



**MAY 18 2016**

Mr. Tate Holland  
President  
Make-UP Designory  
129 South San Fernando Boulevard  
Burbank, CA 91502-1322

Sent: United Parcel Service  
Tracking #: 1Z A87 964 01 9269 2413

OPE-ID: 04092400

Dear Mr. Holland:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Make-UP Designory (MD) a total of \$27,500 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 MD'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 (2011).<sup>1</sup>

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). 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 reviewed a single audit report of MD prepared by Almich & Associates, P.C. The report was prepared in accordance with the Department's applicable audit guide and covered the period from January 1, 2012 through December 31, 2012. The audit also included a review of MD's compliance with applicable laws and regulations including the Clery Act and the HEA. The audit report included a finding that MD did not submit its 2012 crime statistics for its New

<sup>1</sup> The Department significantly revised 34 C.F.R. §668.46 in final regulations published on October 20, 2014. However, the fines proposed in this letter are based on violations of the regulations existing during the period covered by the program review.

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York City campus to the Department's Campus Safety and Security Data Analysis Cutting Tool (CSSDACT) as required by 34 C.F.R. § 668.41(e)(1)-(e)(5). The audit report also included MD's response to the finding.

The Department reviewed the audit report and issued its Final Audit Determination (FAD) letter to MD on October 22, 2013. The FAD is incorporated by reference into this fine action. (Enclosure 1).

The Department is taking this fine action based on the finding in the FAD, which concluded that MD did not submit the 2012 crime statistics for its New York campus to the Department in accordance with the requirements of the Clery Act and the Department's regulations.

### **MD FAILED TO REPORT CRIME STATISTICS TO THE DEPARTMENT FOR CALENDAR YEAR 2012**

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 (including separately identifying crimes that took place in dormitories or other on-campus 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 statistics must be included in the institution's ASR which must be provided to current students and employees and made available to potential students and employees by October 1 of each year. The same statistics must be electronically submitted to the Department for 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).

MD did not submit the 2012 crime statistics for its New York City campus to the Department in accordance with the requirements of the Clery Act and the Department's regulations. The Department makes the crime statistics available to the public. The Department notes that after the auditor notified MD about this violation, the institution submitted its 2012 crime statistics for the New York campus to the Department on April 26, 2013. The auditor provided the Department with a copy of MD's crime statistics submitted to the Department's CSSDACT on April 26, 2013. As a result of MD's failure to comply with the law, potential students and their parents, potential employees and the public did not have access to crime information about MD's campus. The failure by MD to submit the 2012 crime statistics for its New York City campus meant that the Department was unable to provide that crime statistical information to the public.

In its response and corrective action plan, MD concurred with the finding and stated that it had taken corrective actions to ensure compliance in the future. The Clery Act and the Department's regulations require that institutions submit the crime statistics for each calendar year to the

Department for public use. The failure by MD to submit its 2012 crime statistics for the New York campus to the Department deprived the public of important crime information at MD. Potential students, parents and employees must be able to review the crime statistics of any school from the Campus Crime and Security Website to make informed decisions about where to study or work. MD's submission of the crime statistics and correction of its procedures only after the Department alerted the College of its obligations do not excuse its earlier failure to comply with its legal obligations. The correction of violations does not diminish the seriousness of not timely and correctly submitting crime statistics to the Department each year as required by the Clery Act and the Department's regulations.

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 MD is 2014-2015 award year. According to the Department records, MD received approximately \$635,642 in Federal Pell Grant (Pell) funds, and \$3,296,438 in Federal Direct Loan funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,540,305, and for institutions participating in the Federal Direct Loan programs, the median funding level is \$2,108,926. Accordingly, MD is a large institution because its funding level for Federal Direct Loans exceeds the median funding level for that Title IV, HEA program.

As detailed in this letter, the Clery Act violations identified at MD are very serious. MD failed to submit the 2012 crime statistics for its New York City campus to the Department for public use, in accordance with the requirements of the Clery Act and the Department's regulations. The ASR and the crime statistics submitted to the Department are basic sources for providing safety and security information to students/employee and potential students and employees. MD's failure to submit its 2012 crime statistics for the New York City campus to the Department deprived prospective students/employees, and the public of important crime information that would help them take precautions for their safety or make informed decisions about where to attend college or work. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be part of its administrative capability, and MD's failure to comply with those requirements constitutes an inability to properly administer the Title IV programs.

After considering the gravity of the violation and size of the institution, I have assessed a fine of \$27,500 for MD's failure to submit the 2012 crime statistics for its New York City campus to the Department in accordance with the requirements of the Clery Act and the Department's regulations. This is a serious violation because potential students and employees, and the public were deprived of crime information entitled to them. The maximum fine is appropriate in this case.

Mr. Tate Holland  
Make-UP Designory  
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The fine of \$27,500 will be imposed on **June 10, 2016**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. MD may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If MD 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

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

**ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT MD SUBMITS MUST BE RECEIVED BY JUNE 10, 2016; OTHERWISE, THE \$27,500 FINE WILL BE EFFECTIVE ON THAT DATE.**

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

Sincerely,



Susan D. Crim, Director  
Administrative Actions and Appeals Service Group  
Federal Student Aid/Program Compliance  
U.S. Department of Education

Enclosure

cc: Dr. Michale S. McComis, Executive Director, ACCSC, via [mccomis@accsc.org](mailto:mccomis@accsc.org)  
CA Bureau for Private Postsecondary Education, via [bppe.licensing@dca.ca.gov](mailto:bppe.licensing@dca.ca.gov)