



FEB 13 2015

Mr. Jonathan Brand
President
Cornell College
600 First Street South West
Mount Vernon, IA 52314-1098

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Dear Mr. Brand:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Cornell College (Cornell) a total of \$55,000 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). 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 Cornell'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 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). The ASR must also include statements explaining the institution's policies on certain specified campus security topics. 34 C.F.R. § 668.46(b).

The Clery Act and the Department's regulations also require that an institution that maintains any on-campus student housing facility, must prepare an Annual Fire Safety Report (AFSR). 34 C.F.R. § 668.49(b). The AFSR must be published and distributed through appropriate publications and mailings in the same manner as the ASR. The AFSR must be a comprehensive publication in the same manner as the ASR; however, if an institution chooses to combine the ASR and AFSR and publish them as a single document, then the title of both reports must conspicuously appear on the cover page. 34 C.F.R. § 668.41(e).

The Department reviewed a single audit report of Cornell prepared by McGladrey, LLP. The report was prepared in accordance with the Office of Management and Budget Circular A-133

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and covered the period from July 1, 2011 to June 30, 2012. The audit also included a review of Cornell's compliance with applicable laws and regulations including the Clery Act and the HEA. The audit report included findings that Cornell had not distributed the 2011 ASR and 2011 AFSR in accordance with the requirements of the Clery Act and the Department's regulations. The audit report also included Cornell's response to the findings.

The Department reviewed the audit report and issued its Final Audit Determination (FAD) letter to Cornell on May 14, 2013. The FAD is incorporated by reference into this fine action. (Enclosure 1).

The Department is taking this fine action based on the findings in the FAD, which concluded that Cornell did not properly distribute its 2011 ASR and its AFSR for calendar year 2011.

CORNELL FAILED TO PROPERLY DISTRIBUTE ITS 2011 ASR

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

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).

Cornell did not properly distribute its 2011 ASR to current students and employees. The FAD found that Cornell did not notify current students and employees about the availability of the 2011 ASR until well after the statutory deadline of October 1, 2011. The only notification sent to students and employees was an email sent from Cindi Reints, Cornell's Director of Financial Assistance, to Cornell's Faculty, Staff and Students on November 9, 2011 which referred vaguely to "certain information" to which the students and employees were entitled as consumers. The email did not specifically refer to campus crime statistics and policies or otherwise describe the reports' contents or state that a paper copy would be available upon request as required by the Clery Act and the Department's regulations. Moreover, the date of this email indicates that the ASR was not made available to students and employees until at least November 9, 2011, more than a month after the statutory deadline. In its response to the audit, Cornell did not claim that it had properly distributed its 2011 ASR or present any evidence to counter the finding. Cornell did identify steps it would take to ensure that future ASRs would be timely and properly distributed. However, the revision of procedures in the future does not excuse Cornell's earlier failure to comply with the law. The Clery Act requires institutions to provide students and employees with vital crime statistics and information through the ASR by October 1 each year. Cornell failed to comply with this requirement and thus deprived its students and employees of important safety information.

CORNELL DID NOT PROPERLY DISTRIBUTE ITS 2011 AFSR

The Clery Act and the Department's regulations require that all institutions that receive Title IV, HEA funds and maintain an on-campus student housing facility must, by October 1 of each year, prepare, publish and distribute to its current students and employees through appropriate publications and mailings, an AFSR that contains, at a minimum, all of the statistical and policy elements described in 34 C.F.R. § 668.49(b). The first AFSR had to be provided to students and employees by October 1, 2010. In the AFSR, institutions must disclose fire statistics for each on-campus student residential facility for the three most-recent calendar years. An institution's statistics must accurately and completely identify the number of on-campus fires and the cause of each fire, the number of persons who sustained fire-related injuries that resulted in treatment at a medical facility (including on-campus health centers), the number of fire-related deaths, and the dollar value of property damage caused by such fires. 34 C.F.R. § 668.49(c).

