



SEP 27 2013

Dr. Edward J. Ray, Ph.D.
President
Oregon State University
1500 S.W. Jefferson
Corvallis, OR 97331-8507

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Dear Dr. Ray:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Oregon State University (OSU) a total of \$280,000 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 OSU'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). An institution must compile and publish accurate 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).

Federal Student Aid
An OFFICE of the U.S. DEPARTMENT of EDUCATION

Administrative Actions and Appeals Service Group
830 First St., N.E. Washington, D.C. 20002-8019
StudentAid.gov

The Department conducted a program review at OSU from September 14, 2009, to September 18, 2009. The focus of the review was OSU's compliance with the Clery Act. The review consisted of an examination of OSU's police incident reports, arrest records, student conduct violation records, policies and procedures related to campus safety, and the review of a student complaint. Staff interviews were also conducted. On February 22, 2010, the Department issued a Program Review Report (PRR) to OSU. The review found that OSU had not complied with the Clery Act and with the Department's implementing regulations. OSU responded to the report on March 18, 2010. After reviewing OSU's responses, the Department issued its Final Program Review Determination (FPRD) letter to OSU on July 16, 2010. 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 OSU did not report accurate crime statistics to the members of its campus community, the public and the Department for calendar year 2007.

OSU FAILED TO REPORT ACCURATE CRIME STATISTICS IN ITS CALENDAR YEAR 2008 ASR AND STATISTICAL DATA SUBMITTED TO THE DEPARTMENT'S CAMPUS CRIME AND SECURITY WEBSITE

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 report 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).

As discussed in the FPRD, after the Department informed OSU of its intention to conduct a program review at the University, OSU determined and reported to the Department that it had failed to properly include all reportable crime statistics in its campus crime statistics for calendar year 2007 and in its crime statistics reported to the Department.

When reviewers arrived on-site, OSU officials provided them with what they represented to be OSU's corrected crime statistics as shown in the chart below:

Crime Category	Crime Statistics Reported in OSU's 2008 ASR for 2007	Reported to the Department's Website	Corrected Crime Statistics Provided by OSU
Forcible Sex Offense	7	3	7
Aggravated Assault	3	1	2
Robbery	No change	No change	No change
Burglary	46	30	48
Motor Vehicle Theft	5	2	6
Liquor Law Arrests	386	N/A	572
Weapons law Arrests	2	N/A	11
Drug law Arrests	93	N/A	143

In its February 22, 2010 program review report, the Department required OSU to show proof that it had corrected what the University acknowledges were erroneous crime statistics reported for 2007. In its March 18, 2010 response to the program review report, OSU informed the Department that even the "corrected" crime statistics provided to the reviewers on-site were erroneous.

OSU provided the “final” corrected crime statistics shown below:

Crime Category	Crime Statistics Reported in OSU’s 2008 ASR for 2007	Reported to the Department’s Website	Corrected Crime Statistics Provided by OSU During Review	Corrected Crime Statistics Provided by OSU in Response to PRR
Forcible Sex Offense	7	3	7	8
Aggravated Assault	3	1	2	4
Robbery	No change	No change	No change	1
Burglary	46	30	48	59
Motor Vehicle Theft	5	2	6	9
Liquor Law Arrests	386	N/A	572	542
Weapons law Arrests	2	N/A	11	10
Drug law Arrests	93	N/A	143	93

In its March 18, 2010 response to the program review report, OSU stated that it had corrected its 2007 crime statistics in its ASR and the statistical data to the Department to reflect the most recently corrected statistics. OSU provided the Department with a copy of its 2009 ASR which contained the final corrected 2007 crime statistics. OSU also provided a copy of the corrected final statistical data as reported to the Department for 2007.

After comparing OSU’s final corrected crime statistics and the 2007 crime statistics originally contained in its 2008 ASR, the Department concluded that in the ASR made available to students, employees and potential students and employees in 2008, OSU did not include a total of Two Hundred and Three (203) crimes in its crime statistics for calendar year 2007 .

