), but burglaries are reported, MTC's incorrect characterization of the crime reflected in incident #AP-09-03-019 meant it was not included in the statistics provided in the ASR and reported to the Department..

In its response to the PRR, MTC acknowledged that it had incorrectly classified the crimes reflected in incident #s AP-08-09-069 and AP-09-03-019 and that the crimes were not included in the campus crime statistics reported in the 2009 ASR, and in the statistics reported to the Department.

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the crime statistics which are 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. The correction of violations by institutions after the fact does not diminish the seriousness of not correctly including these incidents in campus crime statistics at the time they occurred.

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 MTC is 2012-2013 award year. According to the Department's records, MTC received approximately \$24,971,919 in Federal Pell Grant (Pell) funds, \$25,783,605 in Federal Direct Loan funds and \$793,249 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, MTC is a large institution because its funding levels for the Federal Pell Grant, Federal Direct Loan, and Campus-Based programs exceeds the median funding levels for those Title IV, HEA programs.

As detailed in this letter, the Clery Act violations identified at MTC are serious. These failures have endangered MTC'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 to take precautions for their safety. In addition, prospective students and employees and the public must be able to rely on crime statistics reported to the Department and made publicly available to understand the crime situation at institutions of higher education. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of

its administrative capability, and MTC's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

In determining the appropriate fine amounts in this case, FSA is also taking into account the Secretary's decisions in In the Matter of Tarleton State University, Dkt. No.09-56-SF (Dec. of the Secretary, June 1, 2012) and In the Matter of Washington State University, Dkt.No. 11-56-SF (Dec. of the Secretary, Aug. 29, 2012). Those decisions concluded that the HEA authorizes the Department to impose a fine calculated on the basis of each missing criminal offense in an ASR or report to the Department and that the maximum fine amount should be imposed when the unreported crimes are violent crimes.

After considering the gravity of the violations and size of the institution, I have assessed a fine of \$27,500 for MTC's failure to include 18 required policy statements it omitted or did not properly and adequately include in its 2009 ASR. This is a serious violation because current students and employees, and prospective students and employees were denied information that would help them make informed decisions about safety and campus crime policies at MTC. MTC has acknowledged that it did not include the required policy statements in its 2009 ASR or, in some cases, referred to a policy maintained elsewhere. For example, MTC did not inform students and employees of the procedures for campus disciplinary actions in the case of an alleged sex offense. Students and employees could not be expected to understand how to report crimes or what type of procedures to anticipate when MTC did not provide that information to them. MTC's failure to include numerous policy statements in its 2009 ASR rendered the report woefully deficient, unreliable, and unhelpful to the campus community. I impose a fine of \$5,000 for each missing policy statement up to a maximum of \$27,500. In this case, MTC failed to include 18 policy statements so I have assessed the maximum amount.

I have assessed \$10,000 for MTC's failure to properly classify and report incident report # AP-08-09-069 in its 2009 ASR as a burglary. This is a serious violation because current and prospective students and employees, and the public must be able to rely on accurate and complete campus crime information in the ASR and posted on the Department's Campus Crime and Security Website. Similarly, I have assessed \$10,000 for MTC's failure to properly classify and report incident report # AP-09-03-019 as a burglary in its 2009 ASR. This is a serious violation because current, prospective students and employees, and the public were not provided accurate crime information in MTC's 2009 ASR and on the Department's Campus Crime and Security Website.

The fine of \$47,500 will be imposed on **October 14, 2014**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. MTC may submit both a written request for a hearing and written material indicating why a fine should not be imposed.

If MTC chooses to request a hearing or submit written material, you must write to me at:

Dr. Marshall White, Jr.
Midlands Technical College

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

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT MTC SUBMITS MUST BE RECEIVED BY OCTOBER 14, 2014; OTHERWISE, THE \$47,500 FINE WILL BE EFFECTIVE ON THAT DATE.

If you have any questions or desire any additional explanation of MTC's rights with respect to this action, please contact Lawrence Mwehuku 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
Dr. MaryAnn Janosik, Director, SC Commission of Higher Education, via
mjanosik@che.sc.gov