The AFSR must include several fire safety information disclosures covering topics such as the type(s) of fire safety systems that are used in each student housing facility, the number of fire drills that were conducted during the previous calendar year, any institutional policies, procedures, and programs regarding: 1) the use and/or possession of portable electrical appliances; 2) smoking and the use/presence of open flames in student housing facilities; 3) evacuation procedures to be followed in the case of a fire; 4) fire safety education and training programs; 5) the institutional official(s) and departments to whom students and employees should report the occurrence of fires so that those incidents can be included in the institution's annual fire statistics; and, 6) any plans for future improvements to the institution's fire safety program. 34 C.F.R. § 668.49(b).

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Cornell has on-campus student housing facilities and thus is required to issue an AFSR each year. As with the ASR, Cornell did not properly distribute its 2011 AFSR to current students and employees. The FAD found that Cornell did not notify current students and employees about the availability of the 2011 AFSR until well after the statutory deadline of October 1, 2011. The only notification sent to students and employees was an email sent from Cindi Reints, Cornell's Director of Financial Assistance, to Cornell's Faculty, Staff and Students on November 9, 2011 which referred vaguely to "certain information" to which the students and employees were entitled as consumers. The email did not specifically refer to campus fire statistics and policies or otherwise describe the reports' contents or state that a paper copy would be available upon request as required by the Clery Act and the Department's regulations. Moreover, the date of this email indicates that the AFSR was not made available to students and employees until at least November 9, 2011, more than a month after the statutory deadline. In its response to the audit, Cornell did not claim that it had properly distributed its 2011 AFSR or present any evidence to counter the finding. Cornell did identify steps it would take to ensure that future AFSRs would be timely and properly distributed. However, the revision of procedures in the future does not excuse Cornell's earlier failure to comply with the law. The Clery Act requires institutions to provide students and employees with vital fire statistics and information through the AFSR by October 1 each year. Cornell failed to comply with this requirement and thus deprived its students and employees of important safety information.

In determining the amount of a 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 Cornell is 2012-2013 award year. According to the Department records, Cornell received approximately \$1,635,551 in Federal Pell Grant (Pell) funds, \$8,397,401 in Federal Direct Loan funds and \$872,794 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, Cornell 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 Cornell are very serious. Cornell failed to provide the ASR and the AFSR to its students and employees by the statutory deadline. Moreover, when Cornell eventually did send out a notice of the reports availability, the notice was vague and did not explain what information was available or how students and employees could obtain a paper copy. The ASR and AFSR are basic sources for providing safety and security information to students. As a result of Cornell's violations of the Clery Act, students and employees were deprived of information that would help them take precautions for their safety. Moreover, the Department considers an institution's compliance with the Clery Act

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requirements to be part of its administrative capability, and Cornell'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 a fine of \$27,500 for Cornell's failure to properly distribute its ASR for calendar year 2011. This is a serious violation because current students and employees were denied information about campus safety that would help them make informed safety decisions. A maximum fine is appropriate in this case.

I have also assessed a fine of \$27,500 for Cornell's failure to properly distribute its 2011 AFSR. This is a serious violation because the campus community was deprived of important information to help them make important safety decisions with regard to fire safety at Cornell.

The fine of \$55,000 will be imposed on **March 9, 2015**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. Cornell may submit both a written request for a hearing and written material indicating why a fine should not be imposed.

If Cornell chooses to request a hearing or submit written material, you must write to me **to the attention of Lawrence Mwethuku** 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 Cornell's case to a hearing official who will conduct an independent hearing. Cornell is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If Cornell does not request a hearing but submits written material instead, I will consider that material and notify Cornell of the amount of fine, if any, that will be imposed.

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT CORNELL SUBMITS MUST BE RECEIVED BY MARCH 9, 2015; OTHERWISE, THE \$55,000 FINE WILL BE EFFECTIVE ON THAT DATE.

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

cc: Ms. Karen Solomon, Vice President for Accreditation Relations, Higher Learning
Commission, via ksolomon@hlcommission.org
Dr. Brad Buck, Iowa Department of Education, via brad.buck@iowa.gov