In its March 18, 2010 response, OSU provided corrected crime statistics for calendar year 2007 that showed that OSU under-reported specific types of crimes as shown below:

Crime Category	OSU's 2007 Crime Statistics Reported in its Original 2008 ASR Dated 10/1/08	OSU's Corrected 2007 Crime Statistics Reported in its ASR Dated 10/1/09	# of Under-Reported Crime Incidents in 2007
Forcible Sex Offenses	7	8	1
Aggravated Assault	3	4	1
Burglary	46	59	13
Motor Vehicle Theft	5	9	4
Liquor Law Violations	366	542	176
Weapons law Violations	2	10	8
Total			203

Upon comparing information obtained from the Department's Campus Security Data Analysis Cutting Tool prior to the program review and OSU's final crime statistics provided in its March 18, 2010 response, the Department concluded that statistical crime data submitted by OSU to the Department for inclusion in the Campus Crime and Security Website for 2007 under-reported Twenty five (25) crimes as shown below:

Crime Category	# of Under-Reported 2007 Crime Statistics to the Department
Forcible Sex Offenses	1
Aggravated Assault	1
Burglary	13
Motor Vehicle Theft	10
Total	25

OSU reported to the Department that the crime statistics it gathered for calendar year 2007 only included crimes reflected in the Oregon State Police case files and did not include crimes reported to the police and reflected in the Oregon State Police Daily Log but not reflected in the case files. OSU contends that the failure resulted from an error committed by a new employee who did not fully understand the Clery Act reporting responsibilities.

In its response to the program review report, OSU did not explain why it did not provide correct crime statistics the first time it provided revised statistics to the Department. The FPRD notes that OSU has taken corrective actions to prevent future reporting omissions.

The Clery Act and the Department's regulations require that institutions ensure the accuracy of the data when it is presented to current students and employees, and prospective students and employees who can use the data to make decisions affecting their personal safety. Current students and employees, and prospective students and employees must be able to rely on the institution's reported crime statistics. OSU's calendar year 2008 ASR was inaccurate and misleading. OSU's statistical data posted on the Department's Campus Crime and Security Website was inaccurate, misleading, and unreliable. Statistical data posted on the Department's website must be accurate and reliable. In this case, the crime statistics provided by OSU in the ASR and to the Department significantly underreported the number of reported crimes on its campus.

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 OSU is 2011-2012 award year. According to the Department records, OSU received approximately \$30,132,289 in Federal Pell Grant (Pell) funds, \$146,935,678 in Federal Direct Loan funds and \$5,494,645 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, OSU 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 OSU are serious and numerous. These failures could have endangered OSU's students and employees who must be able to rely on the disclosures of accurate and complete campus crime statistics in order 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 OSU'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 \$27,500 for OSU's failure to report One (1) Forcible Sex Offense in its 2007 crime statistics. This is a serious violation because current and prospective students and employees were denied accurate information to make informed safety decisions. The crime statistics included for 2007 in the 2008 ASR and the statistical data submitted to the Department were glaringly deficient. A maximum penalty is appropriate for each of the under-reported violent crimes that were reported in 2007.

I have assessed \$27,500 for OSU's failure to report One (1) Aggravated Assault in its statistics for 2007. This is a serious violation because current and prospective students and employees were denied accurate information to make informed safety decisions.

I have assessed \$10,000 for each of the thirteen (13) Burglaries that OSU did not include in its crime statistics for 2007. This is a serious violation because current and prospective students and employees were given inaccurate and misleading statistical data with regard to burglaries at OSU. Current students/employees and prospective students/employees cannot be expected to make important safety decisions when campus security information given to them is inaccurate.

I have assessed \$10,000 for each of the four (4) Motor Vehicle Thefts OSU did not include in its 2007 crime statistics. This is a serious violation because current and prospective students and employees relied on inaccurate reporting of motor vehicle thefts at OSU.

I have assessed \$27,500 for OSU's failure to report one hundred seventy-six (176) Liquor Law Violations. This is a serious violation because the campus community and the public relied on extremely inaccurate information. I have assessed a fine of \$5,000 for each Liquor Law Violation not included in the campus crime statistics up to a maximum fine of \$27,500. A maximum fine amount is appropriate in this case because these are not violent crimes.

I have assessed \$27,500 for OSU's failure to include eight (8) Weapons Law Violations in its crime statistics for 2007. This is a serious violation because the campus community and the public were provided information which was significantly inaccurate. I fine \$5,000 for each Weapons Law Violation to a maximum fine of \$27,500. A full maximum fine amount is appropriate in this case.

The fine of \$280,000 will be imposed on **October 17, 2013**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. OSU may submit both a written request for a hearing and written material indicating why a fine should not be imposed.

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

ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT OSU SUBMITS MUST BE RECEIVED BY OCTOBER 17, 2013; OTHERWISE, THE \$280,000 FINE WILL BE EFFECTIVE ON THAT DATE.

If you have any questions or desire any additional explanation of OSU'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. Sandra E. Elman, President, NWCCU, via selman@nwccu.org
Mr. Charles Triplett, Board Secretary, Oregon State Board of Higher Education, via charlestriplett@ous.edu